The Institute of Chartered Accountants of India
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ICAI International Conference 2015

"Accountancy Profession:
Building Global Competitiveness; Accelerating Growth"

29 - 31 Jan 2015
Bangalore Palace, Bengaluru

23.01.2015
Mentoring Programme for
Young Members

Vistāra
Expansion, Creating New Dimensions

CPE - January 2015
38

Chairman's Communique . . .

Dear Professional Colleagues,

HAPPY NEW YEAR 2015

Year comes and year goes, It has been our effort to make all years eventful. It is in our hands to make the New Year more challenging. This is thetimefor us to make new resolutions and to be ambitious to reach newer heights and greater goals in one's professional and personal life. We shall continue to emerge as good and vibrant professional players, safe guarding the quality of our prestigious profession. This year Sankranti falls on 15th January.

We wish you and your family a Happy Makara Sankranti.

The month that was Dec 2014

December 2014 was a month of events one after the other. In order to comply with the requirement of CPE Credit and giving prime importance in updation of knowledge, many programmes were conducted besides study circle meetings.

Two day workshop on New Regime of Companies Act and relevant aspects of KVAT & VAT Audit on 5th& 6th Dec 2014, was very well received by the delegates. We place on record the support extended by all our renowned speakers and CA P R Suresh co-ordinator of this event.

For the **Workshop on Real Estate**, conducted in association with Research committee of SIRC of the ICAI on 18th& 19th& 20th Dec 2014 had an overwhelming response. We thank all the great speakers who had put in all their efforts to conduct this event. In fact, the technical sessions conducted could throw light on many of the issues faced by CAs while they are involved in advisory services to their clients dealing with real estate business which plays a key role in economic growth of our great nation.

The **panel discussion on Co-operative Audit** was also great help for the members involved in co-operative Audit. We also whole heartedly thank CA B.V. Ravindranth from Sagar, CA Umesh Bolmal form Hubli, CA H Shivakumar and other resource persons who actively participated in panel discussion. Professional opportunities for young Members in co-operative and NPO Sectors dealth by Dr. CA N. Suresh on 24th Dec 2014 was of immense value to the delegates.

Prarambh - A Kickstart to Excellence, an International CA Students Conference, held first ever in Bangalore on 27th& 28th Dec 2014 was a remarkable success & set a new milestone in the history of Bangalore branch.

I would like to convey my deepest gratitude to our dynamic President CA K Raghu, Dr. Mylswamy Annadurai and all eminent personalities who have contributed significantly for the success of the conference by gracing the occasion. Special thanks to BOS, SICASA Bangalore, Regional & Central council members, Overseas CA family & our beloved students for their support and active participation.

My hearty congrats to CA Shravan Guduthur, SICASA Chairman & CA Allama Prabhu, Conference Coordinator on this resounding success of the conference.

The month ahead – January 2015

Apart from study circle meetings a joint programme is being organised at Hotel Woodlands in association with ICSI & ICMA Bangalore Chapters on 10th Jan 2015 between 5pm & 8.30pm **"Concepts of Corporate Management Ancient Indian Thoughts".** We thank CS S.C.Sharada, Chairman, Bangalore Chapter of ICSI & CMA Vishwanath Bhatt, Chairman, ICMA Bangalore chapter who have taken initiative to conduct this special programme for the benefit of the members of the 3 professional organisations.

Here is an enchanting programme called for **Young CAs Mentoring Programme** for young members organised by YOUNG MEMBERS EMPOWERMENT COMMITTEE on 23rd Jan 2015 at Hotel Le Meridien. This unique event will enable the young members to excel in their chosen areas of their professional endeavours and will strengthen our profession. On behalf of Bangalore Branch, I request all the young CAs to participate actively and derive maximum benefit out of this unique opportunity.

ICAI International Members Conference 2015 on 29th, 30th& 31st Jan 2015 at Bangalore Palace as a part of continuous professional development of the Members, the ICAI is organising this prestigious event 'Accountancy Profession, Building Global Competitiveness, Accelerating Growth'. Members are requested to participate in enmasse and make this first ever happening International event for members at Bangalore a grand success.

Once again on behalf of the Bangalore branch I wish you all ***a Happy and Prosperous New Year and Happy Sankranti !***

With Best Wishes,

CA. Babu K Thevar
Chairman

CALENDAR OF EVENTS - JANUARY & FEBRUARY 2015

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
07.01.2015 Wednesday	Internal Audit Vs. New Companies Act **CA Dayanivas Sharma**	Branch Premises 6:00pm to 8:00pm	2 hrs
10.01.2015 Saturday	**One Day Workshop on Real Estate** **CA Ashok Raghavan & CA Annapurana Kabra** *Refer Page No. 4*	TDCAA Building, Near Sree Raj Theatre, Srinagar, Tumkur-572106 10am to 5.30pm	6 hrs
10.01.2015 Saturday	**Concepts of Corporate Management - Ancient Indian Thoughts** *- A joint programme with ICSI & ICMA Chapter, Bangalore* Delegate Fees : ₹ **650/-** *Refer Page No. 5*	Wood lands Hotel, Rajaram Mohan Roy Road, Richmond Road 5.00pm to 8.30pm	- - -
14.01.2015 Wednesday	GST Constitution Amendment Bill - An Overview **Ms. Jayashree.P.**	Branch Premises 6:00pm to 8:00pm	2 hrs
21.01.2015 Wednesday	Wealth Tax **CA Sunil Surana**	Branch Premises 6:00pm to 8:00pm	2 hrs
23.01.2015 Friday	**Mentoring Programme for Young Members** *- organised by YMEC, ICAI, hosted by Bangalore Branch* *Refer Page No. 30* ***Delegate Fees:** Will be informed in due course of time*	Le Meridian, Sankey Road, Bangalore 9.30am to 5.30pm	6 hrs
26.01.2015 Friday	**Republic Day Celebration** - Flag Hoisting at 9:30am	Branch Premises 9:30am to 11:30am	- - -
28.01.2015 Wednesday	**Workshop on Data Analysis for Bank Branch Audit** **CA Shivakumar H.** Fee: ₹ **200/-** ***Restricted to 45 Members***	ICAI Bhawan , II Floor, Sri sanjay Towers subbarama Chetty Road, Basavangudi, B'lore 5pm to 8pm	6 hrs
29.01.2015 to 31.01.2015 Thursday to Saturday	**ICAI International Members Conference 2015** *For details refer Page No. 15*	Bangalore Palace, Near Guttahalli, Vasanthnagar Bangalore	14 hrs
04.02.2015 Wednesday	Forex Valuation in SAP as per AS-11 **CA Rajeev Kumar**	Branch Premises 6:00pm to 8:00pm	2 hrs
11.02.2015 Wednesday	Study circle meeting	Branch Premises 6:00pm to 8:00pm	2 hrs
18.02.2015 Wednesday	Internal control on Financial Reporting (SOX) CA Pritesh K Shah	Branch Premises 6:00pm to 8:00pm	2 hrs

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

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

One Day Workshop on

REAL ESTATE

6 hrs CPE

on Saturday, **10th January 2015** between **10.00am & 05.30pm**

at TDCAA, Near Sree Raj Theatre, Srinagar, Tumkur-572106

Timing	*Topic*	*Speaker*
10:00am to 11:30am	Income Tax provisions related to immovable properties, JD and Capital Gain Act	**CA.Ashok Raghavan**
Tea Break		
11:45am to 1:30pm	Income Tax provisions related to immovable properties, JD and Capital Gain Act (Continued)	**CA. Ashok Raghavan**
Lunch		
2:30pm to 4:00pm	KVAT and Service Tax provisions applicable to Real estate Transactions	**CA Annapurna Kabra**
Tea Break		
4.15pm to 5.30pm	KVAT and Service Tax provisions applicable to Real estate Transactions (Continued)	**CA Annapurna Kabra**

CA Babu K Thevar
Chairman
Bangalore Branch of SIRC of ICAI

CA. T. N. Raghavendra
Co-ordiantor
Mobile: **+91 94484 16521**

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

DELEGATE FEES: ₹ **250/-**

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

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Advt.

Workshop on

CONCEPTS OF CORPORATE MANAGEMENT – ANCIENT INDIAN THOUGHTS

on 10th January 2015 at 5.00pm to 8.30pm

at **Wood lands Hotel**,
Rajaram Mohan Roy Road, Richmond Road, Bangalore-560 025

in association with **ICSI Chapter & ICMA Chapter**, Bangalore

Timing	*Topic*	*Speaker*
05:00pm to 5:30pm	Networking and Registrations	
5.30pm to 6.00pm	INAUGURAL • **CA B.P. Rao**, *Past President, ICAI* • **CMA G.N. Venkataraman**, *Past President of ICMA* • **CS. D.K. Prahlada Rao**, *Past President ICSI*	
6.00pm to 6.40pm	Cost Management & Taxation (representing ICMA)	**CMA. B.R. Prabhakar** *Past Chairman and Regional Council Member of SIRC of Institute of Cost Accountants of India*
6:40pm to 7:20pm	Reporting requirements & Investor Protection	**CA K.Gururaj Acharya** *Member Expert Advisory Committee ICAI, New Delhi*
7.20pm to 8.00pm	Ehtics & Governance	**CS . Gopalakrishna Hegde** *Central Council Member, ICSI*
8.00pm to 8.30pm	Open House	
8.30pm onwards	Dinner	

CA Babu K Thevar
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Bangalore Branch of SIRC of ICAI

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

CS. S.C. Sharada
Chairman
Bangalore Chapter of ICSI

CMA. Vishwanath Bhatt
Chairman
Bangalore Chapter of ICMA

DELEGATE FEES: ₹ **650/-**

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POWERS OF SEARCH AND SEIZURE UNDER INCOME TAX ACT

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

In recognitioin of the fact that a man's house is his castle not to be invaded by any general authority to search and seize his goods and papers. The only legal means that can be applied to search a person's abode is under the authority of a "Search Warrant" and, in the absence thereof, neither any private person not any officer can invade the privacy of a home and subject its occupants to indignity. It is, therefore, imperative that seizure should not be allowed to exceed the limits of absolute necessity and the over zealousness of the searching officers not permitted to cross the permissible limits.

Legal History

- Income-tax authorities had originally no power of search or seizure.
- They possessed only powers of civil courts as under the Code of Civil Procedure, such as, powers of discovery and inspection, enforcing attendance of witnesses, examining them on oath, compelling the production of books and documents, issuing commissions, etc.
- In interest of the public, to tax income or profits, escaping taxation, **"TAXATION ON INCOME (INVESTIGATION COMMISSION) ACT, 1947"**, was enacted with vast powers to deal with object of assisting the Investigation Commission to help apprehend tax evaders.
- When Central Government thinks that a person has evaded taxes to a substantial extent it can refer to the commission for the investigation. If in the course of investigation if the commission comes to know that some other person has himself evaded payment of taxation on income, it may make a report to the Central Government stating its reason.
- After considering the report of the commission, the Central Government may order that the proceedings shall be reopened.
- **The constitutionality of the above Act was considered by the Supreme Court in *Surai Mall Mohta & Co v Visvanatha Sastri* (AV)-26 ITR 1- 1954 and the procedures prescribed by the Act, in so far as they affected the persons proceeded against, being a piece of discriminatory legislation, was held to be against the provisions of Article 14 of the Constitution of India and therefore void and unenforceable.** Later, in ***Muthiah (M Ct) v CIT – 29ITR 390- 1956*** the same view was reiterated. Consequent upon these decisions of the Supreme Court, the said Act was deprived of its efficacy.

  Note: Article 14 Equality before law: The state does not deny to any person equality before the law or the equal protection of law within the territories of India prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.
- Evasion of tax continued **unabated.**
- Central Government appointed the Taxation Enquiry Commission and on their recommendation section 37(2) of the 1922 Act was recast in section 132(1) of The 1961 Act.
- This section was later amended in 1964 and again in 1965 when section 132 was substituted by sections 132 and 132A.
- Later, **on the recommendations of the Wanchoo Committee, Taxation Laws** (Amendment) Act, 1975 was enacted to introduce several amendments to **section 132. It inserted a new section 132A.**

Object of the provision

- The principle objective of the provision is prevention of tax evasion. i.e., **to unearth the hidden or undisclosed income or property and bring it to assessment and not merely to get information of the undisclosed income, but also to seize the money, bullion, etc., representing the undisclosed income and to retain them for purposes of proper realization of taxes, penalties, etc.**
- The second is that the obvious purpose of amending the section from time to time was to plug the loopholes, from time to time discovered or brought to light, with a view to making evasion of taxes more difficult, and simultaneously, so as to shape the law as to be in consonance with, and not violative of, the fundamental rights.

Section 37 of the 1922 Act

- *1922 Act.*—This section corresponds to section 37(2)

of the 1922 Act, which read as follows:

- *"37. **Powers of income-tax authorities.**—*
- Any **Income-tax Officer** specially authorized by the Commissioner in this behalf may
- *(i)* enter and search any building or place where he has reason to believe that any Books of Accounts or other documents which in his opinion will be useful for, or relevant to, any proceeding under this Act may be found and examine them, if found;
- *(ii)* seize any such books of account or other documents or place marks of identification thereon or make extracts or copies there from;
- *(iii)* make a note or an inventory of any other article or thing found in the course of any search under this section which in his opinion will be useful for, or relevant to, any proceeding under this Act;
- *(iv)* the provisions of the Code of Criminal Procedure, 1898 (V of 1898), relating to searches shall apply to searches under this section.

In one case, where the assessee challenged the validity of the search conducted under the provisions of section 37(2) of the 1922 Act, the Assam High Court **struck down the provisions** as **violative of Articles 14 and 19(l)(g) of the Constitution.** The main objections taken against the provisions of section 37(2)of the 1922 Act were that:—

- (i) there is nothing to indicate the purpose and object for exercising the powers under that sub-section, or that no nexus is disclosed between the purpose and object of the provision and exercise of drastic powers thereunder;
- (ii) there is no indication as to when and in what circumstances the power in question is to be exercised;
- (iii)there is no indication in the sub-section in respect of which persons and whose premises the power in question is to be exercised;
- **(iv)** the sub-section discloses or contains no policy of the legislature, nor any principles which according to the legislature afford a guidance for exercise of power under that sub-section by the executive; and
- (v)that no provision is made for the return of the seized books of account nor any time limit set for any such return.

Section 132 of the Income Tax Act, 1961

- The provisions of Section 37(2) in 1922 Act was recast in Section 132(1) of the Income tax Act, 1961.Except for it was mentioned as "Powers of Search and Seizure" in Section 132 of the Income tax Act, 1961 instead of "Powers of Income Tax authorities" as mentioned in Section 37 of the 1922 Act.

Constitutional validity of the Section upheld by Supreme Court

- 93 ITR 505-SC Decision- Pooran Mal vs. Director of Inspection (Investigation),IT, New Delhi- December 14,1973.

The provisions relating to Search and Seizure in section 132 of the IT Act, 1961, and rule 112 of the Income Tax Rules, 1962, do not violate the fundamental rights under Article 19(1)(f) and (g) of the constitution of India. The provisions of section 132 are evidently directed against persons who are believed on good grounds to have illegally evaded payment of tax on their income and property. Therefore, drastic measures to get at such income and property with a view to recover the government dues would stand justified in themselves.

Articles 19(1)(g) to practice any profession or to carry on any occupation (or) trade (or) business.

102 ITR 531- 1975- Bhupendra Ratilal Thakkar vs. Commissioner of Income Tax, Gujarat- December 5,1975 It was held that Rules 112B and 112C of the Income Tax Rules, 1962, which provide for the release of articles seized and remaining assets respectively are both beneficial rules and there can be no satisfactory reason for challenging their validity wrt article 14 of the Constitution of India.

Amendments to Section 132 of the Income Tax Act 1961

- Amended by the Finance Act,1964 w.e.f. 1.4.1964.
- Amended by the Finance Act, 1965 w.e.f. 12.03.1965
- Amended by the Direct Tax Laws Amendment Act, 1987 w.e.f. 1.4.1988 - "Director of Inspection" in 132(1) is substituted by the word "Director or Director General"
- Amended by Finance Act 2009, w..e.f. 1.10.1998- "Joint Director or Joint Commissioner" has been newly inserted as competent authority in Section 132(1).
- Amended by Finance Act 2009, w..e.f. 1.06.1994- "Additional Director or Additional Commissioner" has been substituted for "or any such Joint Director or Joint Commissioner as may be empowered by Board in this behalf" as competent authority in Section 132(1).

Section 132 of the Income Tax Act, 1961 (amended by Finance Act, 1964)

- *1964.*—**The Finance Act, 1964 with effect from 1 April, 1964 amended the above provision to read as under**:
- ***"132. Powers of search and seizure.***—(1) **Where the**

Commissioner, in consequence of information in his possession, has reason to believe that—

- any person to whom a **summons** under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (XI of 1922), or under sub-section (1) of section 131 of this Act, or a **notice** under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has **omitted or failed to** produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or
- any person to whom a **summons or notice as aforesaid has been or might be issued will not**, or would not, produce or cause to be produced any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (XI of 1922), or under this Act, or
- any person is in possession of any articles or things including money wholly disproportionate to his known sources of income, particulars of which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (XI of 1922), or this Act,
- May authorize any Inspecting Assistant Commissioner or any Income-tax **Officer to enter and search any building or place where he has reason to suspect that such items as specified are kept and if** found, the Inspecting officer , may—

(i) seize any such books of account or other documents;

(ii) place marks of identification on any such books of account or other documents or make or cause to be made extracts or copies there from;

(iii) make a note or an inventory of any articles or things including money found which, in his opinion, will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922, or this Act.

- Information in possession of the competent authority **must be something more than a rumour or a gossip or a hunch.**

The formation of opinion by the authorized officers based on the information available must be bonafide and not be accentuated by malafide, bias or based on extraneous or irrelevant material. Whether there is a rational between information possessed and opinion formed, can be examined by the court.

Scope and applicability of the provision

Section 132 is directed against **three types of persons**:

- those who have omitted or failed to produce books or documents as required by any summons or notice issued to them;
- those who, whether so summoned or not to produce documents, will not or would not produce books of account or documents; and
- those who are believed to be in possession of money, bullion, jewellery or other valuable article or thing representing either wholly or in part, income or property which has not been disclosed for purposes of taxation

Section 132 of the Income Tax Amendment Act, 1961 (w.e.f. 12.03.1965)

- The DGIT or DIT or CCIT or CIT may authorize any JDIT or JCIT or Asst.DIT or Asst.CIT or DDIT or DCIT or ITO or, Even such JDIT or JCIT or Add.DIT or Add.CIT may authorize the above officers when empowered by the Board, to conduct search.
- 132(1) (a) & (b) remains same regarding summons u/s 131(1) and notice u/s 142(1)
- Clause (c) is amended as follows: Any person is in possession of any **money, bullion, jewellery or other valuable article or thing** and they **represents either wholly or partly income or property Which has not been, or would not be, disclosed,** for the purposes of the 1922 Act, or this Act

The following are the powers of the authorized officers during the course of search & seizure in order to comply with 132(1).

- (i) **Enter and search any [Building, place, vessel, vehicle or aircraft] where he has reason to suspect that such BOA ,** other document, money, bullion, jewellery or other valuable article or thing are kept
- (ii) **Break open the lock of any door** or other receptacle where the keys thereof are not available;
- (iia) **Search any person who has got out of, or is about to get into,** or is in the Place of search, if he has reason **to suspect that such person** has secreted the items specified in (i) above.
- (iib) require any person who is found to be in possession or control of any BOA or other documents maintained **in the form of electronic record to afford him the necessary facility to inspect** them.
- (iii) Seize any item as mentioned in (i) above if found as a result of such search;**(where such items represents stock in**

trade it cannot be seized but authorization officers shall make a note or inventory of such stock-in -trade.)

- (iv) **Place marks of identification on any books of account or other documents or make or cause to be made extracts or copies there from**
- Where the Authorized officer **has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of section 132(1),** then, notwithstanding anything contained in [section 120], it shall be competent for him to **conduct search & seize** where **he has reason to believe that any delay in getting the authorization from** the [Chief Commissioner or Commissioner] **having jurisdiction over such person may be prejudicial to the interests of the revenue** :

The items seized during the course of search, may be handed over to the AO having jurisdiction over such person within a period of 60 days from the date on which the last of authorization for search was executed.

- Where it is not practical to take physical possession of the items found during the search due to volume, weight or physical characteristics, he may order person who is owner or in possession ,not to deal with it, unless authorized by him. This will be considered as seizure of such items.
- Business premises searched cannot be sealed.
- Authorized officer May request service of any police officer or officer of Central government during the course of search to help them for compliance.
- The person searched has to take an oath, it is made clear to him that proceedings are judicial and he is bound to tell the truth.
- His statement is admissible as evidence. **Once his statement is recorded, he cannot be prevented from attending to his work elsewhere**
- The authorized officer during the course of search and seizure , examine on oath any person who is found to be in possession or control of any items as mentioned in Clause(c) of section 132(1).

Section 132(4A) of the Income Tax Act, 1961 (w.e.f. 01.10.1975)

- Earlier the onus of proving that the items found in possession or control of a person in the course of a search belong to that person and relates to his affairs is, on the Income Tax Department.
- W.e.f. from 1.10.1975, Section 132(4A)- There is rebuttable presumption that items found during the course of search in possession or control of person belongs to such person and contents of BOA & Documents are true.

Ground rules of Search and Seizure

- Right of the person to be searched-
- Search warrant of authorization must specify the person – need not to be delivered to the person- sufficient if shown to him.
- Verify the identity of each member of the search party before and after the search.
- To have at least two respectable and independent residents of the locality as witnesses.
- To have a copy of the panchanama together with all the annexure.
- To have his children permitted to go to school, after the examination of their bags

To inspect the seals placed on various receptacles sealed in course of searches and subsequently reopened by continuation of searches

- To have the facilities of having meals, etc., at the normal time.
- To have a copy of any statement before it is used against him in an assessment or prosecution proceedings.
- To have inspection of books of account, etc., seized or to take extracts there from in the presence of any of the authorized officers or any other person empowered by him.
- The Act does not give any power to the Income-tax Department to arrest an individual at the premises which are being searched
- Immovable properties is not within the scope of Section 132
- Original documents wrt immovable properties found during the course of search cannot be seized.
- Guidelines wrt seizure of Gold has been made by the board, which have to be strictly adhered during the course of search.
- In the case of a wealth tax assessee, gold jewellery and ornaments found **in excess of the gross weight declared** in the wealth tax return only need be seized.
- In the case of a person not assessed to wealth tax gold jewellery and ornaments to the extent of 500 gms. per married lady, 250 gms. per unmarried lady and 100 gms. per male member of the family need not be seized.
- The authorized officer may, having regard to the status of the family, and the custom and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income Tax/

Commissioner authorizing the search at the time of furnishing the search report.

- In all cases, a detailed inventory of the jewellery and ornaments found must be prepared to be used for assessment purposes.

Rule 112(2)(a)(b)&(c) for Authorisation in respect of search

- Rule 112 2 (a) Authorization is w.r.t 132(1)- where the assessee has failed to appear in response to summon issued u/s 131(1) or failed to produce BOA etc. in response to notice issued u/s 142(1) – Form 45 shall be used.
- Rule 112 2 (b) Authorization is w.r.t proviso to section 132(1)-*Where the authorized officer has no jurisdiction over the person searched, can exercise his powers still in the interest of the revenue* – Form 45 A shall be used.
- Rule 112 2 (c) Authorization is w.r.t to sub section (1A) of Section 132- To search in any other place, other than the place of authorization where there is a suspicion – Form 45B shall be used.
- It is to kept in mind that each of the Sub – rule caters to a independent provision as state above.
- Therefore it becomes Imperative that the Authority which sanctions the Authorization should the respective Forms i.e. Form 45, 45A, 45B in the respective cases.
- Else it may lead to a legal tangle providing an opportunity to question the Search in case of different Forms being used as Authorization.

Release of Articles U/sec 132(5) read with Rule 112B

- **Rule 112B** - Where in pursuance of sub-section [67][(5)] of section 132 of the Act, the assets or part thereof have to be released, the [68][Assessing Officer] shall forthwith deliver the same to the person from whose custody they were seized in the presence of two respectable witnesses.]
- If the assessee requires the release of the valuables or articles before completion of the search assessment assessee has to furnish the Bank guarantee to the satisfaction of the Commissioner of Income Tax for release of the assets seized as unaccounted income or wealth.

Declaration given u/s 132(4) – At the time of search as an oath statement – whether penalty can be levied

- Importance of declaration u/s 132(4) with reference to penalties leviable under provisions of the Income Tax Act with reference to its amendment and its explanation will be covered as an Article next month.

TAX UPDATES - NOVEMBER 2014

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

VAT, CST, ENTRY TAX, PROFESSIONAL TAX

PARTS DIGESTED:

a) 19 KCTJ – Part 8

Reference / Description

19 KCTJ 218: State of Karnataka vs. M/s Transglobal Power Limited- In the instant case Assessee entered into contract with KPTCL for construction of power lines and erection of transmission towers at certain locations. The said contact was in four parts, technical specifications for Laying of stations; Supply of Materials; Civil portion of the contact and Erection Portion.

The Honourable Karnataka High Court held that, on careful reading of the contract it was clear that for convenience of operation and for payment of sales tax on supply portion, it is treated as a contract for supply. Therefore, the intention of the parties is manifest coupled with the said clause. The other terms and the conduct of the parties disclose that in terms of the bid, assessee supplied the materials as per specifications and paid tax thereon and transferred title in the goods to M/s KPTCL. Thus, KPTCL became the owner of the said materials. They in turn, handed over the material for the safe custody to the assessee to enable him to perform the said contract i.e., the erection work. As KPTCL had entered into four contracts, unless these four contracts are performed in unison, the object of given contract would have been frustrated. All the four contracts are given to the same assessee. Therefore, they wanted to ensure that the erection work which is purely a labour work was also to be treated as an integral part of this composite contract on the single source responsibility basis and the contractor was bound to perform the total contract in its entirety and non performance of any portion of the contract was to be treated as breach of the entire contract. The intention was that the contractor does not wriggle out of the situation and the object of the contract is not frustrated. The KPTCL was insisting that it is a composite contract to be performed by the assessee in its entirety. Therefore, it is not a case where a contract which is entered into is not divisible as contract for supply of material and contract for labour. Even if it is a composite contract, if it is a divisible contract, then the levy of tax cannot be on the basis of works contract only. In cases of composite contract, which are not divisible, such contract should be treated as work contract, and levy should be under Schedule VI of entry 23. In the instant case, as rightly pointed by the Tribunal, there are four contracts in nature. Each one of them is separate. In respect of the contract for sale of material taxes have been paid in accordance with law. No tax is payable in respect of contract for supply of labour. In civil works, it is a work contract and tax is levied under Schedule VI entry 23.

INCOME TAX

PARTS DIGESTED:

a) 358 ITR – Part 4
b) 368 ITR – Part 1, 3 & 4
c) 226 Taxman – Issue 7
d) 150 ITD – Issue 3, 4, 7 & 9
e) 46-B BCAJ – Part 2
f) 34 ITR(T) – Part 1, 3 & 4

Reference / Description

[2013] 358 ITR 499 (All-HC): CIT vs. Smt. Rama Rani Kalia- The Hon'ble Allahabad High Court held that the difference between the 'short-term capital' asset and 'long-term capital asset' is the period over which the property has been held by the assessee and not the nature of title over the property. The lessee of the property has rights as owner of the property subject to covenants of the lease for all purposes. He may, subject to covenants of the lease deed, transfer the lease hold rights of the property with the consent of the lessor. The conversion of the rights of the lessee in the property from having lease hold right into free hold is only by way of improvement of her rights over the property which she enjoyed. It would not have any effect on the taxability of gain from such property, which is related to the period over which the property is held.

[2013] 358 ITR 505 (Kar-HC): Jeans Knit (P.) Ltd. vs. DCIT- The Honourable Karnataka High Court observed that there was no prior intimation of the proposed action of adjusting the amount of refund due to the assessee towards any other

amount due from the assessee. It was an intimation informing the appellant that the amount of refund due for the assessment year 1997-98 stood adjusted against the outstanding demand for the assessment year 1995-96. It would not be same thing as a prior intimation of the proposed action. As the adjustment of the refund amount was made without following the provisions of section 245 and without giving a proper intimation, the same was bad in law.

[2014] 368 ITR 1 (Bom-HC): Vodafone India Services Pvt. Ltd vs. Union of India and Others- The Honourable Bombay High Court observed that the charge of income comes under section 4 of the Act. Only if it is income which is chargeable to tax under the normal provisions of the Income tax Act, Chapter X of the act can be invoked.

The Honourable Court further observed that the arm's length price is meant to determine the real value of the transaction entered into between associated enterprises. The recomputation exercise is to be carried out only when income arises in case of an international transaction between associated enterprises. It does not warrant recomputation of consideration received or given on capital account. It permits recomputation of income arising out of capital account transaction, such as interest paid or received on loan taken or given, depreciation taken on machinery, etc. All the above would be cases of income being affected due to a transaction on capital account.

[2014] 368 ITR 384 (All-HC): Uttar Pradesh Carbon and Chemicals Ltd. vs. Tax Recovery Officer and Others- The Honourable Allahabad High Court held that under section 226(3)(vi) of the Act the petitioner has objected to payment and has filed an affidavit stating that the sum demanded or any part thereof was not due to the assessee nor payable by the petitioner and that the petitioner was not required to pay any such sum or any part thereof to the Tax Recovery Officer in compliance with the requisition contained in the notice. Once that is done, no further proceeding for recovery can be made against the petitioner. However, in view of the decision of the Supreme court in Beharilal Ramcharan's case (1981) 131 ITR 129, it is apparently clear that under Section 226(3)(vi) of the Act a limited enquiry can be conducted by the Tax Recovery Officer to find out about the genuineness of the affidavit for which he is required to give a notice to the person giving the affidavit. The ITO cannot discover on his own that the statement on oath made on behalf of the garnishee was false in any material particular and cannot subjectively reach to a conclusion that in his opinion the affidavit filed by the garnishee was false in any material particular.

It was held that the provisions of section 226(3) of the Act are intended to apply only to an admitted liability where a person admits by word or by conduct that any money is due to the assessee or is held by him for on account of the assessee, he becomes liable to pay.

The Hon. Court referred to the case of Jitendra Kumar (2012) UPTC 547, where it was held that the power under section 226(3) of the Act could not be invoked for effecting a recovery of a claim which is disputed and the condition precedent for exercising the power under section 226(3) of the Act is that the money is due and payable by the person concerned to the assessee.

[2014] 368 ITR 401 (All-HC): Principal Officer, L.G. Electronics Inc. vs. Asst. DIT- In the instant case the Honourable Allahabad High Court observed that once a transfer pricing analysis is done, the computation of income arising from international transaction has to be done keeping in mind the principle of the arm's length price. Once this is done, there is no further need to attribute profits to a permanent establishment. However, where the transfer pricing analysis does not take into account all the risk taking functions of the enterprise and it does not adequately reflect the function performed and the risk assumed by the petitioner, the situation would be different and, in such a situation, there would be a need to attribute profits to the permanent establishment for those functions/ risk that have not been considered.

[2014] 368 ITR 738 (Bom-HC): Commissioner of Income Tax vs. N.G.C. Network (India) P. Ltd- In the instant case the Honourable Bombay High Court observed that the payment of expenses was made to the Indian resident and these payment was not required to be included in Form 3CEB since section 92 covers only international transactions.

The Honourable Court also observed that it is not necessary that the foreign enterprises must compensate the Indian agent for the benefit it receives or it may receive from the advertisement and promotion of its channels by agent in India. The Agent in India earns commission from ad-sales and distribution revenue, both of which have sufficiently compensated the assessee. Thus revenue determining the sufficiency of the compensation received by the agent is uncalled for.

[2014] 226 TAXMAN 197 (Mad.-HC): Commissioner of Income Tax, Coimbatore vs. Smt. V.R. Karpagam-

In the instant case assessee had entered into an agreement with one 'M' for development of a piece of land owned by her. As per the agreement, the assessee was to receive 43.75 per cent of the built up area after the development. This 43.75 per cent built up area was translated into five flats. The assessee claimed exemption under section 54F on the value of the five flats.

The Honourable Madras High Court held that the agreement signed by the assessee with 'M', is that the assessee will receive 43.75 per cent of the built up area after development, which is construed as one block, which may be one or more flats. In that view of the matter what was before the Assessing Officer is only equivalent of 56.25 per cent of land transferred, equivalent to 43.75 per cent of built up area received by the assessee. This built up area got translated into five flats. Hence, it is opined that the transaction in this case was not with regard to the number of flats but with regard to the percentage of the built up area, vis-a-vis, the Undivided Share of Land. It was eventually held that the assessee was eligible to claim the benefit of sec 54F.

[2014] 150 ITD 237 (Del-Trib): Kiran Kapoor vs. Income Tax Officer-In the instant case, the assessee was engaged in the business of export of software of ready to print books. The claim of the assessee u/s 10B on account of design layout formation and scanning of books was denied by the Assessing officer.

The Honourable Delhi Tribunal held that the learned CIT(A) has erred in comparing the work done by the assessee with "Computer Programme". It is the consistent stand of the assessee that its case falls under sub clause (b) of clause (i) to Explanation 2 to section 10B. It is to be analysed whether the assessee is engaged in any customization of electronic data. The ld CIT (A) has tested assessee's case u/s 10BB. However the counsel for the assessee had submitted that scope of section 10BB is limited in scope as compared to the new definition in new section 10B. In this regard it is to be taken note that post amendment old section 10B requires "processing or management of electronic data" whereas new section 10B is larger in scope and only requires "any customized electronic data". The difference is that old section 10B requires that input data must necessarily be in electronic form where as in new section 10B this requirement is done away with. This interpretation has found favour by ITAT in ITO v. Accurum India (P) Ltd. [2010] 126 ITD 69 (TM) held that "The data which a customer may require, may be gathered either by manual effort or by electronic means, as for example, through internet. By whatever means the data is collected, once it is stored in an electronic form, it becomes a customized electronic data which can be exported to qualify for deduction u/s 10A". Thus the process of actually collecting the data need not be IT enabled. What all is required is that the data collected should be in an electronic form. The exact language of sub-clause(b) of clause (1) of Explanation 2 is "any customized electronic data.

[2014] 150 ITD 323 (Bang-Trib): Deputy Commissioner of Income Tax vs. Ananda Marakala-In the instant case it was held by Honourable Bangalore Tribunal held that proviso inserted by Finance Act, 2012 in Section40(a)(ia) is declaratory and curative in nature and it should be given retrospective effect from 1-4-2005.

The Honourable Tribunal followed the decision of the Honourable Allahabad High court in case of Vector Shipping Services (P.) Ltd (2013) 218 Taxman 93, where it was concluded that provisions of section 40(a)(ia) were applicable only to amount of expenditure which were payable as on 31st March, of every year and it could not be invoked to disallow expenses which had been actually paid during previous year without deduction of TDS.

[2014] 150 ITD 342 (Mum-Trib): M. Dinshaw & Co. (P.) Ltd. vs. DCIT- In the instant case the assessee paid vehicle tax on purchase of vehicle under Bombay Motor Vehicle Tax Act, 1958 and accounted the same as revenue expenditure. The Assessing officer rejected the assessee's claim and concluded that the payment in question being part of cost of vehicle and is capitalised.

The Honourable Mumbai Tribunal held that, section 43(1) defines the term 'actual cost'. In the absence of a statutory definition or mandate, the accounting prescription shall prevail. It is only where the law specifically provides for a particular course of action, inconsistent with the accounting mandate, that the same shall prevail and override the latter, viz., section 43B. The Accounting Standard (AS) in respect of accounting for fixed assets, i.e., AS-10, issued by the Institute of Chartered Accountants of India, defines 'fixed asset', also laying down the principles for its valuation (cost) or determining its cost.

Therefore, payment of tax, in-as-much as it only enables the vehicle being put to its intended use; in fact, represents a condition therefore, shall form part of its cost. In fact, one can consider it to be akin to registration fee incurred for registration of the vehicle, which would be a part of the cost of the asset. Thus, it was held that such tax is capital expenditure.

[2014] 150 ITD 645 (Mum-Trib): Om Stock & Commodities (P.) Ltd. vs. DCIT- The Honourable Mumbai Tribunal held that, the value of sale transactions of commodity through MCX without delivery cannot be considered as turnover for purpose of section 44AB and any failure on the part of the assessee to get the accounts audited in such case would not lead to levy of penalty u/s 271B of IT Act.

[2014] 150 ITD 651 (Mum-Trib): Allcargo Global Logistics Ltd. vs. ACIT- In the instant case the assessee paid a certain sum to its AE as share application money which remained unutilised for a certain period. The Assessing officer made a TP adjustment in the hands of assessee on account of interest by treating the share application money as loan due to delay in allotment of shares. Thus the Honourable Tribunal followed the decision of Bharti Airtel Ltd. [2014] 63 SOT 175 (Delhi-Trib.) where is was held that transaction involving payment of share application money could not be treated as international transaction of loan given by assessee-company to its AE merely because there was a delay in allotment of shares.

[2014] 150 ITD 772 (Mum-Trib): ACIT vs. v. NGC Networks (I) (P.) Ltd.- In the instant case assessee made payments to the cable T. V. operator/DTH provider for placing its channel in a particular frequency to get better viewership on account of good picture and sound quality. The Assessing Officer was of the view that the payment made by the assessee for placement of its channel was in the nature of royalty as per Explanation 2 of section 9(1)(vi) and, therefore, TDS should have been deducted as per provisions of section 194J.

The Honourable Tribunal held that the channel placement fee paid to the cable TV operator/DTH provider could not be regarded as royalty as it did not fall under the definition in terms of Explanation-2 of section 9(1)(vi). Though there is an amendment in the provision and as per newly inserted Explanation-6 with retrospective effect the term process has been defined and it includes transmission, uplinking and down linking of signals etc. But the said retrospective amendment cannot be pressed into service for the purpose of disallowance under section 40(a)(ia) because of the reason that at the relevant time when the assessee has deducted the tax at source it was not in the statute.

Thus when the assessee has deducted the tax as per provisions of section 194C which is a bona fide decision of assessee keeping in view the nature of payments and facts of the case, then, the assessee was not supposed to foresee the subsequent retrospective amendment in the statute to be held liable to tax deduction at source under the provisions of section 194J.

[2014] 46-B BCAJ 166 (Bang-Trib): Shri G.N. Mohan Raju vs. ITO- The Honourable Bangalore Tribunal held that AO cannot suo moto treat the return of Income filed before issue of notice u/s 148 to be return filed in response to the said notice. Thus notice u/s 143(2) issued before the assessee has filed a return in response to notice u/s 148 cannot be treated as a valid notice.

[2014] 34 ITR(T) 114 (Chen-Trib): Comic Global Ltd vs. Asst. CIT- The Honourable Chennai Tribunal held that payments made by the assessee to non-resident on account of translation services do not attract the provisions of section 194J. Thus disallowance made on such payments under section 40(a)(i) was deleted.

[2014] 34 ITR(T) 314 (Chen-Trib): Asst. CIT vs. Baskara Constructions Pvt. Ltd.- The Honourable Chennai Tribunal held that the TDS deducted by the managing director of the company in his individual capacity on behalf of the company can be treated as compliance of deducting TDS by the company for the purpose of section 40(a)(ia) of the Act. However the Managing Director of the Company has given indemnity bond stating that the TDS was made on behalf of the Company and he has not claimed any credit of such TDS nor will make any such claim in future.

[2014] 34 ITR(T) 479 (Agra-Trib): Rajeev Kumar Agarwal vs. Asst. CIT-In the instant case the assessee paid interest without deducting TDS u/s 194A of the Act. The Assessing officer disallowed the sum u/s 40(a)(ia) of the Act. The Assessee contended that the recipients of the interest have already included the income embedded in the payments in their tax returns filed u/s 139 and that the second proviso to section 40(a)(ia) by the Finance Act, 2012, was declaratory and curative in nature and should be given retrospective effect from 01.04.2005.

The Honourable Agra Tribunal held that the second proviso to section (40)(a)(ia) provides that as long as the assessee cannot be treated as an assessee in default, the disallowance u/s 40(a)(ia) could not come into force. The first proviso to section 201(1) which also introduced by the Finance Act, 2012 provides that when the assessee's tax withholding lapse has not resulted in any loss to the exchequer, the assessee would not be treated as an assessee in default. Section (40)(a)(ia) was not a penal provision to punish the lapses of non-deduction of tax at source from the payments for expenditure, particularly when the recipients had taken into account income embedded in the payments, paid due taxes thereon and filed the income tax returns in accordance with the law.

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

ICAI International Conference 2015

"Accountancy Profession:
Building Global Competitiveness; Accelerating Growth"

29th, 30th & 31st January 2015

Bangalore Palace, Bengaluru

ABOUT THE CONFERENCE

The International Conference on 'Accountancy Profession: Building Global Competitiveness; Accelerating Growth' aims to bring together stake holders such as thinkers, policy makers, industry and financial institutions to ponder and conceptualise broad contours of strategic framework for Building Global Competitiveness for nation's economic development, predicating positively for the future growth of our economy. The International Conference would be a 'Window to Future' to understand and acclimatize to the unseen forces in the global businesses and regulatory landscape. The exchange of ideas and deliberations through the leaders would provide an indicative roadmap for development of professional accountants. An opportunity would be at hand to participate in the Health & Spiritual Sessions. Parallel sessions on Young & Women members, in addition to International Networking Summit for SMPs, are also being held.

14 CPE Hours

PRESIDENT'S MESSAGE

Growth of global economy is intrinsically dependent on healthy global competitiveness, which in turn depends on an enabling business infrastructure comprising resources, capacities and enabling governance framework.

The globalised competition is leading to shifts in global markets and new business models which in turn are giving to new paradigms for governance, assurance and business complexities. Given the education and training, the accountancy profession is the best suited to accentuate global competitiveness and accelerate growth in these changing times.

In this background, this Mega International Conference aims to explore the strategic role that professional accountants can further play in building global competitiveness and accelerating growth through value added services as creators, enablers, preservers, and reporters of sustainable value. It aims to identify imperative drivers of change and opportunities shaping the landscape for businesses and accountants. Through this global platform, we will look forward and tune into the emerging trends in the global business, policy spheres and latest reforms.

Best Wishes

CA. K. Raghu
President, ICAI

VICE PRESIDENT'S MESSAGE

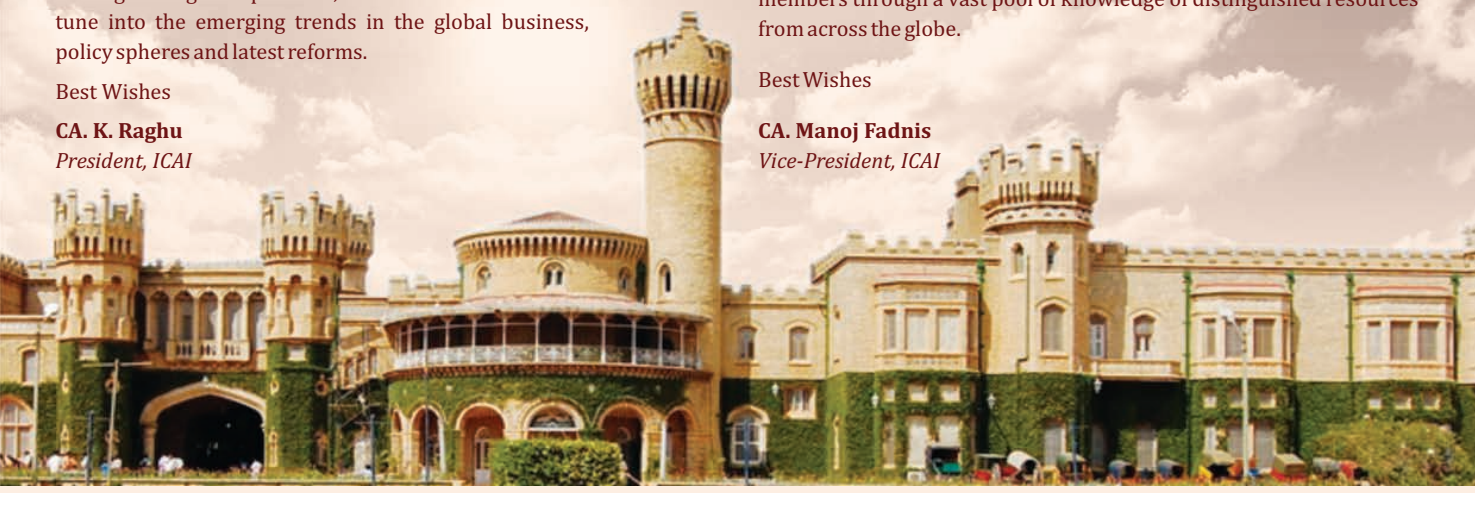
The global landscape is continuously reshaping itself due to market volatility, globalization and innovation in business processes where shifts of wealth, power, economic uncertainty and political transitions are routinely occurring. While businesses adapt to a turbulent environment opportunities are emerging, as blessings in disguise, for accountants to assume a far greater organizational remit.

Pressures are increasing on the accountancy profession to strengthen processes and standards to go beyond current financial reporting practices and provide a more transparent, simplified but holistic picture of a firm's health & prospects.

The International Conference will focus on cross-border accounting issues and provide an effective roadmap for future which develops a strong accountancy profession at global level and support sustained economic growth. It would simultaneously provide the much needed impetus for further enrichment of the acumen of our esteemed members through a vast pool of knowledge of distinguished resources from across the globe.

Best Wishes

CA. Manoj Fadnis
Vice-President, ICAI



ICAI International Conference 2015

"Accountancy Profession: Building Global Competitiveness; Accelerating Growth"

PROGRAMME STRUCTURE

DAY 1 : Thursday, 29 January 2015

03:00PM Registration

03:30PM **Inaugural Session**

Chief Guest: ***An Eminent Personality***

Guests of Honour:

CA. Suresh Prabhu
Hon'ble Union Minster of Railways, Govt. of India

CA. Piyush Goyal*
Hon'ble Minister of State (I/C) for Power, Coal & New & Renewable Energy, Govt. of India

CA. K. Rahman Khan
Hon'ble Member of Parliament & Former Union Minister, Govt. of India

05.00PM **Special Address**

Accountancy Profession–Meeting Governance Mandate
Ms. Olivia Kirtley
President, International Federation of Accountants, New York

05:30PM India Emerging as Global Hub for Accounting Professionals
CA. T.V. Mohandas Pai
Chairman, Manipal Global Education Services, Bengaluru

06:00PM Corporate Social Responsibility – Responsible Growth; Inclusive Development*

07:15PM **Cultural Program**

A Spectacular Dance Show by
Ms. Nirupama Rajendra & Team

DAY 2 : Friday, 30 January 2015

09.00AM **Spiritual Session**

Essence of Leadership and Contours of Holistic Living
Sri Sri Ravi Shankar Guruji
Founder, Art of Living Foundation, Bengaluru

10.00AM **Session - I : Essence of Reporting – Governance and Sustainability**

Moving Towards Integrated Reporting
Mr. Jonathan Labrey
Chief Strategy Officer, International Integrated Regional Council

IFRS Implementation: Key Learning's

Regulatory Perspective:
CA. Amarjit Chopra
Chairman, NACAS

Corporate Perspective :
CA. Suresh Senapaty
ED & CFO, WIPRO

11:00AM **Session - II : Managing Change: Regulation & Developmental Context**

Assurance Services: Moving Beyond Regulatory Requirements - Global Perspective
CA. P.R. Ramesh, *FCA*

11.30AM Corporate Governance and Risk – Interdependencies
CA. Narendra Aneja, *FCA*

Make in India - Paving way for a Resurgent India: Role of Profession*

01.00PM Lunch

02:00PM **Session – III : Management & Leadership - Frontiers of Growth**

Indian Capital Market - Opportunities for the Profession
Mr. Ashishkumar Chauhan
Managing Director & CEO, Bombay Stock Exchange

Special Address

Paradox of Growth & Governance: Regulatory Perspective
Shri M.C. Joshi, *Chairman, Quality Review Board*

Bangalore - The Emerging Hub for Start Up Companies*

03:30PM **Special Session : Profession and Emerging Digital Landscape**

A Holistic Approach to Cyber Security: From Board Room to Operations
Mr. Robert E Stroud
President, International Systems Audit & Control Association

Digital Education for the Profession
Mr. Rob Thomason
Executive General Manager, CPA, Australia

04:30PM **Session IV : Professional Avenues for Future Growth**

Towards Better Global Governance
Mr. Michael Armstrong
Regional Director, Middle East, ICA England & Wales

International Taxation – Building Industry Competitiveness in the Borderless Economy
CA. T. P. Ostwal, *FCA*

Cloud Computing: Emerging Opportunities for the Profession
Mr. Aditya Tulsian
Head - Strategy & Accounting Ecosystem, Intuit

Connected World – the Emerging Landscape: Visualizing the Future
Shri. Bharat Goenka
Cofounder & Managing Director, Tally Solutions Pvt Ltd.

07:30PM **Cultural Program**

by **A Top Bollywood Singer & Team**

ICAI International Conference 2015

"Accountancy Profession: Building Global Competitiveness; Accelerating Growth"

PROGRAMME STRUCTURE

DAY 3 : Saturday, 31 January 2015

09.00AM **Session - V : Confluence – Profession & Society**

India@2025: Agenda for Growth & Development
Dr. Kirit Somaiya
Hon'ble Member of Parliament

Towards a Stress Free Healthy Professional Life
Dr. Devi Shetty
Chairman and Founder, Narayana Health

10.00AM **Panel Discussion**

Attracting Foreign Direct Investment to India
Mr. Deepak Ghaisas
Chairman & Chief Mentor, Gencoval Stratetgic Services Pvt.Ltd.
Mr. Praveen Chakravarty

11.00AM **Special Session**

Wealth Creation: Disciplined Approach; Diverse Demands
Ms. Chitra Ramkrishna
Managing Director & CEO, National Stock Exchange

11.30AM **Panel Discussion**

Empowering SMEs for Development of Region
Mr. Arjuna Herath
President, South Asian Federation of Accountants and President, CA Sri Lanka
Mr. Yacoob Suttar
President, ICA, Pakistan
Mr Showkat Hossain
President, ICA, Bangladesh

12.30PM Role of SMPs in supporting SMEs
Mr. Cormac Fitzgerald
President, CPA, Ireland

01:00PM Lunch

02:00PM **Session - VII : Financial Services Sector – Agenda for Sustainable Growth**

Banking Sector @2025– Opportunities & Challenges*

Insurance Sector – Mitigating Risk; Augmenting Growth*

Improving Corporate Governance
Mr. Lee White
CEO, ICA, Australia

03:00PM **Session – VIII : Profession in the Next Decade: Embracing Change**

Mr. Eamonn Siggins
CEO, CPA, Ireland

Key Note Address

GST - A Catalyst for Growth- Challenges and Way Forward*

03:30PM **Panel Discussion : Professional Opportunities Abroad**

CA. Raju Menon
Chairman, Dubai Chapter of ICAI
Mr. V. Ravi Sankar
Chairman, Singapore Chapter of ICAI
CA. Vijay Gupta
Chairman, British Columbia Chapter of ICAI
CA. George Isaac
Chairman, Doha Chapter of ICAI
CA. Padmanabha Acharya
Chairman, Abu Dhabi Chapter of ICAI
CA. Amit Goyal
Chairman, Toronto Chapter of ICAI

04.30PM **Valedictory Session**

** Confirmation awaited*

CONCURRENT SESSIONS

- **International Networking Summit for SMPs**
- **Young Members Meet**
- **Women Empowerment Meet**

REGISTRATION DETAILS

Category	*Fees*
ICAI Member (ACA)	₹ 2500
ICAI Member (FCA)	₹ 3000
Non-Member	₹ 4000
Foreign Delegate	$ 150
SAFA Country Member	₹ 3000

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DD/Cheque in favour of
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RECENT JUDICIAL PRONOUNCEMENTS IN INDIRECT TAXES


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

Service Tax

1. Difference between rent-a-cab services and hire services: Honourable High Court in an issue involving the classification of services has pronounced the distinction between the rent-a-cab services and hire services. It is pronounced that the services where in the motor car is hired retaining the effective control and possession by way of providing a driver is classifiable as hiring services. Whereas the services wherein the motor vehicle is let-out with a complete possession and control over the vehicle is classifiable as rent-a-cab services. [CCE vs. Sachin Malhotra and others 2014-TIOL-2039-HC-Ukhand-ST]
2. High Court has no jurisdiction to adjudicate on issue relating to classification: Honourable High Court in an issue relating to classification of services which has proximate relation to rate of tax or the value liable to service tax has held that the High Court has no jurisdiction to adjudicate the issues relating to classification. [CST vs. Saumya Construction Pvt Ltd., 2014-TIOL-2089-HC-Ahm-ST]
3. Application for refund of wrongly paid service tax on acquisition of residential unit - time limit as prescribed under Section 11B is not applicable: The builder of residential unit wrongly collected the service tax from the Appellant and remitted the same to the Revenue. The Appellant filed the refund application which was allowed by the Adjudicating Authority. However, the Appellate Authority held that the refund application is barred by limitation. On appeal The Tribunal allowing the refund held that it is admitted fact that Appellant was not required to pay any service tax for acquisition of residential unit. As the wrongly paid amount is not service tax, the time limit prescribe under Section 11B of Central Excise Act, 1944 is not applicable to facts of the case.
4. Rebate on export of services: The Tribunal has held that rebate of service tax paid on exports of services filed after the expiry of one year from the date of receiving the payments are time barred. Further, in relation to rejecting the claim of rebate on the grounds that the service provided by the Appellant is not ascertainable since the service agreement is not furnished, the Tribunal has held that the Revenue cannot question the classification of services at the time of claiming rebate when it has collected the service tax under specific classification. [Alar Infrastructure Pvt Ltd., and Another vs. CCE, Delhi – I 2014-TIOL-2432-CESTAT-Del]
5. Rental charges received for goods installed at customers premises – not liable to service tax: The Appellants engaged in the manufacture of liquid gases also installed the cryogenic tanks for storage at the premises of the customers. The Appellants are charging rent on the storage tanks and are remitting VAT on the same. The Revenue's contention that such charges collected are liable to service tax under the category storage and warehousing charges. However, the Tribunal observed that the Appellants does not have control on the goods stored in such tanks. The whole responsibility of the goods / gases stored in the tanks is with the customer. Accordingly, allowing the appeal it is held that the said charges are not liable to service tax. [Inox Air Products Ltd., vs. CCE, Raigad 2014-TIOL-2556-CESTAT-Mum]
6. Tax paid prior to issuance of show cause notice – not liable to pay penalty: Honourable High Court has set aside the levy of penalty on the grounds that the Respondent has paid the taxes due as determined by the

Revenue prior to issuing the show cause notice. In this regard the reference was also given to the reasonable cause as recorded by the Tribunal that the Respondents had fallen into financial crisis on account of the criminal breach of trust committed by their sub-agent, criminal proceedings were initiated against such persons and the same are pending. [Commissioner of Service Tax, Chennai vs. M/s Lawson Travel and Tours (India) Pvt Ltd., and Others 2014-TIOL-2295-HC-Mad-ST]

CENVAT Credit

7. Inward transportation services – CENVAT credit is admissible: In an issue relating to admissibility of CENVAT credit of service tax paid on inward transportation of inputs, the Tribunal has held that when there is no dispute on account of availment of CENVAT credit on inputs, the assessee is entitled to claim CENVAT credit on inward transportation service used for transportation of inputs. Accordingly, the CENVAT credit on inward transportation is held to be admissible. [M/s Mahanagar Gas Ltd., vs. CCE, Mumbai – V 2014-TIOL-2341-CESTAT-Mum]

8. Admissible CENVAT credits: The Tribunal has held that service tax paid on insurance services bought for employees or their dependants is not admissible since the same is not in relation to business activities. Insofar as running of barges and tugs, horticultural services and canteen services, it is held that the appellant is entitled for input service credit placing reliance on the judgment in the case of Ultratech Cement Ltd., reported in 2010-TIOL-745-HC-Mum. [M/s Welspun Maxsteel Ltd., vs. CCE, Raigad 2014-TIOL-2339-CESTAT-Mum]

9. Plastic crates are capital goods – eligible for claiming CENVAT credit: Honourable High Court has held that the plastic crates used in the factory to carry intermediate goods from one section to another for further processing are capital goods and as such the Appellants are entitled to claim CENVAT credit of duty paid on such goods. Reference is given to the decision of the Tribunal in the case of Banco Products (India) Ltd. - Vs - Commissioner of Central Excise, Vadodara (2009 (235) ELT 636 (Tri-LB). [The Commissioner of Central Excise, Salem vs. M/s Pallipalayam Spinners (P) Ltd., 2014-TIOL-2288-HC-Mad-CX]

10. CENVAT credit relating to trading activity – not eligible: The Tribunal has held that the Appellants are not entitled to claim CENVAT credit of service tax paid on services received which were used in the activity relating to trading. Reliance placed on the decision of the Tribunal Mercedes Benz India Pvt. Ltd., vs. CCE, Pune-I reported in 2014-TIOL476-CESTAT-Mum. [Finolex Cables Ltd., vs. CCE, Pune-I 2014-TIOL-2576-CESTAT-Mum]

Central Excise

11. Tribunal has no powers to dismiss the appeal in case the Assessee or counsel are not present on the date of hearing: The issue before the Honourable Supreme Court is whether the Tribunal has powers to dismiss the appeal. The brief facts were that on the date of hearing neither the Assessee nor the Assessee's counsel were present. The Tribunal therefore dismissed the appeal. Honourable Supreme Court held that Central Excise Act, 1944 enjoins upon the Tribunal to pass order on the appeal confirming, modifying or annulling the decision or order appealed against or may remand the matter. It 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 up for hearing. Reliance placed on the judgment in the case of CIT vs. S. Chenniappa Mudaliar [1969] 1 SCC 591. [Balaji Steel Re-rolling Mills vs. Commissioner of Central Excise & Customs [2014] 52 taxmann.com 107 (SC)]

12. SSI exemption: In terms of Notification No, 10/2013 dated 02.08.2013, the Tribunal has held that the Appellant is entitled to claim SSI exemption plastic bottles manufactured affixing brand name of another person. [M/s Shivendra Plastics vs. CCE and ST, Hyderabad-IV 2014-TIOL-2401-CESTAT-Bang]

13. Group Companies – Rule 8 of Central Excise Valuation Rules is not applicable: Appellant is a Private Limited Company engaged in clearance of piston parts to its group Company which is a Public Limited. The Revenue adopted Rule 8 of Central Excise Valuation Rules relating on the

grounds that the group Company is related party. On appeal, the Tribunal has held that, Appellant a Private Limited Company and the customer a Public Limited, cannot be called as related party person under Section 2(41) of the Companies Act, 1956. It is further held that they cannot be termed as inter-connected undertakings. Accordingly, the impugned order of the Revenue applying Rule 8 is set-aside. [M/s Menon Piston Rings Pvt Ltd., vs. CCE, Pune – II 2014-TIOL-2441-CESTAT-Mum]

14. Free samples – central excise valuation – assessable value cannot be Retail Sale Price: The Tribunal has held that the product supplied as free samples along with another product are not liable for valuation in terms of Section 4A of Central Excise Act, 1944 – Retail Sale Price. Accordingly, the cost construction valuation method adopted by the Revenue is held to be correct. [M/s Wyeth Ltd vs. CCE, Nashik 201-TIOL-2530-CESTAT-Mum]

15. More than one unit situated at a place constitute a factory: The Revenue demanded the refund of duty already sanctioned on the grounds that the Appellants without having ISD registration should not have taken the credit in respect of other unit located in the same compound. The Tribunal placing reliance on the judgment of Honourable High Court in the case of CCE & ST, Bangalore vs. Biocon Ltd., reported in 2014-TIOL-1646-HC-Kar-CX held that if the Appellants owns more than one unit and all the units are situated at a place it would constitute a factory. Accordingly, the appeal is allowed in favour of the Appellant. [M/s Apotex Research Pvt Ltd., vs. Commissioner of Customs and Service Tax, Bangalore – I 2014-TIOL-2583-CESTAT-Bang]

Customs

16. Jurisdiction of Commissioner of Customs: The Tribunal has held that the Commissioner of Customs at Bombay does not have jurisdiction over the Sikka port located in Gujarat. As such the show cause notice issued by the Commissioner of Customs Bombay for not filing IGM or bill of entry is set aside. [The Shipping Corporation of India Ltd., vs. Commissioner of Customs (Import) Mumbai 2014-TIOL-2407-CESTAT-Mum]

17. Revenue cannot deny the interest for delay in refund on the grounds that assessee took time to furnish additional information / documents: The Tribunal has upheld the payment of interest for delay in sanction of refund. The Revenue's contended that the delay was on account of time took by the Respondent in furnishing additional details / documents to verify the unjust enrichment. The Tribunal observed that the non-production of documents will be only those which are required to be furnished by the Respondent. Further, it was also observed that if the contention of the Revenue is accepted department will ask for certain information and shift the burden on the assessees for not furnishing the required information / documents in time & the whole purpose of Section 27A of the Customs Act, 1962 will be thus defeated. [Commissioner of Customs (Prev), Jamnagar vs. M/s Reliance Industries Ltd 2014-TIOL-2454-CESTAT-Ahm]

VAT

18. Back to back sub-contract of full works contract – Principal contract is not liable to pay tax on the profit retained: The brief facts of the case are that the Petitioner were awarded the works contract which was again sub-contracted to another contractor in toto. The Revenue in the course of issuing Liability Certificate in Form 20B to the Petitioners, demanded the tax on the difference of amount paid to sub-contractor and the amount received from the awarder which is actually the profit of the Petitioner. Honourable High Court of Kerala in writ petition filed by the Petitioners observed that the Petitioners have obtained the Certificate in Form 20H from the sub-contractor. As such the amount on which the tax is demanded represents profit element which is accrued to the Petitioner. In respect of the works sub-contracted to another contractor, sub-contractor is liable to pay tax thereon and also has furnished the Certificate inform 20H. As Petitioner have not undertaken any works, the amount represents the profit and as such is not liable to tax under Kerala Value Added Tax Act, 2005. [M/s Surya Constructions vs. CTO (WC & LT), Ernakulam and Others 2014-TIOL-2226-HC-Kerala-VAT]

19. Battery charger – not accessory to cell phone: The issue before the Honourable Supreme Court

relates to the rate of tax applicable to cell phone battery charger. The Appellants was of the view that the rate of tax applicable to cell phone 4% is applicable to battery. However, the Revenue's contention is that the battery charger is liable to tax at the rate of 12.5%. Honourable Supreme Court held that the battery charger is an accessory to the cell phone and is not a part of the cell phone. Further, battery charger is not a composite part of the cell phone but is an independent product which can be sold separately without selling the cell phone. Accordingly, the Honourable Supreme Court decided the appeal in favour of Revenue. [State of Punjab vs. Nokia India Pvt Ltd., 2014-TIOL-100-SC-VAT]

20. Sale of used car by a dealer in timber – not liable to tax: Respondent a dealer in timber sold a used car. Revenue's contention that sale of car is liable to tax under section 4(1)(b) of Karnataka VAT Act, 2003. It is held that the Respondent is dealer in timber and as such the transaction is a solitary transaction which is not liable to tax. [State of Karnataka vs. Vasavi Wood Industries [2014] 50 taxmann.com 99 (Karnataka)]
21. Trade discount not reflected in tax invoice - not eligible for deduction: Honourable High Court of Karnataka has held that the trade discount given by way of issuing credit notes after the end of month is not allowable as deduction from the total turnover in ascertaining the taxable turnover. The Respondents had provided the trade discount by way of issuing credit notes. [Samsung India Electronics Ltd., vs. State of Karnataka [2014] 48 taxmann.com 366 (Karnataka)]
22. Appellate Authority not entitled to reject the appeal for non filing of application for condonation of delay: The order rejecting the appeal by the Appellate Authority on the grounds that application for condonation of delay is not filed is set-aside by the Honourable High Court of Karnataka. It was order was set-aside on the grounds that the Appellate Authority has rejected the appeal essentially because it was defective and not on merits. [Catering Inn vs. State of Karnataka [2014] 50 taxmann.com 228 (Karnataka)]

APPILCABILITY OF SERVICE TAX PROVISIONS TO HOSPITALITY SECTOR

CA. P.G. Subramanian, FCA

PART-II

Firstpart of the Article dealt with –

1. Scheme of the act from 01-07-2012
2. Relevant extracts arising from Amendments through Finance Act,2014
3. Changes in Service Tax Rules

The Second and concluding Part deals with-

1. Other Important clarifications
2. Law as applicable to hotels.

SECTION 4

OTHER IMPORTANT CLARIFICATIONS

1. **When do the proposed changes come into effect?**

It may be noted that the changes being made by amendments I notifications and rules can be categorized into two broad categories based on when they would come into effect:

i) Changes which will have immediate effect and

ii) Changes which are proposed to be given effect to only from 01st October, so as to coincide with the Service Tax Return cycle.

iii) Readers are, therefore advised to note the same carefully.

MEASURES TO WIDEN THE TAX BASE

1. **What are the Amendments made which has the effect of widening he existing tax base?**

Some of the Amendments, which are Sector specific are-

i) Services by a Hotel Inn or Guest House:

According to the present entry at Sl.no.18 "Service by way of renting of a hotel inn, guest house ,club or camp site or other commercial places meant for residential or lodging purposes, having a declared tariff of a unit of accommodation below 1000 rupees per day or equivalent " is exempt from service tax. Some doubts appear to have arisen on account of use of the "Commercial" in the entry. To remove any ambiguity, the word commercial is being omitted. **Renting of vacant land or buildings for hotels would continue to be taxable irrespective of the hotel's declared tariff.** This is an important clarification and covers wide area including Service Apartments/Guest Houses which may be operating from rented premises. Declared tariff value, even if it is below Rs.1000/- in such case, attracts levy of Service Tax.

ii) Where the exclusions and exemptions are withdrawn to widen the tax base, if the aggregate value of taxable service provided by a person in a financial year does not exceed Rupees Ten Lac, exemption will be available in terms of Notification No. 33/2012-ST.

iii) What are the changes in Point of Taxation rules?

Point of taxation Rules- the First Provision to rule 7 of the point of Taxation Rules (POTR) is being amended to provide that point of taxation in respect of reverse charge will be the payment date or the first day that occurs immediately after a period of three months from the date of invoice, whichever is earlier. This amendment will apply only to invoices issued after 01stOctober, 2014. Atransition rule is being prescribed (New Rule 10 of POTR).

iv) What are the changes in Cenvat Credit Rules?

A Service Provider shall take credit on inputs and input services within a period of six months from the date of issue of invoice, bill or challan w.e.f. 01st September, 2014[Newly inserted proviso to Rule 4(1) and fifth proviso to rule 4(7).

In case of Service Tax paid under full reverse charge, the condition of payment of invoice value to the service provider for availing credits of input services is being withdrawn. However, there is no change in case of partial reverse charge.

v) Are there any changes regarding Advance Rulings?

Yes. The resident Private Limited Company is being included as a class of persons Eligible to make an application for Advance Ruling in Service Tax [Notification No-15/2014-ST. The change will come into effect immediately

SECTION 5

LAW AS APPLICABLE TOHOTELS

5.1 ACCOMMODATION

1. ***How is short term accommodation and taxable service defined under the Act?***

Taxable Service is defined in Section 65(105) (zzzzw) as follows-"to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continuous period of less than three months". From the definition it is clear that accommodation provided by all the categories mentioned is treated as taxable service for the purpose of the Act.

2. ***What are the essential ingredients to qualify as taxable service?***

Essential ingredients are-

- Service is provided or to be provided to any person.
- Service is provided or to be provided by a hotel, inn, guest house, club or camp site by whatever name called.
- Provision of accommodation is for a continuous period of less than three months.

3. ***What is the threshold limit for levy of Service Tax?***

As per Circular/ Letter D.O.F. N0.334/3/2011-TRU,dated 28-02-2011-"Actual levy will be restricted to accommodation with declared tariff of Rs.1,000/- per day or higher by an exemption notification. Once this requirement is met, tax will be chargeable irrespective of the fact that actually the amount charged from a particular customer is less than Rs.1,000/. The tax will also be charged on the gross amount paid or payable for the value of the service".

4. ***Does Mantap Keeper fall under the category of hotels for service tax purpose?***

Yes. Mantap Keeper in Section 65(67) is defined as-A person who allows temporary occupation of a Mantap for a consideration for organizing any official, social or business function which includes marriage. The definition is very wide in its coverage and covers all immovable properties let out for organizing social, official or business functions. It includes within its scope places like kalyanamantaps or marriage halls, banquet halls, conference halls etc; Hotels and Restaurants providing any such facility within their premises for organizing any social, official or business functions shall also be obviously included in the coverage of service tax. Therefore the levy of the service tax will apply in all these cases.

5.2 RESTAURANT SERVICES

1. ***What are Restaurant Services?***

Section 65 (105) (zzzzv) defines Restaurant as:- To any person , by a restaurant, by whatever name called , having the facility of air conditioning in any part of the establishment, at any time during the financial year, which has license to serve alcoholic beverages, in relation to serving of food or beverages including alcoholic beverages or both, in its premises.

2. ***What is the scope of taxable services in a Restaurant?***

1.1 Restaurants provide a number of services normally in combination with the meal and/ or beverage for a consolidated charge. These services relate to the use of restaurant space and furniture, air-conditioning, well trained stewards, linen, cutlery and crockery, music, live or otherwise or a dance floor. The customer also has the benefit of personalized service by indicating his preference for certain ingredients e.g. salt, chilies, onion, garlic or oil. The extent and quality of services available in a restaurant is directly reflected in the margin charged over the direct costs. It is thus not uncommon to notice even packaged products being sold at prices far in excess of MRP.

1.2 In certain Restaurants the owners get into revenue sharing arrangements with another person, who takes the responsibility of preparation of food, with his own materials and ingredients, while the owner takes responsibility for making the space available, its decoration, furniture, cutlery, crockery and music etc; The total bill, which is composite, is shared between the two parties in terms of the contract. Here the consideration for services provided by the restaurants is clearly demarcated.

1.3 Another arrangement is whereby the Restaurant separates a certain portion of the bill as service charge. This amount is meant to be shared amongst the staffs who attend the customers after providing a certain portion towards breakages and damages. Though this amount is exclusively for the services it does not represent the full value of all services rendered by the restaurants.

1.4 The new levy is directed at services provided by high end restaurants that are air conditioned and have license to serve liquor. Such restaurants provide conditions and ambience in a manner that service provided may assume predominance over the food in many situations. Example of such Restaurant is some of the finest Restaurants located in Luxury Hotels or stand alone high class restaurant. It should not be confused with mere sale of food at any eating house, where such services are materially absent or so minimal that it will be difficult to establish that any service in any meaningful way is being provided.

5.3 HEALTH AND FITNESS SERVICE

1. ***What are health and fitness service as defined by the act?***

Section 65(51) and 65(52) of the Act defines 'health and fitness services' as under:- (51) "Health and fitness service" means service for physical well being such as , sauna and steam bath, Turkish bath, solarium, spas, reducing or slimming saloons, gymnasium, yoga, meditation, massage(excluding therapeutic massage) or any other like service. (52) "Health club and fitness centre" means any establishment including a hotel or a resort providing health and fitness service.

a) Section 65(105) (zw) defines the taxable service as follows:- "Taxable service" means any service provided or to be provided to any person, by a Health club and fitness centre in relation to health and fitness services.

b) Scope of Taxable Service is better understood by referring to Circular F.No. B.11/1/2002 –TRU dated 01/08/2002[Annexure I] which is: -Health and fitness services are provided by clubs, fitness centres, health saloons, hotels, gymnasium and massage centres. The services which fall under this category might be for weight reduction and slimming, physical fitness exercise, gyms, aerobics, yoga, meditation, reiki, sauna and steam bath, Turkish bath, sun bath and massage for general well being. However, therapeutic massage does not come in the ambit of taxable service. Therapeutic massage basically means a massage provided by qualified professionals under medical supervision for curing diseases. Ayurvedic massages, acupressure therapy, etc; given by qualified professionals under medical supervision come under the category of therapeutic massages. If the massage is performed without any medical supervision or advice but for the general physical well being of a person, such massages do not come under the purview of therapeutic massages and would be liable for service tax.

5.4 SOURCES OF REVENUE FOR HOTEL

I. ***How is revenue defined under the Service Tax Act?***

Revenue is defined as-

- ❖ Providing accommodation to Guests.
- ❖ Sale of food to guests- The Hotel may have facility of air conditioning or central heating system with license to serve alcoholic beverages.
- ❖ Banquet Hall along with facility of catering.
- ❖ Facility like sound system, erection of stage, projector etc; for holding functions.
- ❖ Health and Gymnasium facility.
- ❖ Shops o rent.
- ❖ Renting of car to guest.
- ❖ Permitting use of business centre and other facilities like telephone, emails, photo copy etc;
- ❖ Annual Membership fee from various members like running of loyalty programs.
- ❖ Revenue from minor operating departments like Laundry, sale from mini bar etc;

The Service Tax is payable on all the services mentioned above.

5.5 NEGATIVE LIST PROVISION/ VALUATION / ABATEMENT

1) ***Does any of the services rendered by a hotel fall under negative list?***

Clauses (a) to (q) of Section 66D specify certain services as non taxable service. None of the services specified in Section66D relates to services provided by hotel.

2) Similarly, Notification No. 25/2012-ST, dated 20/06/2012 grants exemption to services specified in the notification. None of the services specified therein relates to services provided by a hotel.

3) ***What are the rules on valuation and abatement?***

➢ **Short Term Accommodation**- As per entry no 6 of Notification No 26/2012 –ST dated 20/06/2012, the abatement is permitted to the extent of 40% of the gross amount charged and the service tax is payable on 60%

of the gross amount charged from the customer. The service provider is not entitled to the Cenvat credit on inputs and capital goods. He is entitled to the credit of service tax paid on input services.

- **Value of services provided by Restaurant**- Clause (i) of Section 66-E declares service portion in an activity where a goods being food or other articles of human consumption or beverages is supplied as a taxable service. Rule 2 C of Service Tax Valuation Rules, 2006 provides that the value of taxable service in case of supply of goods being food or any other article of human consumption shall be 40% of the total amount charged. The' total amount' has also been defined in the rule. Thus, 40% of the total amount charged in case of services provided by restaurant will be considered as a value of taxable service.
- **Banquet Hall with food facility**- Entry no 4 of Notification No.26/2012-ST, dated 20-06-2012 provides abatement for bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention centre, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises. Thus, if the hotel provides services of providing banquet hall plus supply of food or any article of human consumption, the abatement from total amount charged, to the extent of 30% will be available to service provider. The Service tax would be payable by the hotel on 70% of the total amount charged.
- **Renting of Motor Vehicle**- Entry no 9 of Notification No. 26/2012-ST, dated 20/06/2012 provides for abatement of 60% from the total amount charged for services of renting of any motor vehicle to carry passengers. The service provider shall not take credit of service tax paid on inputs, capital goods and input service.
- **Claiming of Abatement**- It has been constantly held by various courts that claiming of benefit of notification is optional. The service provider may choose to avail the benefit of notification and pay service tax on abated value. He may forego the abatement and pay the service tax on the entire value. In case the service provider forgoes the abatement and pays the service tax on the entire value, he will be entitled to the benefit of Cenvat credit on all input, input service and capital goods.
- **Other Services**- In case of other services like renting of shops, membership of clubs or associations, Loyalty programs, providing health and Gymnasium facility, permitting use of business centre, photocopy machines etc; the value will be determined under Section 67 of the Finance act,1994. The value will be the gross amount charged by the service provider for these services rendered.

4) ***What are the Rules as applicable to Bundled Services?***

- **Bundled Services**- The provisions relating to bundled services are contained in **Section 66F** Sub section (3) provides that if various elements of such services are naturally bundled in ordinary course of business, it shall be treated as provisions of single service which gives essential character to the bundle. Sub- clause (b) provides that if the services are not naturally bundled in ordinary course of business, it shall be treated as provisions of single service which results in highest liability of service tax. As per Section 66 F of the act, 'bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with element of provision of another service or services.

  Sub-section (2) of Section 66 F further provides that where a service is capable of differential treatment for any purpose based on description, the more specified description shall be preferred over a more general description. Therefore in classifying the services, the services shall be classified based on specific description principle.

  The various services provided by hotel need to be examined on the above principle to determine the classification of service.

  Para 9.2.1 defines the Rule relating to provision of bundled services. The Rule is- 'If various elements of bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character.'

Illustration:-

- A hotel provides a 4-D/ 3-N package with the facility of breakfast. This is a natural bundling of services in the

ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

- A 5 star hotel is booked for conference of 100 delegates on a lump sum package with the following facilities-
  - Accommodation for the delegates.
  - Breakfast for the delegates.
  - Tea and Coffee during conference.
  - Access to fitness room for the delegates.
  - Availability of conference room.
  - Business Centre

As is evident a bouquet of services is being provided, many of them chargeable to different effective rates of tax. None of the individual constituents are able to provide the essential character of the service. However, if the service is described as convention service, it is able to capture the entire essence of the package. Thus the service may be judged as convention service and chargeable to full rate. However, it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.

5.7 CENVAT CREDIT

AVAILMENT OF CREDIT ON OUTPUT SERVICE

1. ***What are the conditions for availing Cenvat credit where abatement is claimed?***

A hotel provides services which inter alia include short term accommodation and banquet hall (mandap keeper) along with catering services. Notification No. 26/2012-ST, dated 20/06/2012 provides abatement from the gross amount charged in respect of these services for determining the value of taxable service. The nature of service, quantum on which tax is payable and the conditions of availment of abatement are described below:-

Sl.	Description of taxable service	Percentage	Conditions
1	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (Including Hotel, Convention Centre, Club, Pandal, Sahmiana or any other place, specially arranged for organizing a function) together with renting of such premises.	70	CENVAT Credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing the taxable service, has not been taken under the provisions of the CENVAT credit Rules, 2004.
2	Renting of Hotels, Inns, Guest Houses, Clubs, Campsites or Other Commercial Places meant for residential or lodging purposes	60	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

In case of services provided by restaurant, rule 2C of the Service Tax (Determination of Value Rules, 2006 specifies the service portion as 40% of the gross amount charged. Rule 2C specifies the condition that the credit of excise duty paid on inputs falling under Chapters 1 to 22 of Central Excise Tariff Act shall not be availed. Therefore, restaurant cam claim the credit in respect of excise duty paid on other inputs, capital goods and service paid on input services.

In brief, there is no restriction on availment of credit of service tax paid on input services.

1. ***Can Input credit be availed by service provider where Service Tax is charged on full value of services?***

Other Services

In respect of other services like renting of shop, membership fees etc; the service provider is required to pay service tax on the gross amount charged for services provided. Therefore, the service provider will be entitled to the credit of service tax paid on inputs, input services and capital goods used in providing such services.

2. ***What are the Rules for availing Credit under reverse charge?***

Availment of Credit of Service Tax under Reverse Charge:-

The services of providing motor vehicle by specified person to body corporate has been specified in Notification No.30 /2012-ST, dated 20/06/2012. The service tax is payable

either fully by the service recipient or partially by service recipient and partially by service provider depending on the fact whether the service provider has availed the credit of service tax paid on input services or excise duty paid on input or capital goods.

3. ***What are the conditions for availing Credit of tax charged by service provider?***

Credit of Service Tax paid by Service provider:-

The service receiver is entitled to avail the credit of service tax on input services received by him on receipt of invoice from the service provider. As per Rule 4(7) of Cenvat Credit Rules, the service receiver has to pay the value of taxable service plus service tax to the service provider within 3 months from the date of invoice. In case the amount is not paid within 3 months, the service recipient is required to reverse the credit already availed by him based on the invoice received by him from the service provider, which can be taken as re-credit when amount is paid.

4. ***What are the rules regarding tax payable under reverse charge?***

Service Tax Payable under reverse charge – Payment and Credit:

As per Rule 7 of Point of Taxation Rules,2011, the point of taxation in respect of person required to pay tax as recipient of service shall be the date when payment is made (if payment is made within 6 months from the date of the bill). Thus, the service recipient is liable to pay tax when the amount is paid to the service provider.

Further, as per proviso to Rule 4(7) of Cenvat Credit rules, the service recipient can take the service tax paid by him as the person liable to pay service tax only when he has paid the value of taxable service to provider of service and service tax to Government authorities.

This can be explained by following example-

- Say 'X' avails the services of renting of motor vehicle from 'Y' who has taken the credit of service tax paid on input services and capital goods. Therefore, 'Y' is required to pay service tax on the entire amount recovered by him. As per the Notification No.30 /2012-ST, dated 20-06-2012 'X' and 'Y' are required to pay 40% and 60% of the total service tax respectively. 'Y 'will raise invoice on 'X' for recovery of value of taxable service plus 60% of the service tax. Say the invoice dated 01-11-2012 is raised by 'Y' on 'X'.
- 'X' can take the credit of 60% of service tax payable in the invoice immediately on receipt of invoice. However, if he fails to pay 'Y', the value of service by 31/01/2013, the credit taken by him will have to be reversed and re-credit can be taken as and when the amount is paid to 'Y'.
- 'X' is required to pay 40% of the total service tax on payment of value of taxable service to 'Y'. That payment must be made within six months from the date of invoice i.e. 30-04-2013. Say 'X' makes the payment on 01-05-2013 to 'Y'; therefore, the payment of service tax will be made (40% of the total service tax) by 05th or 06th Feb, 2013. The credit of 40% of service tax paid by 'X' can be taken only on 05th or 06th Feb,2013 , as the case may be , when both : the value of taxable service has been paid to 'Y' and the service tax has also been paid to Government.

5. ***Who are the persons liable to pay Service Tax including Reverse Charge?***

As per the provisions of Section 68(1) the service tax is payable by the person providing taxable service. Section 68(2) empowers the Central Government to notify the services and specify the person liable to pay service tax in respect of such notified services. The Central Government has issued Notification No. 30/2012 –ST, dated 20/06/2012 notifying the services and the person liable to pay service tax. The people liable to pay service tax are specified in Rule 2 (1) (d) of Service Tax Rules.

None of the services provided by hotel are specified in Notification No.30/ 2012- ST dated 20/06/2012. Therefore, the service tax for all the services rendered by the hotel is payable by the service provider.

Under the reverse charge mechanism, even if the service providing service is exempt from payment of Service Tax, he may be liable to pay Service Tax as recipient of Service. The specified services under the notification No.30/2012-ST dated 20/06/2012 inter alia includes renting of motor vehicle, security services, manpower supply etc; If service provider receives any of the services specified in the notification and is provided by the specified person, the Service Tax under reverse charge will also be payable by the recipient of service.

(Contd. on next issue)

RECENT CASE LAWS IN INTERNATIONAL TAXATION

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

1. *Citation: Castrol India Ltd v. Deputy Commissioner of Income-tax, Range 8 (3), Mumbai [2014] 52 taxmann.com 262*

Issues:

a) Can the TPO rule that the ALP is nil? Significant costs were incurred by the assessee in respect of a project and assessee had also furnished relevant invoices raised in this regard. The TPO disallowed the entire cost borne by the assessee by taking the ALP at NIL.

The Mumbai Tribunal ruled that it was incumbent upon TPO to work out ALP of relevant transactions by following some authorized method and entire cost borne by assessee could not be disallowed by taking ALP at nil

b) As per technical collaboration agreement between assessee and its British AE, assessee paid royalty to AE at rate of 3.5 per cent of net ex-factory sale price of products manufactured and sold in India. TPO/Assessing Officer disallowed royalty payment simply relying on approval of SIA treating same as royalty paid by assessee in respect of exports sale and other income .

The Mumbai Tribunal ruled that since the TPO had neither rejected method followed by assessee to bench-mark transaction in respect of payment of royalty nor had adopted any recognized method to determine ALP of said transaction, TP adjustment in respect of royalty payment simply relying on approval of SIA was unjustified.

2. *Freescale Semiconductor India (P.) Ltd v. Deputy Commissioner of Income-tax, Circle 8 (1), New Delhi [2014] 52 taxmann.com 233*

Issues:

Assessee-company was a wholly owned subsidiary of USA company and provided services mainly to its associate enterprises. It had used certain comparables to compute arm's length price. TPO rejected comparables analysis conducted by assessee and selected his own comparables by using different quantitative filters. The facts of this case were similar to facts of case of Motorola Solutions India (P.) Ltd v. Asstt. CIT[2014] 48 taxmann.com 248 (Delhi) and comparables picked up by TPO in both cases were same, the question was asked by the assesse whether the decision of Tribunal in case of Motorola's Solutions India (P.) Ltd. on each of comparables had to be followed in case of assessee

The Delhi Tribunal answered in favour of the assessee and ruled that the ratio of the Motorola decision has to be followed.

3. *EXL Service.Com (India) (P.) Ltd v. Assistant Commissioner of Income-tax, Circle -11(1), New Delhi [2014] 52 taxmann.com 352*

Issue:

For Depreciation, what triggers a Transfer Pricing Adjustment- higher or lower amounts of depreciation or change in the rates of depreciation?

The method of charging depreciation, both by the assessee and its comparables, is by and large the same that is SLM. The assessee is seeking adjustment only due to higher rates of depreciation charged by it under SLM with the lower rates of depreciation charged by four comparable companies.

The Delhi Tribunal held that that the operating profit margins of the four comparable companies should be recomputed by the TPO/AO in line with the rates of depreciation charged by the assessee under SLM.

No Transfer Pricing adjustment can be made under Transactional Net Margin Method (TNMM) for a simplictor higher/lower amount of depreciation in itself or as a percentage of total operating expenses nor does an otherwise comparable company ceases to be so because of these factors. Adjustment called for when there is a difference in rates of depreciation on similar types of assets under similar method of charging depreciation

4. *Tata Motors European Technical Centre Plc v. Assistant Director of Income-tax (IT)(2)(2) [2014] 52 taxmann.com 411 (Mumbai)*

Issue

The assesee based in the UK and was a wholly owned subsidiary of Tata Motors. It was providing design and engineering services for automobiles to the TML. Assessee sent its employees to India by deputing engineers and technical personnel at TML's factory/ establishment. Thus, the assessee had a service PE in India. Assessee selected four overseas comparables located in UK to benchmark ALP of transactions with TML (i.e., AE). TPO disagreed with selection of foreign comparables based in UK on the ground that since PE of assessee was located in India and carrying out its business within the Indian territory, assessee had to be treated as a business entity in India. Thus, it made transfer-pricing adjustment by selecting Indian comparables.

The Mumbai Tribunal ruled that Indian Transfer Pricing Regulation does not put any fetters on selection of foreign comparables, if conditions are as such that the Indian comparables do not stand the test of comparability with the tested party.

Mentoring Programme for

YOUNG MEMBERS

6 hrs CPE

On Friday **23rd January 2015**

at **Hotel Le Meridien**
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Organised by **Young Members Empowerment Committee of ICAI**

Hosted by **Bangalore Branch of SIRC of ICAI**

This programme will enable young members to excel in their chosen area of professional endeavours and to retain higher peaks in their career. This unique event will serve as a platform to interact with few stalwarts and high achievers from our profession which will be a motivation to all the delegates.

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Chairman
Bangalore Branch of SIRC of ICAI

CA Chhajed Praffulla Premsukh
Vice Chariman
Young Members Empowerment Committee (YMEC) of ICAI

CA Pampanna BE
Secretary
Bangalore Branch of SIRC of ICAI

CA Chhaira Jay
Chariman
Young Members Empowerment Committee (YMEC) of ICAI

CA Chetan Venugopal
Co-ordinator of the programme

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For further details please contact
Ms. Geethanjali D., Tel No: 080 - 3056 3500 / 513

Limited seats, Registrations on first come first serve basis

Inauguration

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CA. Sunil Ghabawalla

Dr. Girish Ahuja

CA. M. P. Vijay Kumar

CA. Suresh P. R.

Dr. Gururaj Kharjagi

CA. Vinay Mruthyunjaya

CA. T. P. Ostwal

CA. G. Sekar,
Central Council Member

CA. Vijay Raja

Quiz Master
CA. Cotha S Srinivas,
Secretary, SIRC of ICAI

CA. C. S. Gupta,
Co-opted Member, BOS

Interactive Session with Board of Studies

STUDENT SPEAKERS

Mr. Nandith Y.K.M.D.,
Andhra Pradesh

Ms. Vidhi K Shah,
Gujarat

Ms. Tanvi Yallapragada,
Andhra Pradesh

Ms. Abitha K.A.,
Kerala

Ms. Pooja Dinesh Gupta,
Maharashtra

Ms. Palak Pahwa,
Madhya Pradesh

Mr. Sudip Paudel,
Nepal

Ms. Neha Navalakha,
Guwahati

Mr. Chinna Ram Kalyan Goud,
Bangalore

Ms. B. Nimesha Chathurangi Cooray,
Sri Lanka

Ms. Sapana Ghimire,
Nepal

Ms. Geethika Haridas, IPCC
First Rank Holder

Ms. Lavanya Murugesh,
Bangalore

Mr. Vishal V. Takalkar,
Maharashtra

Ms. Shruthi R,
Madhurai

Mr. Pradeep Guragain,
Nepal

Ms. Nikitha G Singh,
Bangalore

Ms. Sanjana Revankar,
Karwar

Ms. Priya Sugandh,
Kolkata

Ms. Shivi Tandon,
Lucknow

Mr. Mohd. Shohag Al Mamun,
Bangaladesh

Blood Donation Camp

Foreign Student delegates visit to Infosys.
Group photo with CFO CA Deepak and CA Jairam

Entertainment Programme

GST - Transition provisions - Discussion on Service Tax & Excise Law, VAT & Entry Tax Law


Mr. R. C. Pillai


CA. S.Venkatramani


CA. Madhukar N Hiregange


CA. Jatin Christopher


CA. Deepak Kumar Jain


CA. Dayananda K


CA. P.R. Suresh


CA. Vinayak Hegde

Two Day Workshop on New Regime of Companies Act & Relevant aspects of KVAT & VAT Audit


Inauguration


CA. Gururaj Acharya K


CA. Sripriya Kumar


CA. Ravi Prasad


CA. Jomon K George


CA. Annapurna Kabra


Mr. Iqbal Maniyar


CA. Badrinath N. R.


CA. Deepak Kumar Jain


CA. P.R. Suresh, Co-ordinator


Cross section of participants

National Summit on Networking for the Practitioners of SMPs


Inauguration


CA Rakesh Varshey Special Invitee, CCBCAF & SMP, ICAI & CMA, ICAI


CA D.K. Garg, Special Invitee, CCBCAF & SMP, ICAI & CMA, ICAI


CA.M Venkatachalam, Prog. Co-ordinator, Co-opted Member, CCBCAF & SMP, ICAI


CA. K. L. Prashanth

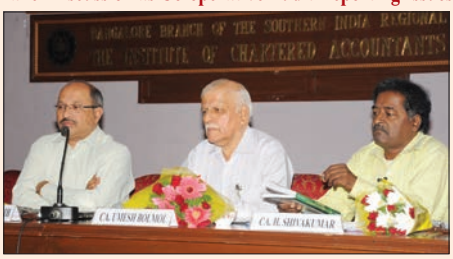

CA. Guru Prasad M


CA. Chetan Venugopal


CA. Amit Raj


Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP,ICAI

Panel Discussion as Co-operative Audit Reporting Issues



CA. B.V. Ravindranath, CA. Umesh Bolmol & CA. H. Shivakumar

Speakers at Study Circle Meetings


Ms. N.S. Indumati


CA. R.Ramakrishnan


CA. Naveen Khariwal G


Dr. CA N. Suresh


CA. Madhukar N Hiregange

MAKE IN INDIA

Inauguration

Chief Guest
Sri. S. Sampathraman,
President, FKCCI,
Bengaluru

Programme Director
CA. N. Nityananda,
Past Central Council
Member, ICAI

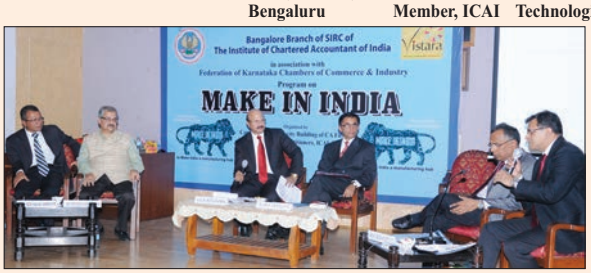
Moderator
Sri. Kiran S
Bettadapura,
Technologist&Columnist

Sri. Dinakar
Adhyam, MD,
Saint-Gobain,
Chennai

Dr.Mithileshwar Jha,
Professor
of Marketing
& Brands, IIMB

Sri. D.Muralidhar,
Director, SNAM
Abrasives Ltd,
Bengaluru

CA.Chetan Venugopal,
Co-Founder, Pierian
Services Pvt Ltd,
a leading KPO



Panel Discussion

Cross section of participants

Workshop on Direct Taxes

CA. A. Shankar
Advocate

CA. N.S. Srinivasan

Mr. R. Ravichandran
Director Investigation
Income Tax, Bangalore

Mr. J. Balachander,
Advocate, Chennai

CA. P.V. Srinivasan

CA. G.S. Prashanth

Moderator
CA. R.Ramakrishnan

Workshop on Real Estate

Inauguration

CA Sanjay M
Dhariwal

CA Annapurna
Kabra

Mr. Arvind Raghavan,
Advocate

CA D.R.Venkatesh

CA Sai Prasad

CA. N. Nityananda

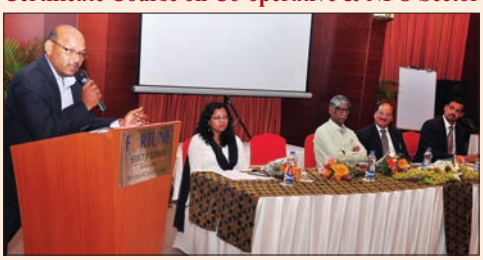
CA Vinay Lal

CA. Ashok
Raghavan

CA P R Suresh,
Co-ordinator

Cross section of participants

Certificate Course on Co-operative & NPO Sector



ICAI International Conference - First Committee Meeting

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