



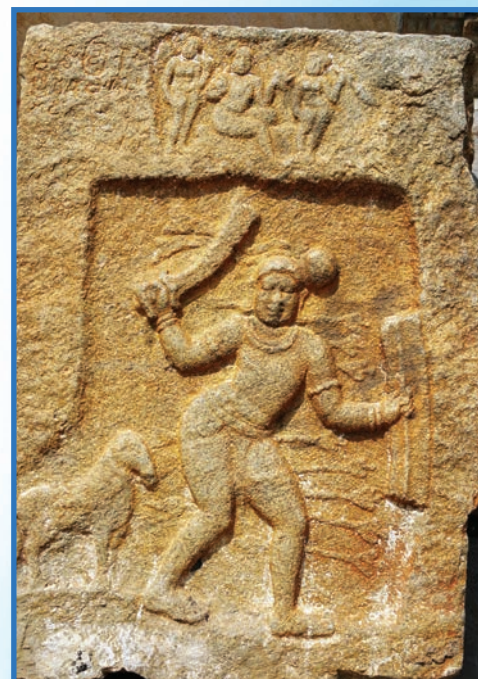
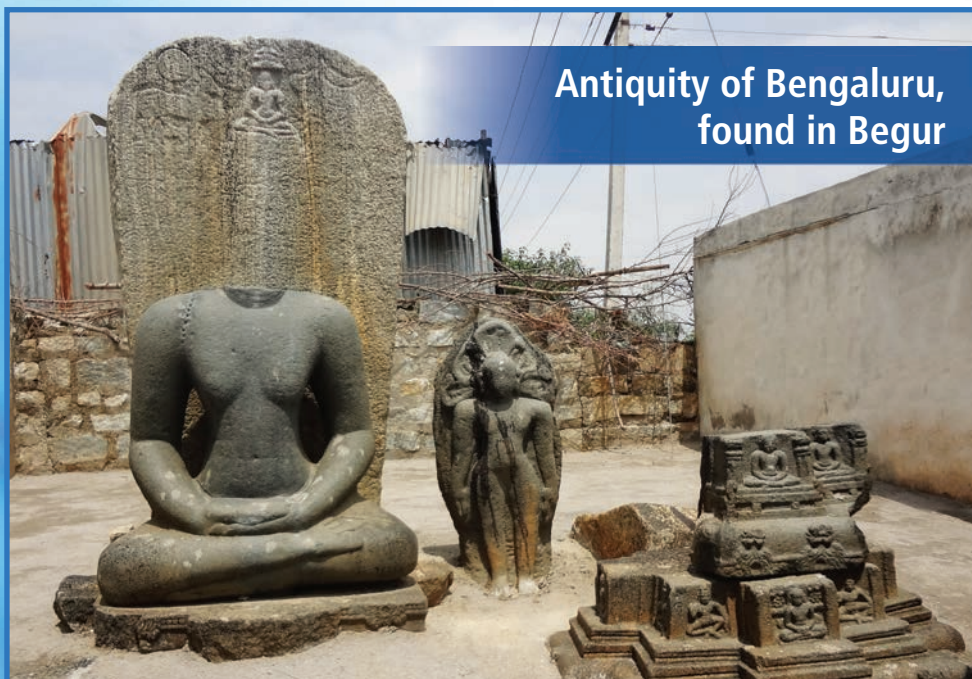
Bangalore Branch of SIRC Newsletter

English Monthly

Volume 03 | Issue 10 | May, 2015 | Pages : 28

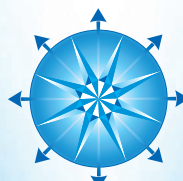
₹ 5/- per copy
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Antiquity of Bengaluru,
found in Begur



*'I do not want to die rusting,
I prefer to burn out.'*

VICHAKSHANA



CA

The Clear-sighted Professional



*'Live as if you were to die tomorrow.
Learn as if you were to live forever.'*

Advt.

Advt.

Challenges of the Profession



CA.T.N.Manoharan, M.Com., B.L., FCA
Past President of ICAI & Padma Shri Awardee

Introduction

Every profession has an objective and purpose for its origin and sustenance. Accounting profession is no exception. While the role and significance of the accounting profession keeps evolving to match with the changing expectations of the stakeholders, laws and regulations, the underlying philosophy remains constant. The commitment of the profession to the society is enshrined in the motto adopted by The Institute of Chartered Accountants of India (ICAI) from the Kadhapanishad – “*Ya esa suptesu jagarti*” – “That person who is awake in those that sleep”. Even before India became Republic in 1950, the Government of India enacted “The Chartered Accountants Act, 1949” and conferred the statutory and special recognition on the profession by chartering it and conferring autonomy on ICAI. This demonstrates the importance attributed to our profession by the Parliament and the need to regulate it with sound principles and standards. **Our profession is the conscience keeper of the finance world** as we perform the accounting, auditing and assurance services. The profession is recognised as a partner in nation building as we provide value added services to significant components of the economy in general and to the business enterprises in particular in terms of planning, budgeting, funding, restructuring, strategising growth and expansion, cost optimization so on and so forth.

Knowledge Management and Innovation

The profession today stands on the threshold of dynamism and change. We need to be diligent in knowledge management and innovation. It goes without saying that any laxity in this regard on our part could be fatal. The government, the regulators, the society and the clients do expect the profession to take proactive measures for knowledge updating and skill up gradation. Both in the core areas of our practice such as assurance function as well as in the non-core areas such as consultancy / advisory functions, we need to be empowered consistently. Any inaction can create a void which will be filled by those outside our profession. John F Kennedy said that *there are risks and costs to action but they are far less than the long range risks of comfortable inaction*. We just cannot afford to be indifferent to the changes happening and cannot be ignorant of the developments around us. Practising accountancy profession is like riding a bicycle and one does not fall off unless he stops pedalling. Learning is akin to pedalling. No other factor can inspire more confidence and faith in the minds of the stakeholders on our profession than the demonstrative quest for knowledge and competence gained out of it. The profession

owes to the stakeholders an assurance that its members are the most competent and empowered lot to deliver services with quality. The profession can ill afford to be negligent on this aspect of sustenance and reputation.

Quality in service leads to excellence, which is a definite attribute that paves way for growth and development of the profession. However, there are limits to the excellence we can achieve on a narrow base. The profession needs to innovate and re-engineer itself to a new trajectory of divergence and efficiency. The profession needs to evolve new products, new services, new systems, procedures and methodologies to maximise utility but minimise the cost. Excellence is like the summit of a pyramid, larger the base higher the summit. We should not spare any endeavour to broaden the base of the quality of our services with skills, standards and values and build the pyramid of excellence, the summit of which is unmatched by that of any other profession.

Capacity Building of Firms

It is common knowledge that Indian entrepreneurs are consolidating their businesses to grow big and face global competition. Multi-nationals are establishing subsidiaries of large size in India. Takeovers, mergers, amalgamations and collaborations are the order of the day. Professionals should also become conscious of this factor and gear up to restructure their firms, reorient their skills and expand their firm size. When an enterprise or a business group grows and the professional firm rendering service to it does not, the chances of replacement by a bigger firm cannot be ruled out. As on date, the total strength of membership of ICAI is **240,612** out of which 53,044 (22%) are female members. As many as 124,612 members (52%) do not hold certificate of practice. Out of the remaining members, 107,636 hold full time COP and 8364 hold part time COP.

On a closer look at the data relating to the composition of the firms in our profession, it is not difficult to realise that most of them are small and medium practitioners (SMPs). We have 42,277 of them functioning as sole proprietors; 15,727 firms operate with 2 to 4 partners; 2676 of them have partners ranging from 5 to 9; 378 of them have 10 to 19 partners and only 23 firms have partners numbering 20 and above. Now that the restriction on 20 partners is gone, one need not resort to LLP for breaching the strength of the partners beyond the erstwhile restriction of 20. Although, there is commendable improvement in the growth and expansion of the firms over the last one decade, still we have a long way to go. To the growing Indian business enterprises, our profession must be able to assure that our firms would measure up to the size that is required to ably cater to the array of services expected of us. All services under one roof and pan India presence should be the goal for the upcoming and growing firms. While multi-national accounting firms are exploiting India by their presence, Indian firms should position globally to tap the potential across continents. By 2020, we must aspire to have at least 500 firms with 20 and above partners with 100 of them having national presence and overseas reach.

Contd. on Pg. 8 ►

Chairman's Communique...

Dear Esteemed Member,

Namasthe,

First and the foremost thing for me to do is to thank you for your continued support, encouragement and good wishes.

I am writing this communiqué with a great sense of satisfaction as my efforts are yielding fruits. The special articles and my Communiqué published in April month's Newsletter have evinced interest in many of the Members, who have expressed their compliments for the same. I specifically refer to the topic "Apathy towards the Hero Stone – An apology to the Hero". The revelation article turned out to be a real eye-opener. We have left no stone unturned to see that the matter is noted for action by the appropriate authorities. We are happy to place on record that the matter is being seriously considered by the Government and it is learnt by a reliable source that a Notice has been issued to the concerned person for dereliction of duties; we are also informed that the Hero Stones would be shifted to the Government Museum shortly for safe custody.

Comprehensive Workshop on Companies Act

The Workshop on Companies Act was a resounding success. A galaxy of resource persons provided their invaluable insight and shared their acumen with the delegates. The Branch always remains indebted to each of them for their unstinted support.

The hall mark of the event was the interactive session with Mr.M.R.Bhat, the Honorable Registrar of Companies (Karnataka) and the other officials of the ROC, wherein many of our doubts were clarified. In fact, ROC has provided his clarifications/ views in writing. The queries along with the response of the ROC are uploaded in our Branch Website; Members may visit the same for enrichment.

One more interesting fact was the participation of 10 persons from the FIU of CID, Department of Police, Government of Karnataka, who wanted to be acquainted with the provisions relating to the acceptance of deposits, raising of capital and other issues which are directly affecting the general public.

Other Events:

Under the aegis of the Board of Studies, ICAI, One day National Seminar on "Changing Dimensions of Corporate Reporting In India under IFRS Regime" was organised on 23.04.2015.

This was a joint programme which we hosted along with the Department of Commerce, Bangalore University. The Programme was mainly meant for Lecturers and over 1000 delegates participated and derived the benefit of the new knowledge. The programme was inaugurated by the Chief Guest Sri.Bharath Lal Meena, IAS, Honorable Secretary for Higher Education, Govt. of Karnataka, and presided over by the honorable Vice Chancellor of Bangalore University Prof. B.Thimme Gowda.

We also conducted a training programme on "Internal Audit" for the Executives of Audit and Accounts Departments of BEML. The programme was well received and the Company has expressed its intention to have many more such programmes in the near future.

The Guest Editorial..

This month's guest editorial is provided by the most cherished leader of our profession, our beloved past president of ICAI, Padmashri T.N.Manoharan. In his editorial, inter alia, he has delved in to the aspect of **Sanctity of signature and Independence** which is highly relevant and ever relevant. He has explained the concept of **Professional Social Responsibility (PSR)** which reminds me of my previous communiqué wherein I had used the term *Personal Social Responsibility* in the context of our obligation towards Society.

His words "No other factor can inspire more confidence and faith in the minds of the stakeholders on our profession than the demonstrative quest for knowledge and competence gained out of it." are worth underscoring.

For acquiring the required Knowledge and thereby display great competence in our professional activities, the Branch has been regularly conducting programmes and we have finalised till August 2015 and announced the same in this Newsletter; members may kindly peruse the same and plan accordingly.

Official facebook page:

Last but not the least, we have created a facebook page to publish our upcoming events. Members may follow us and keep a tab of the future programmes; Follow us on our official facebook page

www.facebook.com/bangaloreicai

With warm regards

Dhanyavada

CA. Allama Prabhu M.S.

Chairman



This Mega Hero Stone found in Begur is now available in the Bangalore Museum, Venkatappa Art Gallery.

The Hero stone is considered as the best hero stone available in the Country.

The Hero Stone depicts the entire battle scene with intricate details.

KYC

Know Your City

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Heritage of Namma Bengaluru - 3

Boiled Beans Story turned Upside Down

When we delve in to the history of India, we note that the Culture, History, Heritage, Traditions, Customs all these things are interlinked and interweaved with Religion in one manner or the other. Hence, when we start our journey in the chronological order, to know more about the History, it is inevitable for us to visit the Temples.

Visiting the oldest temple of Bengaluru :

• Nageshwara Temple, Begur

Begur, a small township attached to Bengaluru, near Electronic City, off the Bangalore-Hosur highway, amidst high-rise apartments, there we find a small temple complex which springs us many surprises. There are five small temples inside the complex, wherein five Shiva Linga's are installed viz., Nageshwara, Choleshwara, Kaalikamateshwara, Nagareshwara & Karneshwara. Temple dedicated to Nageshwara is the oldest of all and dates back to 900AD, i.e., nearly 1100 years back.

Sometime during 890 AD, when the land was ruled by the Ganga Emperor Ereyappa, the Nolambas attacked Begur, which was then held by Ganga's. One of the Chieftain of Ganga Army, Nagattara, was killed in the battle, but he saved the day and the War. Pleased by the sacrifice, Ereyappa had made magnanimous royal grants to the son of Nagattara.

During the course of time, there was a significant decline of Jain kings and resulted in the rise of the Shaivas. The headless thirthankara stands as a witness for the victory of Shaivas.

The battle must be a very great one; many warriors might have died. Many Hero Stones discovered in Begur, are still available inside the Temple complex. The biggest one was shifted to the Government Museum (see adjacent page).

Inside the temple complex, there lies a hero stone, dating back to around 890AD, bearing the earliest reference to the name 'Bengaluru'.

The inscription on one of the stone says: "**Bengaluru kaleghadhul buttana setti sattam**" which means "**Buttana Setti died in the battle of Bengaluru**" (Buttana Setti – a warrior).

Thus, Bengaluru is referred to as the place where the great battle was fought.

This inscription clearly disproves and negates the popular theory of boiled beans offered by a old woman to Hoysala King Veera Ballala (1120 AD) and proves and confirms that Bengaluru existed at least 3 centuries before this incident.

An interesting excerpt from the book "**Bangalore through the Centuries**" by Mr. M.Fazlul Hasan, is reproduced below:

"The name Bangalore appears to be more antiquarian than is generally realized, for it is found in an inscription (Mysore Archaeological Report-1914-15 p.16) of the 9th century A. D., discovered at Begur village, which is situated about nine miles south-east of Bangalore. Apart from these historical facts, however, Bangalore's name is associated with a charming story, which vies in interest with the tale of Alfred the Great and the burned cake. But this story of Veera Ballala, though it continues to attract popular belief from a long time, however, fades with insignificance in the light of tangible historical evidence. "

Another relevant abstract from the book "The Founder of Bangalore", by Mr. S.K.Narasimhaiah, is reproduced below:

"The amusing incident relating to the origin of the name Bangalore which is to be found in the Mysore Gazetteer does not deserve credence as this very name is found to occur in inscriptions dated so far back as the 9th Century A.D., that is, some three centuries before the time of Veera Ballala"

Thus, the Boiled Beans theory is turned upside down ! ●



Guest Editorial

Challenges of the Profession

Contd. from Page 4

Sanctity of signature and Independence

Unlike a few other professions where the accountability is primarily to the client, in our profession the accountability extends to various stakeholders. For instance, when a member of the profession is exercising the assurance function in the nature of statutory audit and appends his signature, he is not only accountable to the shareholders who are the owners of the company but also to the investors, depositors, lenders – banks and institutions, regulators, customers and all those who make decisions relying on the authenticity of the financial statements so attested. **Expression of independent and qualitative opinion is imperative for securing and fulfilling the accountability aspect of the profession. Attest function is the exclusive domain of our profession.** We have been given this recognition on the faith that we will discharge it with utmost care and competence. Considering the fact that audit is not a privilege but a responsibility, it requires to be shouldered carefully by skilled and credible hands. Besides, audit is a time bound exercise and, therefore, adequate trained manpower, infrastructure and audit tools and manuals are inevitable for a firm to acquit it creditably in discharging such function. Assurance function demands excellence, integrity and independence and when properly discharged commands unshakable faith, respect and image. If warranted, based on facts and figures, we should have the mettle to express an adverse opinion on the financial statements of the client who ends up paying for such an opinion. Any dereliction in this regard might dilute our significance and exclusivity. When we consciously discharge our duties to meet with the genuine expectations of the stakeholders, our stature and rights get automatically preserved and cherished. Rights which flow from duties not done properly are not worth having.

Adherence to various standards governing the profession; ensuring proper documentation of work done and resorting to expression of opinion without fear or favour leaves no room for a gap in performance. Succumbing to pressure of a branch manager of a bank to complete an audit in undue haste or to classify certain NPAs as good debts may at best please him but undoubtedly erodes the image of the professional even

in his mind. Losing sight of the significance of quality in work may result in short term gains to that professional but brings disrepute to the entire profession. If the nation's interest is upheld and protected while serving a client, it brings greater glory to the profession and the brand image is enhanced by reinforcing stronger faith and instilling greater confidence on our profession.

The signature of any professional is an expression of credibility. So is the case with the signature of a member of our profession which is truly trusted and highly respected. The status of the signature of a person becomes elevated and turns out to be a precious one on acquiring professional qualification as a Chartered Accountant. Even if a miniscule section of the society perceives that the signature of a member of our profession is available for the asking or solely for a consideration that would be a dreadful scenario and could lead to erosion of goodwill which our forefathers have so strenuously built over six decades.

Ethical values

Some members of the profession strive and survive on account of the goodwill created by our forefathers but they don't do anything to demean the profession. Many members contribute to and enhance such goodwill by their exemplary conduct, impeccable integrity and qualitative delivery of services. Unfortunately, the conduct of a few is such that it has the diminishing effect on the goodwill of the profession and erodes the image overnight. We need to introspect as to which category we should belong to and the answer is obvious. Fee based approach in everything we do would be destructive in the long run whereas value based approach would enhance our reputation. When intangibles such as quality and brand value are not compromised then tangibles in the form of prosperity would automatically follow but in the long run. To achieve this one needs to have not only passion but also patience. **Mahatma Gandhi** said that **there is enough for every one's need but not for the greed.** The Father of the nation also indicated that **'ends' do not justify the 'means' and means should be as good as the ends.** It might pay to be unethical in the short run, but in return one loses self-esteem and peace of mind, which is too precious a price one should dread to pay and suffer.

Lord T.B. McCauley said, *"The measure of man's real character is what he would do if he knew he would never be found out"*. Everyone aspires to grow and reach greater heights. It will be nice to always bear in mind that ability may take us to

the top but it requires character to stay there. Otherwise, the fall could be mighty. Quality in service without compromising on ethical values begets not only prosperity in the long run but undoubtedly helps us to build image and command respect. In matters of innovation and empowerment, one should swim with the current, but in matters of values and principles, one should stand like a rock. The future is going to be tougher in this regard and all the same we need to gear up to face the challenge and ensure that there is no performance gap.

Professional Social Responsibility (PSR)

A member of our profession is considered to belong to the elite segment of the Indian society. About 27% of the Indian population is perceived to be below the poverty line. We owe it to the society to contribute in uplifting the lives of the downtrodden and under privileged masses. The standing and respectability of the profession can touch lofty heights only if the profession is able to positively contribute to the socio-economic development of the society. Several measures can be resorted to as part of PSR initiative and some of them can be readily spelt out.

Firstly, ICAI can enhance the level of contribution in the policy formulations by various ministries of the Central Government and of the State Governments on socio economic reforms and their effective implementation. Secondly, members with requisite exposure, aptitude and inclination can plunge into public life in large numbers and be part of the political

system to be able to contribute in the policy making at the national and state level; Thirdly, members need to accept positions such as Independent Directors of companies, trustees of public charitable trusts, governing board members of educational, health care and not for profit organisations, assume leadership in chambers of commerce, management and trade associations. Fourthly, every medium and large firm can establish a charitable institution and carry out activities to meet the societal needs in a small way.

Conclusion

As we continue our glorious journey, it's time that we take stock of the socio-economic changes unfolding around us and adjust the course of our journey accordingly for larger benefit of the society and the nation. We may not have the ability to change the course of the wind but we can set the sail appropriately to proceed in the noble path we choose to progress. French philosopher Jean-Paul Sartre said that we have no destinies other than those we forge ourselves. **Let us make the society feel proud of our profession and thereby justify our existence.** No other profession can boast of having as proximate a role and nexus as ours with the economic development of our country. Let us reinvent the significance of our role in **partnering, participating and partaking** in the task of building a credible economy in our incredible India. **Jai Hind.**

IMPORTANT ANNOUNCEMENT : KIND ATTENTION MEMBERS

Members may please note that the Ministry of Corporate Affairs (MCA) has notified the Companies (Auditor's Report) Order, 2015 on 10th April 2015.

Click on the following URL for the text of the aforesaid Order

http://www.mca.gov.in/Ministry/pdf/Companies_Auditors_Report_Order_2015.pdf















The deliberations on CARO 2015 that took place in the Comprehensive Workshop on Companies Act 2013 are recorded and uploaded in our Website and is available for archive.

Members may also note that in the **Practice Alert – Discussions** scheduled on 15.05.2015, a detailed discussion on CARO 2015 will be covered. Members are requested to attend the event and derive benefit out of it.

- Chairman, Bangalore Branch





CALENDAR OF EVENTS - MAY 2015

Date/Day/ Time	Topic / Speaker	CPE Credit
01.05.2015 Friday	Holiday on account of May Day	
02.05.2015 Saturday 10.00am to 01.00pm	Impact Seminar on Derivatives - Futures & Options Concepts: Dr. B. Venkatachalam Accounting and Taxation CA. Zain Ahmed Khan <i>Delegate Fee: ₹ 500/- Seminar will be followed by Lunch</i> VENUE: Branch Premises	  3 hrs
06.05.2015 Wednesday 6.00pm to 8.00pm	Study Circle Meet FCRA-Procedure, Critical Issues, Registrations & Renewal CA. G. Muralikrishna VENUE: Branch Premises	 2 hrs
08.05.2015 Friday 6.00pm to 8.00pm	PRACTICE ALERT - DISCUSSIONS Service Tax-Updates & Discussions CA. Madhukar N. Hiregange & CA. (Ms.) Roopa Nayak VENUE: Branch Premises 6.00pm to 8.00pm	  2 hrs
09.05.2015 Saturday	Workshop on 44AB Audit CA. Naveen Khariwal.H Workshop on TDS CA. D.R. Venkatesh <i>Delegate Fee for Members: ₹ 750/- for One Workshop, ₹ 1000/- for Both</i> VENUE: Branch Premises	  10.00am to 01.00pm 02.00pm to 05.00pm 3 hrs 3 hrs Total 6 hrs
13.05.2015 Wednesday 6.00pm to 8.00pm	Study Circle Meet Recent Controversial Issues in Assessment of Charitable Trust or Institution Dr. CA. N. Suresh VENUE: Branch Premises	 2 hrs
15.05.2015 Friday 6.00pm to 8.00pm	PRACTICE ALERT - DISCUSSIONS Audit Reports, Accounting Standards & Financial Reports - Updates & Discussions CA. K. Gururaj Acharya & CA. Sunitha Jain VENUE: Branch Premises	  2 hrs
16.05.2015 Saturday 10.00am to 1.00pm	Statutory Audit of NBFCs - Regulatory Issues Shri. Susobhan Sinha , GM - Dept. of Non-Banking Supervision, RBI, B'lore Shri. N.Gopal , DGM - Dept. of Non-Banking Supervision, RBI, B'lore VENUE: Branch Premises NO DELEGATE FEE, Followed by Lunch	  3 hrs
20.05.2015 Wednesday 6.00pm to 8.00pm	Study Circle Meet Private Equity & Venture Capital Funds - Structures, Funding Instruments, Tax & Regulatory Overview CA. Amith Raj A.N & CA. Krishna Prasad VENUE: Branch Premises	  2 hrs

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

CALENDAR OF EVENTS - MAY & JUNE 2015

Date/Day/ Time	Topic / Speaker		CPE Credit
22.05.2015 Friday 6.00pm to 8.00pm	<div><div></div><div>PRACTICE ALERT - DISCUSSIONS</div></div> <div>VAT - Updates & Discussions CA. S. Ramasubramanian & CA. N. Prateek Marlecha VENUE: Branch Premises</div>	<div></div>	<div>2 hrs</div>
23.05.2015 Saturday 10.00am to 01.00pm	Half a day workshop on Hands on Training using Tally and e-upass upload & Enhanced Audit Tools, Tally Solutions Mr. Divakar & Team, SUN IT Solutions <i>Delegate Fee: ₹ 500/- Followed by Lunch</i> Limited Seats, restricted to 60 members FCFS basis VENUE: ICAI Bhawan, Race Course Road		<div>3 hrs</div>
27.05.2015 Wednesday 6.00pm to 8.00pm	Issues in Sec.9 & Sec.195 and DTAA CA. B.P. Sachin Kuamar VENUE: Branch Premises	<div></div>	<div>2 hrs</div>
29.05.2015 Friday 6.00pm to 8.00pm	<div><div></div><div>PRACTICE ALERT - DISCUSSIONS</div></div> <div>Central Excise & Customs - Updates & Discussions CA. V. Raghuraman & CA. C.R. Raghavendra VENUE: Branch Premises</div>	<div></div>	<div>2 hrs</div>
30.05.2015 Saturday / 31.05.2015 Sunday	<div>Certification Course on Indirect Taxes <i>organised by IDT Committee, ICAI & hosted by Bangalore Branch</i> <i>Tentative date of Commencement: 30th May 2015</i> <i>Course will be on Saturdays and Sundays (12 days)</i> <i>Co-ordinators: CA. P.R. Suresh & CA. (Ms.) Annapurna Kabra</i> <i>Course Fee for Members: ₹ 15,000/-</i></div>	<div></div>	<div>50 hrs Structured + 20 hrs Unstructured</div>
Date/Day	Topic /Speaker	Venue/Time	CPE Credit
03.06.2015 Wednesday	<div>Study Circle Meet Foreign Account, Tax Compliance Act (FATCA) CA. Vijay Kotha</div>	Branch Premises 6.00pm to 8.00pm	<div>2 hrs</div>
05.06.2015 Friday & 06.06.2015 Saturday	<div>Two Day Workshop on Basics in International Taxation <i>Co-ordinator: CA. Cotha S. Srinivas</i> <i>Delegate Fee for Members: ₹ 2,000/-</i> <i>Details on page 14</i></div>	Branch Premises 10.00am to 5.00pm	<div>12 hrs</div>
05.06.2015 Friday	<div><div></div><div>PRACTICE ALERT - DISCUSSIONS</div></div> <div>Domestic Transfer Pricing CA. K.R. Sekar</div>	Branch Premises 6.00pm to 8.00pm	<div>2 hrs</div>

Advertisement Tariff for the Branch Newsletter

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Outside back	₹ 40,000/-	Full page	₹ 20,000/-
Inside front	₹ 35,000/-	Half page	₹ 10,000/-
Inside back	₹ 30,000/-	Quarter page	₹ 5,000/-
Advt. material should reach us before 22nd of previous month.			

EDITOR :
CA. Allama Prabhu M.S.

SUB EDITOR :
CA. Geetha A.B.



CALENDAR OF EVENTS - JUNE & JULY 2015

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
06.06.2015 Saturday	Workshop on e-TDS Procedures and Issues CA. Tarun Kumar Jain Delegate Fee: ₹ 500/-, Followed by Lunch	Branch Premises 10.00am to 01.00pm	3 hrs
10.06.2015 Wednesday	Study Circle Meet Inbound Investments - Tax & Regulatory aspects - Part - I CA. Amith Raj A.N & CA. Krishna Prasad	Branch Premises 6.00pm to 8.00pm	2 hrs
12.06.2015 Friday	PRACTICE ALERT - DISCUSSIONS Income Tax Issues - Updates & Discussions CA. K.K. Chythanya & CA. Tata Krishna	Branch Premises 6.00pm to 8.00pm	2 hrs
13.06.2015 & 14.06.2015 Sat. & Sun.	Two Day Conference <i>Joint Programme with</i> All India Federation of Tax Practitioners (AIFTP) with KSCAA <i>Details on Page 15</i>	Hotel Le-Meridian Sankey Road Bangalore	10 hrs Unstructured
17.06.2015 Wednesday	Study Circle Meet Outbound Investments - Tax & Regulatory Aspects - Part - II CA. Amith Raj A.N & CA. Krishna Prasad	Branch Premises 6.00pm to 8.00pm	2 hrs
19.06.2015 Friday	PRACTICE ALERT - DISCUSSIONS Analysis of Finance Act 2015 on Indirect Taxes CA. V. Raghu Ram & CA. Sai Prasad. A	Branch Premises 6.00pm to 8.00pm	2 hrs
20.06.2015 Saturday	Series of Intensive Workshop on International Taxations (Series -I) <i>Co-ordinator: CA. Cotha S. Srinivas</i> No Delegate Fee	Branch Premises 5.00pm to 8.15pm	3 hrs
24.06.2015 Wednesday	Study Circle Meet Real Estate: Joint Development and Revenue Sharing Agreements - Case Studies CA. Ashok Raghavan	Branch Premises 6.00pm to 8.00pm	2 hrs
26.06.2015 Friday	PRACTICE ALERT - DISCUSSIONS Analysis of Finance Act 2015 on Direct Taxes CA. H. Padamchand Khincha & CA. K.K. Chythanya	Branch Premises 4.00pm to 8.00pm	4 hrs
01.07.2015 Wednesday	CA Day, Flag Hoisting & Celebrations	Branch Premises 10.00am	—
03.07.2015 Friday	PRACTICE ALERT - DISCUSSIONS Service Tax Laws CA. T.R. Rajesh Kumar & CA. Akbar Basha	Branch Premises 6.00pm to 8.00pm	2 hrs
04.07.2015 Saturday	Series of Intensive Workshop on International Taxations (Series-II) <i>Co-ordinator: CA. Cotha S. Srinivas</i> No Delegate Fee	Branch Premises 5.00pm to 8.15pm	3 hrs
08.07.2015 Wednesday	Study Circle Meet Basics & Issues under Money Laundering Act CA. V. Guruprasad	Branch Premises 6.00pm to 8.00pm	2 hrs
10.07.2015 Friday	PRACTICE ALERT - DISCUSSIONS VAT Check Post and Inspections by Intelligence Authorities under KVAT Mr. K.J. Kamath, Advocate & Mr. K.G. Kamath, Advocate	Branch Premises 6.00pm to 8.00pm	2 hrs

CALENDAR OF EVENTS - JULY & AUGUST 2015

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
15.07.2015 Wednesday	Study Circle Meet Effective Cyber Security to prevent Cyber Frauds Mr. Satish Kumar Dwibhashi	Branch Premises 6.00pm to 8.00pm	2 hrs
17.07.2015 Friday	PRACTICE ALERT - DISCUSSIONS Companies Act 2013 CA. Manohar Gupta. P & CA. Chetan K. Jain	Branch Premises 6.00pm to 8.00pm	2 hrs
22.07.2015 Wednesday	Study Circle Meet Managerial Remuneration & Related Party Transactions CS. R. Parthasarathi	Branch Premises 6.00pm to 8.00pm	2 hrs
24.07.2015 Friday	Branch AGM*	Branch Premises	—
29.07.2015 Wednesday	Study Circle Meet Practical aspects in Cost Audit of Manufacturing Industries CA. Chalapathy Rao.G	Branch Premises 6.00pm to 8.00pm	2 hrs
01.08.2015 Saturday	Series of Intensive Workshop on International Taxations (Series-III) <i>Co-ordinator: CA. Cotha S. Srinivas</i> No Delegate Fee	Branch Premises 5.00pm to 8.15pm	3 hrs
05.08.2015 Wednesday	Study Circle Meet Opportunities for CAs in Venture Capital Business CA. Srikant Parthasarathy	Branch Premises 6.00pm to 8.00pm	2 hrs
07.08.2015 Friday	PRACTICE ALERT - DISCUSSIONS VAT CA. Sanjay M. Dhariwal & CA. Annapurna Kabra	Branch Premises 6.00pm to 8.00pm	2 hrs
12.08.2015 Wednesday	Study Circle Meet ICDS-Income Computation Disclosure Standards CA. D.S. Vivek	Branch Premises 6.00pm to 8.00pm	2 hrs
14.08.2015 Friday	PRACTICE ALERT - DISCUSSIONS Service Tax CA. Madhur Harlalka & CA. Badrinath N.R	Branch Premises 6.00pm to 8.00pm	2 hrs
15.08.2015 Saturday	Independence Day - Flag Hoisting & Celebration	Branch Premises 10.00am	—
19.08.2015 Wednesday	Study Circle Meet Depreciation as per Companies Act 2013 in SAP - Changes and its effects CA. Rajeev Kumar	Branch Premises 6.00pm to 8.00pm	2 hrs
21.08.2015 Friday	PRACTICE ALERT - DISCUSSIONS Income Tax Issues CA. Padam Chand Khincha, CA. B.R. Sudheendra & CA. Shivanand Nayak	Branch Premises 6.00pm to 8.00pm	2 hrs
26.08.2015 Wednesday	Study Circle Meet Recent Issues in Income Tax Shri. M.V. Seshachala, Advocate	Branch Premises 6.00pm to 8.00pm	2 hrs
29.08.2015 & 30.08.2015 Sat. & Sun.	State Level Conference - Jnanadayini <i>Details will be Informed later</i>	Bengaluru	12 hrs

No Programmes in September on account of major repairs & renovations to the Auditorium



Two Day Workshop on

Basics in International Taxation

On Friday 5th & Saturday 6th June 2015

from 10.00am to 05.00pm

at **Bangalore Branch Premises**

12 hrs
CPE

DAY 1 - 5 th June 2015		
Timings	Topics	Speaker
09.00am	Registration	
09.30am to 10.00am	Inauguration	
10.00am to 11.30am	Introduction to International Taxation	CA. Kusuma Yathish
11.30am	Tea Break	
11.45am to 01.15pm	Concepts of Residential Status	CA. Vinay Sanji
01.15pm	Lunch Break	
02.15pm to 03.15pm	Concepts of Permanent Establishment and Business	CA. Rani.N.R
03.15pm	Tea Break	
03.30pm to 04.45pm	Concepts of Royalty and Technical Service	CA. Sachin Kumar B.P
04.45pm	OPEN HOUSE	
DAY 2 - 6 th June 2015		
10.00am to 11.30am	Interest, Dividend, Capital Gains & Immovable Property	CA. Prashanth K.L
11.30am	Tea Break	
11.45am to 01.15pm	Concept of Independent and Dependent Personal Services	CA. Vinay T
01.15pm	Lunch Break	
02.15pm to 03.15pm	Limitation of Benefits & Tax Credits	CA. Vivek Davanam
03.15pm	Tea Break	
03.30pm to 04.45pm	Certification U/s. 195, Form 15CA & 15CB Considering TRC & PAN	CA. Cotha S. Srinivas
04.45pm	OPEN HOUSE	

CA. Allama Prabhu M.S.

Chairman

CA. Geetha A.B.

Secretary

CA. Cotha S. Srinivas

Co-Ordinator

DELEGATE FEES:

Members: ₹ 2,000/-, Non-Members: ₹ 15,000/- + Service Tax

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

For further details please contact: **Ms. Geetanjali D.**, Tel: 080-3056 3500 / 3513

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



Two Day Conference

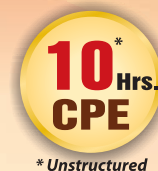
on Saturday, 13th & Sunday, 14th of June 2015

at **Hotel Le-Meridian**, Sankey Road, Bangalore

Organized by **Bangalore Branch of SIRC of ICAI**

Jointly with

**All India Federation of Tax Practitioners (AIFTP) &
Karnataka State Chartered Accountants Association (KSCAA)**



DAY 1 - 13th June 2015

09:45AM **INAUGURAL SESSION**
Inauguration by
Chief Guest :
Shri D.V. Sadananda Gowda
Hon'ble Minister for Law and Justice, Govt. of India
Guest of Honour:
Mr. F.R. Singhvi
Renowned Industrialist

11:30AM **SESSION I**
Gearing up for GST
CA. Madhukar Hiregange, Bengaluru
Chairperson:
Ms. Anita Sumanth
Advocate, Chennai

01:15PM **LUNCH**

02:15PM **SESSION II**
Important Amendments in Service Tax
Mr. K. Vaitheeswaran*
Advocate, Chennai
Chairman:
Mr. Bharathji Agarwal
Sr. Advocate, Lucknow

04:00PM **SESSION III**
Companies Act, 2013
Important provisions for practitioners
CA. Gururaj Acharya, Bengaluru
Chairman:
An eminent resource person

DAY 2 - 14th June 2015

09:00AM **SPIRITUAL SESSION**
by a renowned personality

10:15AM **SESSION IV**
Direct Taxes
Finance Act 2015
Discussion on Provisions relating to
- TDS & Place of effective management
CA. Saurabh Soparkar*, Ahmedabad
Chairman:
Jnanasagara CA. S. Krishnaswamy, Bengaluru

12:00noon **SESSION V**
Labour Laws
for practising professionals
Mr. B.C. Prabhakar, Advocate, Bengaluru
Chairman:
An eminent resource person

01:15PM **LUNCH**

02:15PM **SESSION VI**
Panel discussion on Works Contract
(VAT/Service Tax/Income Tax)
CA. Raghuraman, Advocate, Bengaluru
CA. K.K. Chythanya, Advocate, Bengaluru
CA. Vishnumurthy, Bengaluru
Moderator:
CA. S Ramasubramanian, Bengaluru

04:30PM **VALEDICTORY SESSION**

CA. Allama Prabhu M.S.
Chairman, B'lore Br. of SIRC of ICAI

Mr. J.D. Nankani
President, AIFTP

CA. Raveendra S. Kore
President, KSCAA

Hospitality Committee: CA. Ravi Prasad, Convenor, Mob.: +91 98451 28993, e-mail: raviprasad@mssv.firm.in

DELEGATE FEE: Members - ₹ 3000/- inclusive of Service Tax

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

For Further details please contact:

Ms. Geetanjali.D., Tel : 080-3056 3500 / 3513

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

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DIGEST OF RECENT DECISIONS OF THE HIGH COURTS ON INCOME TAX

CA. K.S. Satish, Mysore



CHARITABLE TRUST

In *Dawn Educational Charitable Trust v. CIT* (2015) 370 ITR 724 (Ker) where the assessee-trust was running a school for the benefit of children of non-resident Indians in a building with air-conditioned class rooms providing the students breakfast & lunch and collecting huge amount towards fees, the Kerala High Court ruled that it was not entitled to registration under section 12A as it was run on commercial lines under the clad of charitable purpose.

BUSINESS EXPENDITURE

Expenditure incurred by the assessee-firm, an importer and exporter of shoe products, on foreign travel of persons including a lady who was one of the founder partners was wholly and exclusively for the purpose of its business and was an allowable deduction held the Madras High Court in *CIT v. Irbaz Shoe Co.* (2015) 371 ITR 215 (Mad).

REVENUE EXPENDITURE

In *Addl. CIT v. Dhampur Sugar Mill P. Ltd.* (2015) 370 ITR 194 (All) where the assessee-company incurred expenditure on laying transmission lines which were to vest absolutely in Uttar Pradesh Power Corporation Ltd. for facilitating the efficient conduct of its business since the assessee had to supply electricity to its sole consumer, the Uttar Pradesh Power Corporation Ltd., the Allahabad High Court expressed the view that the expenditure incurred was clearly revenue in nature.

SECTION 43B

Employees' Contribution to Provident Fund and Employees' State Insurance paid by the assessee on or before the due date for filing the return of income under section 139(1) is eligible for deduction under section 43B(b) opined the Karnataka High Court in *CIT & Anr. v. Magus Customers Dialog Pvt. Ltd.* (2015) 371 ITR 242 (Kar).

CAPITAL GAINS

The Karnataka High Court has in *CIT v. Ved Prakash Rakhra* (2015) 370 ITR 762 (Kar) taken the view that where the assessee demolished his residential house and handed over vacant land to the developer, he was entitled to exemption in respect of the long-term capital gain arising therefrom under section 54F and not under section 54.

CASH CREDITS

Where the partners made contributions towards the capital of the assessee-firm for its business, the assessee-firm cannot be required to explain the source of income of the partners for making the said contributions and enquiry into the source for the partners to make the contributions could be conducted against the individual partners held the Telangana & Andhra Pradesh High Court in *CIT v. M. Venkateswara Rao & Ors.* (2015) 370 ITR 212 (T & AP).

CHAPTER VI-A

In *CIT & Anr. v. Murudeshwar Decor Ltd.* (2015) 370 ITR 626 (Kar) where the assessee-company was engaged in the

job work of decoration of plain glazed ceramic tiles through the processes of printing and embossing the designs, the job work done by the assessee-company constituted manufacture and it was entitled to deduction under section 80-IA held the Karnataka High Court.

ASSESSMENT

The Delhi High Court has in *CIT v. Dimension Apparels P. Ltd.* (2015) 370 ITR 288 (Del) expressed the view that the assessee-company ceased to exist upon its amalgamation with another company, that the assessment order made on the amalgamating company was invalid and that it was not a procedural irregularity which could be cured by section 292B.

APPEAL

An assessee who consented to the assessment is not an aggrieved person and, therefore, is not competent to file an appeal against the order of assessment to the Commissioner (Appeals) under section 246A ruled the Uttarakhand High Court in *Deep Kukreti v. CIT & Anr.* (2015) 371 ITR 257 (Utk).

PENALTY

The Telangana & Andhra Pradesh High Court has in *Gururaj Mini Roller Flour Mills v. Addl. CIT* (2015) 370 ITR 50 (T & AP) taken the view that making book adjustment of the funds by the assessee-firm vis-a-vis its sister concern cannot be said to be a violation or contravention of sections 269SS & 269T and consequently, penalties could not be levied on the assessee-firm under sections 271D & 271E.



RECTIFICATION OF DEED OF TRUST

CA. Dr. N. Suresh

1. Brief Introduction

Deed of Trust is an instrument in writing. A Deed of Trust is a document that sets out the terms and wishes of the Author of the Trust. This document also encompasses understanding between the Author of the Trust and the Trustees and sets out the objects of the Trust, powers of the Trustees, etc.

The controversial issue is whether the Deed of Trust can be amended or rectified? If yes, how to rectify or amend?

First let us understand the reasons for seeking rectification.

2. Reasons for seeking rectification

Normally, the Deed of Trust is drafted either by an Advocate or a Chartered Accountant based on the inputs provided by the Author of the Trust. Many a times, mistake may arise which may be unilateral or bilateral. The intention of the Author of the Trust may not be brought out properly in the Deed of Trust. Upon realizing subsequently Author of the Trust or the Trustees may find it necessary to rectify. Sometimes new elements have to be added in view of various circumstances under which rectification may be sought.

Some of the reasons for seeking rectification are:

- a. When inappropriate words were used in the Deed of Trust.

- b. Clauses in the Deed of Trust fail to bring out the true intention of the Author.

- c. When there is an ambiguity in expression of clauses in the Deed of Trust.

- d. When the construction of sentences gives dual meaning.

- e. When the Tax Department requires certain clauses to be brought over in the Deed of Trust.

- f. When the objects clause are not properly brought out.

These are the illustrative examples for the reasons for seeking rectification.

3. Pre-conditions for Rectification of Deed of Trust

The most significant pre-conditions to be satisfied for rectification of Deed of Trust are –

- a. Power must be vested with the Trustees in the document to rectify.

- b. The Founder of the Trust, unless the power has been provided in the Deed of Trust, cannot rectify.

- c. If specific clauses have to be amended, power to rectify those specific clause is necessary, without which amendment cannot be made as upheld in case of **Sakthi Charities vs. CIT (1984) 149 ITR 624 (Mad)** and In **CIT vs Palghat Shalimar Trust (2002) 254 ITR 212(SC)**. In the latter case, the Supreme Court found that

the power to alter the objects clauses was not there, therefore the amendment made was not binding.

4. How should the Deed of Trust be amended?

For better understanding, the elements that contributes for the amendment can be segregated into -

a. Those that are consequential in nature -

This mainly occurs when there are inappropriate words, wrong spellings, mistake in the name, etc. This is only consequential in nature and do not affect the operation of the objects and main contents of the Deed of Trust. In such circumstances, rectification can be made by making an addendum correcting mistakes. Generally for carrying out these mistakes vesting of is not ordinarily required.

b. Those that are substantial in nature -

When the objects clause has to be amended either by making any addition or deletion, then the power has to be vested in the Deed of Trust to the Trustees for making rectification. If this power is vested, the rectification can be made to the Deed of Trust by either amending it or invoking the provisions contained in Specific Relief Act, 1963 whereby the Court passes an Order.



5. Whether rectification is a prospective or retrospective?

The rectified Deed comes into effect from the time the Deed is rectified. As such, it will have a prospective effect as upheld in the following cases -

- a. Commissioner of Income Tax v. Kamla Town Trust (1996) 217 ITR 699 (SC)
- b. Bhiguraj Charity Trust vs Commissioner of Income Tax (1997) 228 ITR 50 (Del).

6. Is Prior notice to the Income Tax Department required for amendment?

It is a common practice that the Income Tax Department insists that while granting registration under Sec. 12A(a) and 12AA of the I.T Act, 1961 or while granting exemption under Sec. 80G that no changes will be incorporated without the prior approval from the Commissioner of I.T (Exemptions) or Director of I.T (Exemptions).

When such clauses are provided in the Deed of Trust, will it make the Board of Trustees obligated to seek prior permission for any changes?

It is to be noted that, the clauses provided is a pre-procedural requirement, thereby any changes purported to be made, have to be brought to the notice of the CIT(E) or DIT(E). This facilitates to examine the correctness or otherwise, by the Authorities. As emphasized, Deed of Trust is an understanding between the Author of the Trust and the Trustees. Income Tax Department is not a party to such rectification. Providing a clause in the Deed of Trust for seeking prior approval is a procedural requirement. In case of lapses, it cannot invalidate the rectification process.

If, when without the knowledge of the Department, the amendment or rectification carried out and if ITO finds such application is contrary to the amended Deed, then in such circumstances, it may cause for refusal of exemption.

7. Rectified Deed is binding on the Income Tax Department

When rectification is made to the Deed of Trust by invoking Sec. 26 of the Specific Relief Act 1963, the Decree passed by the Court is binding on the Income Tax Department.

- CIT v Kamla Town Trust (1996) 217 ITR 699 (SC)
- Jagdamba Charity Trust v CIT (1981) 128 ITR 377 (Del)
- Bhiguraj Charity Trust v Commissioner of I.T (1997) 228 ITR 50 (Del)
- Laxminarain Lath Trust v CIT (2000) 244 ITR 272 (Raj)
- Sakthi Charities vs. CIT (1984) 149 ITR 624 (Mad)

8. On the issue when the I.T Department is not a party to such rectification, whether such rectification is binding on the I.T Department in the Assessment proceedings ?

The observation in the case of CIT v Kamla Town Trust (1996) 217 ITR 699 (SC) is as follows -

"Therefore, whatever might be the correctness or otherwise of the order passed by the Civil Court under Sec. 26 of the Specific Relief Act, 1963, it was not open to the ITO to say that the trustees could administer the trust in accordance with the original deed and that the claim for exemption had to be dealt with on the basis of the original deed. Nor was it open to the ITO to

say that in the relevant accounting year, the trustees held the property subject to the terms of the original and not the amended deed. In our view, the aforesaid decision of the Delhi High Court lays down the correct legal position in connection with proceedings for rectification of instrument like Deed of Trusts, initiated before competent Civil Courts under the relevant provisions of the Specific Relief Act".

Further the Supreme Court held that it is not open to question the rectification upon decree.

9. Effects of rectification/amended Deed of Trust.

The effect of rectified deed is briefly summarized as follows -

- a. The amended clauses become an integral part of the original document
- b. It will have a prospective effect and does not have a retrospective effect.
- c. The rectified deed or supplementary deed, it is incumbent upon the Assessing Authorities to consider the whole document.
- d. It is the duty of the Trustees to act in accordance with the rectified or supplementary deed, failure of which may lead to breach of Trust.

Conclusion

Deed of Trust can be amended or rectified if there is a power vested in the Deed of Trust to amend such clauses. Without the specific power amendment cannot be made with exception to consequential nature of mistakes which can be rectified. Rectification or amendment will have prospective effect. It is necessary in the clauses of the Deed of Trust to incorporate clauses for carrying rectification. It is better if specific clauses are provided. ■

RECENT JUDICIAL PRONOUNCEMENTS IN INDIRECT TAXES

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



CENTRAL EXCISE:

1. Cost of transportation not incurred by Assessee will not form part of the assessable value:

Honourable Supreme Court upholding the order of the Tribunal has held that the cost of transportation from place of removal to the place of delivery is not includible in the assessable value based on the finding that the Assessee is not responsible to pay such cost of transportation. Accordingly, the appeal filed by the Revenue is dismissed. [*CCE vs. M/s Ispat Industries Ltd.*, 2015-TIOL-40-SC-CX]

2. Job-worker is entitled to claim CENVAT credit of duty paid on capital goods and inputs used in manufacture of goods cleared without payment of duty:

Honourable High Court has held that the job-worker can claim CENVAT credit of duty paid on capital goods and inputs used in relation to manufacture of goods cleared without payment of excise duty on job-work basis. In this regard, Honourable High Court has placed reliance on its own judgement in the case of Commissioner vs. Hwashin Automotive India Pvt Ltd, reported in 2014 (9) TMI 444. Accordingly, the appeal filed by the Revenue is rejected. [*CCE, Chennai vs. M/s Sivaramakrishna Forgings Pvt Ltd.*, 2015-TIOL-813-HC-Mad-CX]

3. Time limit as specified under Section 11B is not applicable to rebate claim under Rule 18:

The Honourable Supreme Court has dismissed the appeal filed by the Revenue contending that the Assessee is not entitled to claim rebate of central excise duty paid on export of goods on the grounds that the application is not filed within one year as prescribed under Section 11B of Central Excise Act, 1944. Upholding the judgement of Honourable High Court, it is held that limitation as specified under Section 11B is not applicable to rebate claims under Rule 18 of Central Excise Rules, 2002. [*Deputy Commissioner of Central Excise vs. M/s Dorcas Market Makers Pvt Ltd.*, and another 2015-TIOL-820-HC-Mad-CX]

4. Refund of CENVAT credit on transportation cannot be denied when the place of removal is upto the port of loading:

The issue before the Tribunal relates to the denial of refund of CENVAT credit under Section 5 of CENVAT Credit Rules, 2004 of service tax paid on transportation services for movement of goods from the factory to the port of loading on the grounds that the service was rendered beyond the factory premises. The Tribunal on perusing the invoices and shipping bill observed that the terms of delivery is on FOB basis

and the place of removal is upto the port of loading. In this regard, the Tribunal placed reliance on its own judgement in the Assessee's own case reported in 2010-TIOL-418-CESTAT-Mad. [*Cauvery Stones Impex Pvt Ltd.*, vs. CCE, Salem 2015-TIOL-589-CESTAT-Mad]

CUSTOMS:

5. Arbitrary amount of 1% on loading and unloading are sustainable only in case actual charges are not ascertainable:

Honourable Supreme Court in a case relating to valuation of imported goods has held that 1% of loading, unloading and handling charges can be applied only when the actual charges are not ascertainable. Accordingly, Honourable Supreme Court allowing the appeal filed by the Assessee held that for the purpose of valuation the actual loading, unloading and handling charges should be considered. [*Wipro Ltd.*, vs. Assistant Collector of Customs and Ors 2015-TIOL-79-SC-Cus]

6. Only pre-import expenses form part of the assessable value for the purpose of valuation:

The issue before the Honourable Supreme Court is whether the value of technical services required for setting up and commissioning should be added to the value of the plant imported for the purpose of levy of customs duty. It is observed



that customs duty is chargeable with reference to the price at which goods or like goods are ordinarily sold or offered for sale at the time and place of importation in the course of international trade. Accordingly, any costs and services that are actually paid or payable prior to the import of goods should only be added for the purpose of determining the value of the imported goods. As such the technical service being post-importation activity to successfully set-up and commission the plant, will not form part of the assessable value. [*Commissioner of Customs, Ahmedabad vs. M/s Essar Steel Ltd., 2015-TIOL-63-SC-Cus*]

SERVICE TAX:

7. **Doctrine of unjust enrichment –not applicable for refund of taxes paid in excess when the consideration is inclusive of taxes:** The issue before the Tribunal pertains to the denial of refund of tax paid in excess on the grounds of unjust enrichment. The facts of the case were that the service tax was remitted considering the value of services rendered as inclusive of service tax without collecting the tax from the customers. Such remittance was made without claiming relevant abatement resulting in excess payment. The Tribunal based on the facts held that doctrine of unjust enrichment will not apply in case the consideration for provision of services is inclusive of taxes. [*CCE, Jaipur – II vs. Roopa Ram Suthar [2015] 56 taxmann.com 121 (New Delhi – CESTAT)*]
8. **CENVAT credit on capital goods can be claimed before such goods are installed:** The Tribunal in an issue relating to claiming of CENVAT credit of duty paid on capital goods

has held that there is no requirement specified for claiming CENVAT credit upon installation of capital goods. Accordingly, the Tribunal dismissed the appeal filed by the Revenue and held that CENVAT credit claimed by the Assessee is correct. [*Commissioner of Central Excise, Customs and Service Tax, Rajkot vs. Reliance Ports and Terminals Ltd., [2015] 55 taxmann.com 73 (Ahemdabad –CESTAT)*]

9. **Service tax paid along with interest before issuing the show cause notice – levy of penalty not justified:** The Tribunal has set-aside the order levying penalty in terms of Section 73(3) of Finance Act, 1994 on the grounds that the entire service tax attributable to taxable services provided has been remitted along with interest before issuance of show cause notice. The Tribunal decided the matter on the basis that no evidence was brought on record by the Revenue to prove that the Assessee had an intention to evade payment of tax. [*Veriton Software Solution Pvt Ltd., vs. CCE, C & ST 2015-TIOL-562-CESTAT-Bang*]

VAT:

10. **Input tax credit not declared in monthly returns cannot be denied if the same is declared in audit report in Form VAT 240 and such audit report is not rejected:** Honourable High Court of Karnataka has set-aside the order denying the input tax credit on the grounds that such input tax credit is not declared in the monthly returns filed in Form VAT 100. Assessee contested that the audit report in Form VAT 240 (books of accounts) submitted has not been rejected by the Revenue and as such the orders passed by the Revenue is gross violation of the

principles of natural justice. With reference to the above contention, Honourable High Court allowed the appeal and observed that reply to show cause notice submitted by the Assessee should be considered and should be appreciated by the Revenue before concluding the assessment. Based on this, the other issue relating to the denial of actual expenses incurred towards labour and other like charges was also set-aside. [*Paharpur Cooling Towers Ltd., vs. Assistant Commissioner of Commercial Taxes TS-146-HC-2015(Kar)-VAT*]

11. **Revisional Authority cannot pass the fresh assessment order under Karnataka VAT Act, 2003:** Honourable High Court of Karnataka has held that the Revisional Authority under Section 63A of the Karnataka VAT Act, 2003 is not entitled to proceed with passing a fresh assessment after the order cancelling the original assessment order is passed. The Revisional Authority can only direct the Assessing Officer to pass the fresh assessment order. Reliance placed on its own judgment in the case of Shankar Construction Co. vs. ACCT, Belgaum reported in 124 STC 265. [*Solidus Hi-Tech Products Pvt Ltd., vs. State of Karnataka & Others TS-133-HC-2015(Kar)-VAT*]
12. **Transfer of right to use goods is liable to VAT even otherwise the effective control is not transferred:** Honourable High Court of Rajasthan has held that the erection of tent, providing furniture, crockery and electric decorative (goods) will qualify as transfer of right to use and as such is liable to VAT. Honourable High

Contd. on Page 23

TAX UPDATES - MARCH 2015

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



VAT, CST, ENTRY TAX, PROFESSIONAL TAX

[2015] 79 VST 5 (SC): Asst. Commissioner v. Hindustan Urban Infrastructure Ltd. and Others - In the instant case the Honourable Supreme Court has held that Official liquidator of the Company, who sells goods in winding up proceedings of Company is a 'dealer' as per Section 2(viii)(f) of the Kerala General Sales Tax Act, 1963 and hence liable to pay tax.

[2015] 79 VST 25 (Karn. - HC): Fosroc Chemicals (India) Pvt. Ltd. v. State of Karnataka - In the instant case the Honourable Karnataka High Court held that in view of Circular No. 1/2014-15 issued by the Commissioner, the authorities were not justified in not granting relief to the Assessee on account of the fact that invoices mentioned in the C forms pertained to a different quarter.

Further, it held that where the Assessee is not entitled for concessional rate under CST for not furnishing C Form, it was liable to pay interest under Karnataka Value Added Tax Act from day one.

INCOME TAX

[2015] 371 ITR 427 (Bom. - HC): CIT v. Chemosyn Ltd. - In the instant case, the Honourable Bombay High Court upheld the order of the Honourable Mumbai Tribunal applying the real income theory and held that no income has been accrued or received of the value

of 18,000 sq. feet of the constructed area under the development agreement dated 16.06.2006 on account of the fact that the agreement dated 16.06.2006 was not acted upon as it came to be superseded/modified by the tripartite agreement dated 06.07.2007.

It further noticed that the income accrued and earned under the subsequent agreement dated 06.07.2007, was offered as capital gains in the subsequent year.

[2015] 371 ITR 453 (SC): GVK Industries Ltd. and another v. ITO and another - In the instant case Assessee-Company was incorporated for purpose of setting up a Gas based power project. With intention to utilize expert services of qualified and experienced professionals who could prepare a scheme for raising required finance and tie-up required loan, assessee sought services of a consultant and eventually entered into an agreement with NRC, a Switzerland based company. In terms of agreement, services rendered by NRC included inter alia, financial structure and security package to be offered to lender, making an assessment of export credit agencies worldwide, obtaining commercial bank support on most competitive terms and assisting assessee in loan negotiations for project in a co-ordinated and expeditious manner.

For the aforesaid service, the NRC issued invoice to the Assessee-Company. The Assessee-Company approached the

Income Tax Officer for a 'no-objection certificate' to remit the sum without deduction of tax at source.

The Income Tax Officer refused to issue the certificate, whereupon the Assessee-Company.

On appeal before the Honourable Supreme Court, it held that the NRC had the skill, acumen and knowledge in the specialised field, i.e., preparation of a scheme for required finances and to tie-up required loans. The nature of activities undertaken by the NRC would certainly come within the ambit and sweep of the term 'consultancy service' and therefore, tax has to be deducted at source as the amount paid as fee could be taxable under the head 'Fee for technical service'.

It further held that once the tax is payable the grant of 'no objection certificate' was not legally permissible.

[2015] 371 ITR 370 (St.) (SC): CIT v. Fr. Mullers Charitable Institutions - The Honourable Supreme Court has dismissed the SLP filed by the Department against the judgement of the Honourable Karnataka High Court in ITA No. 589 of 2007 reported in 363 ITR 230 wherein the Honourable High Court had quashed the proceedings for revision taken by the Commissioner, in a case where the Assessing Officer had disallowed the loans given in violation of Section 13 of IT Act, to bring the entire income of the Trust to tax.



In other words, the Hon. Apex Court impliedly accepted the contention that in case of violation of section 13, only the relevant income can be denied the benefit of exemption and not the whole income.

[2015] 372 ITR 33 (Karn. – HC): Bharti Airtel Ltd. and another v. Dy. CIT

- In the instant case the Honourable Karnataka High Court held that sale of pre-paid SIM Cards at discounted rate to distributors is not commission, therefore, assessee is not liable to deduct tax under Section 194H of the IT Act.

The Hon. High Court also noted that TDS provisions are sub servient to charging provisions. Where the distributor has not yet earned his income, it is premature to suggest TDS. The Hon. High Court also accepted the contention that the telecom company and distributors are on a principal to principal relationship.

[2015] 372 ITR 83 (Cal. – HC): Sunil Kumar Agarwal v. CIT

- In the instant case, the assessee sold a piece of land at a sum of Rs. 10 lakhs by two deeds of conveyance. The market value of the land was, however, assessed by the District Sub-Registrar at a sum of Rs. 35 lakhs, and purchaser paid stamp duty on that basis. The Assessing Officer adopted the valuation made by the District Sub-Registrar and computed the long-term capital gain on that basis.

On second appeal, the Tribunal held that once the stamp valuation authority's value had been accepted by the assessee, then the same would have to be adopted in view of the specific provisions of Section 50C of the IT Act and there was no reason for reference to the DVO in respect of the provisions of Section 50C of the IT Act. It, accordingly, upheld order of the Commissioner (Appeals).

On appeal to the Honourable Calcutta High Court, it was noted that the assessee contended that its case had always been that the price offered by the purchaser was the highest prevailing market price and, thus, valuation made by District Sub-Registrar was, in fact, challenged. It was held that the Assessing Officer, in fairness, should have referred the matter to a valuation officer contemplated under Section 50C of the IT Act, rather than proceeding to assess the capital gain on the basis of the valuation made by the District Sub-Registrar.

The Honourable Calcutta High Court held that, where according to assessee, agreed consideration as per conveyance deed was highest prevailing market price of property, it would follow that assessee disputed higher valuation made by Stamp valuation authority and in such case, Assessing Officer should have referred matter to a Valuation Officer as contemplated under Section 50C of the IT Act.

In this welcome verdict, it was further held that even if the assessee had not challenged the same, the Assessing Officer, discharging a quasi-judicial function, has the bounden duty to act fairly and to give a fair treatment by giving an option to follow the course provided by the law.

[2015] 229 Taxman 454 (Delhi – HC); 54 taxmann.com 337 (Delhi): CIT v. CNB Finwiz Ltd.

- In the instant case, the Honourable Delhi High Court held that tax remission under Section 88E of the IT Act has to be and should be taken into consideration both under normal as well as book profits computed under Section 115JB and amount of remission under Section 88E of the IT Act would get reduced from tax payable under

both methods/manners of computing taxable income.

[2015] 229 Taxman 596 (Bom. – HC); 54 taxmann.com 200 (Bom. – HC): Rashmikanth Kundalia v. UOI

- In the instant case, the Honourable Bombay High Court held that Section 234E of the IT Act, which levies a fee for defaults in furnishing TDS statement, is a fixed charged for extra service which department has to provide due to late filing of TDS statements and therefore it is not in guise of a tax nor it is onerous.

Thus, the Court held that Section 234E does not violate any provision of Constitution and is therefore intra vires.

In order that a levy is called a fee, there has to be quid pro quo. In the instant case, the consequence of delayed filing of TDS statement by way of extra work to be carried out by the department has been held to be a service. The so called extra work is towards processing the returns of the payees and not the deductor. There is no service whatsoever to the deductor. On the contrary, the deductor is providing free service to the department. Instead of rewarding the deductor, he is being penalized by way of levy of fee for later filing. With due respect, the aforesaid ruling requires reversal.

[2015] 152 ITD 737 (Bang. – Trib.); 52 taxmann.com 19 (Bang. – Trib.): Cranes Software International Ltd.

v. Dy. CIT - In the instant case, the Honourable Bengaluru Tribunal held that where assessee had not been able to bring anything on record to prove that services had been actually rendered by AE to it, lower authorities were justified in considering ALP at nil.

[2015] 152 ITD 763 (Mum. – Trib.); 48 taxmann.com 108 (Mum. – Trib.): Dy. DIT (International Taxation) v. Videsh Sanchar Nigam Ltd. - In the instant case, the Honourable Mumbai Tribunal has held that no order under Section 201(1)/201(1A) of the IT Act can be passed treating the assessee in default, when the assessment has not been made in the hands of the payee in respect of the amount paid by the assessee and even when the time limit for issuing notice under Section 148 for

making such assessment has already come to an end.

[2015] 46-B BCAJ 672 (Bang – Trib.): IVF Advisors Pvt. Ltd. V. ACIT - In the instant case it was held by the Honourable ITAT, Bengaluru that Foreign Currency Futures trading cannot be treated as speculative transaction and Derivatives include foreign currency and call/put option are transactions of derivative markets and cannot be treated as speculative in nature.

[2015] 46-B BCAJ 673 (Bang- Trib.): Vodafone South Ltd. v. DDIT - In the instant case the Honourable ITAT, Bengaluru followed the decisions of Madras High Court which dealt with similar issue. It was held in case of Verizon communications Singapore pte ltd v. ITO [39 taxman.com 70] that the definition of the term “process” under the IT Act should be read into DTAA while evaluating royalty taxation under the provisions of DTAA.

RECENT JUDICIAL PRONOUNCEMENTS IN INDIRECT TAXES

Contd. from Page 20

Court negated the decision of the Tax Board wherein the decision was based on two situations. Firstly, if the Assessee provides the above goods to customers with the help of his labourers for a stipulated period and such labourers after some time brings back such goods – such an activity would not fall within the meaning of sale. Secondly, if contractor makes available above goods from his business premises to customers and after use, customers return the goods to the assessee at his business premises – such activity would fall within the definition of

sale and would be liable to tax under the VAT Act. However, Honourable High Court allowing the appeal filed by the Revenue held that there is hardly any distinction in between the two situations cited by the Tribunal and as such in both the situations the transaction is liable to VAT. [Addl. Commissioner (Legal) vs. M/s Taluka Tent Decorators 2015-TIOL-972-HC-Raj-CT]

13. Full input tax credit can be availed even if the by-products are not liable to tax: Honourable High Court of Madhya Pradesh has rejected the contentions of

the Revenue that the Assessee should reverse the input tax credit attributable to the by-products which are not liable to VAT. It is held that the Assessee is entitled to claim input tax credit of VAT paid on purchases even if the by-products are not liable to tax. In this regard Honourable High Court has placed reliance on the judgement of Honourable Supreme Court in the case of CST vs. Bharat Petroleum Corpn Ltd., reported in 1992 taxmann.com 38. [Ruchi Soya Industries Ltd., vs. State of MP [2015] 56 taxmann.com 187 (MP)]

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CONCEPT BASED CPT PRE-EXAM CRASH COURSE FOR JUNE 2015 EXAMINATION

By faculty members trained at Bangalore Branch,
Guest lectures by eminent members of the profession

Duration – 11 days

From 18th May 2015 to 28th May 2015

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www.bangaloreicai.org

Lecture Meet on Tax Audit

on Saturday, **23rd May 2015** at **Branch Premises**

Registration: **09.00am**, Time: **10.00am to 1.30pm**

Tax Audit - Concepts	CA. Deepak Chopra
Understanding form 3CD	CA. Naveen Khariwal H
<i>Fees: ₹ 200/- (with Lunch and Tea)</i>	
No. of Seats : 180 (FCFS basis)	

Lecture Meet on Performing Statutory Audit under Companies Act 2013

on Saturday, **13th June 2015** at **Branch Premises**

Registration: **09.00am**, Time: **10.00am to 1.30pm**

<i>Speakers:</i>	CA. Srikanta Prasad K.N.
	CA. Jitendra Kumar Jain
<i>Fees: ₹ 200/- (with Lunch and Tea)</i>	
No. of Seats : 180 (FCFS basis)	

IPCC & FINAL for November 2015 Examinations & CPT for December 2015 Examinations

Admissions open for Subjectwise Coaching

Coaching classes will be commencing at the Bangalore Branch of SIRC of ICAI from 21st May 2015. The classes will be concluded by 31st August 2015.

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Extension of time to complete GMCS-I Course by the students registered for articleship training on or after 1st May, 2012

It has been decided to grant extension to students, who were registered for practical training on or after 1st May, 2012 and completed one year of their practical training but not completed the GMCS-I course are, required to complete GMCS-I Course latest by 31st December, 2015.

The above students are advised to register at the portal www.icaionlineregistration.org or contact the nearest Regional Council/Branch for registration in GMCS-I Course and complete the same at the earliest but not later than 31st December, 2015.

CA. V. Murali

Chairman, Board of Studies

Comprehensive Workshop on Companies Act 2013



Inauguration



CA. K. Gururaj Acharya
Programme Director



CA. Ravi Prasad,
Programme Co-ordinator



CA. S. Sundaresan



CA. Himanshu Kishnadwala



CS. Satish Menon



CA. Anup Shah



CA. Shyam Ramadhyani



CA. Adarsh Ranka



CA. P.V. Srinivasan

Interactive Session with ROC



Sri M.R. Bhat, ROC



Felicitation to Sri M.R. Bhat, ROC



FIU, CID Officials who participated in the Workshop



Interaction with ROC & ROC Officials



Lucky draw for delegates

Interactions



Training Prog. on Internal Audit for Officials of Audit & Accounts Dept. of BEML



Sri Pradeep Swaminathan,
Director (Finance), BEML



Programme Co-ordinator addressing the participants



Participants of the programme

Joint Programme on IFRS with Bangalore University



CA. V. Murali



CA. Anil Thampi



CA. Mohan Lavi



CA. Vijay Kapur



Release of Souvenir

Practice Alert - Discussions



CA. S. Venkataramani



CA. T.R. Rajesh Kumar



CA. Jatin Christopher & CA. Hanish S.

Half Day Workshop on Corporate Restructuring, Mergers & Acquisitions



CA. Amith Raj A.N.



CA. Lakshmisha S.

Impact Seminar at Tumkur

Audit Action Points & Provisions relating to Pvt. Ltd. Companies



Inauguration



CA. Ravi Prasad

Speakers at Study Circle Meetings



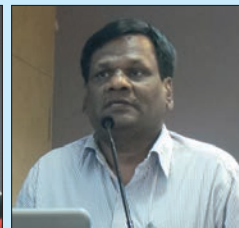
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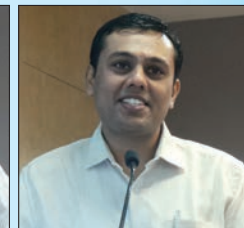
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