



Bangalore Branch of SIRC Newsletter

English Monthly

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Heritage of Namma Bengaluru

Damaruga

Trishula

Suryapana

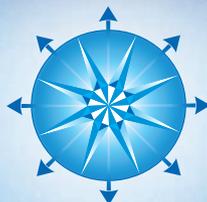
Chandrapana

Mystic Monolithic Monuments at Shri Gavigangadhareshwara Cave Temple



“Very often we forget the economic truth that if all around us are happy, we ourselves are bound to be happy.”

VICHAKSHANA



CA

The Clear-sighted Professional

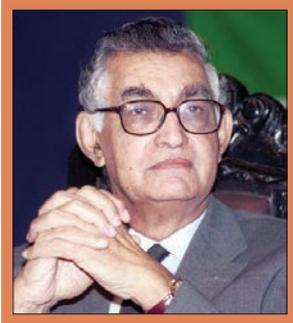


“Happiness is when what you think, what you say, and what you do are in harmony”

Advt.

Advt.

Ethics for the Profession



● Padma Shri CA Y H Malegam

- Past President, ICAI (1979-80)
- Past Chairman of National Advisory Committee on Accounting Standards (NACAS)
- Was the Chairman of the famous Malegam Committee (formulated by RBI)

The accountancy profession faces two major challenges today. First, it is required to function in a business environment which is increasingly affected by corruption and second, a spate of corporate failures, both in India and abroad have resulted in a massive erosion of trust in the role of the professional accountant both in industry and in practice. These are issues, which if not adequately addressed can seriously affect the long-term future of the profession.

Corruption has often been described as the sand which clogs up the machine of economic progress. While on the one hand, it involves a theft of the tax payer's money, in a more important sense, it impacts negatively on the nation's economic development and destroys the moral fibre and the value system of its citizens.

On many counts, India is widely perceived as a corrupt nation. In a 2014 study of 189 nations, India ranked 134th in "Ease of Doing Business" and 179th in "Ease of Starting a Business". In an increasingly global environment, such an adverse perception can have serious consequences. Similarly, a World Bank Study has estimated that because of corruption, India loses every year 0.5% of its Gross Domestic Product.

The profession owes its existence to the evolution of the joint stock system which enabled the savings of the community to be pooled and made available to talented entrepreneurs and innovators, which in turn resulted in much of the improvement in quality of life we enjoy today. The essential element in this system is the segregation between ownership and management and the trust which the owners need to repose in the managers. The instrument through which this trust is communicated is the financial statement and the profession, through an independent and informed opinion on this statement, provides the basis of that trust. However, when this trust is destroyed, the system gets destroyed and consequently also the role of the profession gets destroyed.

In the last few years, there has been a significant erosion of that trust. It perhaps started with Enron. There were of course corporate failures before Enron, but it was the sheer size of Enron and the consequent destruction of Arthur Anderson, a blue-chip Big Six accounting firm which caught the public attention. Enron was followed by the collapse of Lehman Brothers and the consequent financial crisis of 2008 whose effects are still being felt. In India, we have had Satyam, Deccan Chronicle and others.

(Contd. on Page 8)



Jnanasagara CA. S. Krishna Swamy says

Comparing two great leaders

In the happiness of his subjects lies his happiness, in their welfare; whatever pleases him (personally), he shall not consider good, but whatever makes his subjects happy, he shall consider good.

– Arthashastra

In the last article, I spoke about the two great leaders,

1. Sir, M. Vishvesvaraya as a visionary and
2. Mahatma Gandhi as a missionary.

1. Sir. M. Vishvesvaraya - as a visionary

The hallmark of him was integrity and perfection in every aspect of engineering that he undertook construction of

dams, irrigation channels, flood control, hydro electric power generation (clean energy) and as well in administration.

2. Mahatma Gandhi - as a missionary

The hall mark of Mahatma was spiritualism laced swadeshi movement with the purist of means like non violence, quest for truth, eradication of social evils like un-touchability etc. Einstein said of him "generations to come, it may be, will scarce believe that such a one as this ever in flesh and blood walked upon this earth." Gandhiji had deep, inexhaustible spiritual reserves. Nehru says "He was obviously not of the world's ordinary coinage; he was minted of a different and rare variety and often the unknown stared through his eyes."

Top 10 Qualities of Sir M. Vishvesvaraya (leadership)

1. Punctuality and Diligence

Even as a student, Visvesvaraya was punctual, diligent and intelligent. These qualities together with his pleasing manners endeared him to his teachers. He was a brilliant student. The principal of Central College, Charles Waters, took special liking for him. Even after he retired and returned to London he remembered Visvesvaraya with special affection. He bequeathed his own gold cuff-links to Visvesvaraya as a memento. Mrs. Waters came to India specifically to present the cuff-links to Visvesvaraya. These facts show the extraordinary impression that Visvesvaraya had made on his teacher, Charles Waters.

(Contd. on Page 9)

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Chairman's Communique...

Dear Esteemed Member,

Namasthe,

GST BUSINESS PROCESS & STAKEHOLDER CONSULTATION:

In mid October 2015, The Department of Revenue (Ministry of Finance, Government of India) has published the Reports of the empowered Committee on business processes for GST relating to Registration, Refund and Payment and invited comments from the stakeholders and the public at large.

This is a very radical step taken by the Ministry of Finance in the implementation of proposed GST, consequently, under the aegis of the Indirect Taxes Committee of ICAI, the Bangalore Branch of SIRC is hosting a One Day Seminar on GST on 14th of November 2015.

This is a unique Seminar where we have four Statutory Authorities rendering their key note Addresses on the new development. Details of the event are elsewhere published in the News Letter. I request our Members to utilize this opportunity and submit their comments and feedbacks on the Business Processes.

CORPORATE ACCOUNTANTS MEET:

The annual Corporate Accountants Meet will be held under the aegis of the Committee for Members in Industry on 20th of November 2015 at Shangri La Hotel, Bengaluru. I request the members in Industry to participate and avail the benefit of the event. The Registration is restricted to 250 members, on first come first served basis. I request the interested members to confirm their participation by sending an email to: blrregistrations@icai.org

OTHER IMPORTANT EVENTS:

One Day workshop on ICDS is organized on 21st of November 2015 and One Day Workshop on Internal Financial Controls (IFC) is scheduled on 17th of December 2015. Members are requested to make a note of the same and participate in the events.

GUEST EDITORIAL by Padma Shri CA. Y.H. Malegam:

This month's guest editorial is written by Padma Shri **CA. Y.H. Malegam**. He has rendered his services in various capacities and the Fraternity and the Nation at large stands benefited.

He was the Past President of ICAI (1979-80), Past Chairman of National Advisory Committee on Accounting Standards (NACAS) and the past Chairman of the famous Malegam Committee (formulated by RBI). The Bangalore Branch expresses its profound gratitude for accepting our request and obliging to write the guest editorial for us.

I thank all the authors of the Articles for writing interesting Articles and thereby making the News Letter more purposeful than ever before. I thank -

1. CA. K.S. Satish, Mysore, for his Digest of Court, Tribunal and Appellate Decisions on Income Tax , exclusively focusing on domestic taxation;
2. CA. K. Gururaja Acharya for providing us useful Updates on Companies Act 2013;
3. CA. Annapurna Kabra, for compiling a Digest on recent decisions under the VAT Laws;
4. CA. N.R. Badrinath and CA. Madhur Harlalka for writing on updates in Central Excise and Customs; and for giving relevant articles on Service Tax.
5. CA. A. Saiprasad for providing us a Digest on Service Tax Case Laws;
6. CA. Sachin Kumar B.P., for writing updates exclusively on case laws relating to International Taxation.

From this issue, we have also started publishing humorous cartoons (YAKTOON's) written by CA. Vinayak Pai and we are thankful to him for permitting us to use his Cartoons in our News Letter.

I am sure that all these new initiatives would make the News Letter more interesting, informative, educative and exciting.

With warm regards

Dhanyavada

CA. Allama Prabhu M.S.
Chairman



KYC

Know Your City

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Heritage of
Namma Bengaluru - 9

Bengaluru sold for 3,00,000 !

All the successors of Kempe Gowda remained loyal to the Vijayanagara Empire. All those noble convictions, charitable principles and endowment policies and other such profound thoughts and concepts that guided the Vijayanagara Empire, as it is, were followed by Kempe Gowda and his successors; they were declaring themselves as the feudatories of Vijayanagara, surprisingly even after the Empire had ceased to exist.

Immadi Kempe Gowda or Kempegowda II, who succeeded his elder brother Gidde Gowda, was as charitable and noble as his father. He had inherited all the virtues of kingship. A copper plate dated 1597 accredits him for having erected the four famous watch towers in Bengaluru, which are popularly believed to mark the limits of the city to which it was predicted that the city of Bangalore would extend. But, many historians do not agree this theory as they opine that the cardinal locations served as strategic points for defence purposes.

Kempe Gowda II gave importance to irrigation and built many tanks and reservoirs. He continued the good work of his father and fulfilled his vision of making Bengaluru a commercial hub. His heroic victories are described in many Inscriptions.

An inscription dated 1628 in Sri Ranganatha Temple at Mutyalabeedi at Ballapuradapet which is inscribed in Telugu narrates an act of endowment made by the merchant community, who had made a request to Kempe Gowda II, by entering in to an agreement to grant certain monies for the offerings, festivals and other religious ceremonies of the temple. It describes Immadi Kempegowda as a righteous king and also

indicates about the busy commercial activities of Bengaluru. The inscription throws light not only about the uprightness of Kempe Gowda II but also about the social, religious and benevolent activities of the inhabitants of Bengaluru.

I cannot resist the temptation of quoting the exact words of Mr. M.Fazlul Hasan :

"..From this inscription, it is obvious that the revitalized Hindu Culture which blossomed into perfection by the magnificent efforts of Vidyaranya, the religious and political preceptor of the founders of the Vijayanagar empire, proliferated with the lapse of time and had enriched the natural predilections of the inhabitants of the Bangalore of those early days"

But the predetermined fate manifested itself in the form of an attack by the Army of Bijapur Sultan led by Ranadulla Khan along with Shahji Bhonsley (Shivaji's father) who was second in command. Both were determined to conquer Bengaluru. The jealous neighbours and the defeated enemies of Kempe Gowda II joined hands with the Sultan and as a result Kempe Gowda II, in 1638, suffered a severe defeat. He negotiated a Treaty and accordingly he was forced to vacate Bengaluru and to move to Magadi.

It is nothing but an historical irony that exactly after 101 years of the formation of the new City, the founders handed over their favorite City that was built with immense dedication and great fondness to the enemies and moved out of it !

Impressed by the meritorious martial services of shahji Bhonsley, the Sultan of Bijapur bestowed Bengaluru and the surrounding villages as a jahagir, as a reward for the great victory.

During the realm of Shahji, Maratha Art and Culture flourished in Bengaluru; he was an astute administrator, highly diplomatic and a great warrior. He consolidated his position and built a strong military base.

During his youth, Shivaji lived in Bengaluru for few years and in 1640 he married the Bengaluru girl Saibai Nimbalkar.

After the death of Shahji, his sons divided his possessions. Bengaluru fell to the share of Venkoji(Ekoji) and Poona to Shivaji.

Venkoji ruled Bengaluru for few years. During his reign, he renovated the historical Kadu Malleshwara Temple at Malleshwaram.

But, Venkoji could not withstand the various petty warfare and decided to sell Bengaluru to the then Mysore king Chikka Devaraja Wodeyar for 3,00,000/- . Chikka Devaraha Wodeyar was interested in acquiring Bengaluru for its strategic location.

Shivaji was upset to hear that his beloved city Bengaluru had become a subject matter of sale he rushed to stop the transaction, defeated Venkoji and gained control over Bengaluru. With strict conditions, he then handed over the City to the safe custody of his sister-in-law Deepa Bai (w/o Venkoji).

Aurangzeb who was cautiously watching all these developments and with a desire to acquire Bengaluru sent his armed forces under the command of his general Khasim Khan.

In 1687, Mughals captured Bengaluru.

After nearly 3 years, in 1690, Mughals decided to conclude the incomplete sale transaction that was earlier initiated by Venkoji and sells Bengaluru to Chikka Devaraja Wodeyar for 3,00,000/- !!

COVER PAGE INFORMATION:

The photos are that of the ancient temple of Shri Gavi Gangadhareshwara Cave Temple, Gavipuram Guttahalli, Bengaluru, renovated by Kempe Gowda I and his successors.

The temple is carved out of the natural monolith rock formations and it is simply outstanding and unique. The gigantic mystic discs viz., *Suryapana*(in the east) and *Chandrapana*(in the west) are in the forecourt.

These two enormous rock cut discs are identical in size, shape & design and are placed parallel to each other. Each of them are placed on the horns of Nandi. It is a puzzle that the discs have cross hairs (as in a Telescope) on both the sides.

Many famous Astronomers have tried to decipher the purpose of erecting these discs as nothing would have been so erected without a purpose. The Astronomers also noticed and discovered a new phenomenon. Interestingly a bronze pillar (Dwajasthamba) is placed in between these two discs and the shadow of the pillar coincides with the vertical marking on the discs.

Why and how are these two discs aligned? Does it have any astronomical significance? Have we lost any important astronomical information? Questions have remained as questions.

One more spectacular stage show happens on the evening (approximately from 4.50PM to 5.20PM) of Makara Sankranti (usually on 14th of January). This radiating event is awaited by thousands of devotees.

On this day, during this time, Sun light beams from the South West Part of the temple, passes through the great archway (which is erected on the compound wall) and thereafter passes through two windows which are placed perpendicular to each other, further passes through the horns of Nandi falls on the Shiva Linga and illuminates the Sanctum Santorum.

The extraordinary architectural ingenuity of our ancestors is demonstrated by this highly complex and complicated alignment which lies coterminous with the movement of Sun.

One should necessarily visit this temple complex to experience and appreciate the divine grace.

Let us feel proud and exuberant to know about the Heritage of Namma Bengaluru.



Guest Editorial

Ethics for the Profession

(Contd. from Page 4)

As accountants we cannot absolve ourselves of responsibility for these failures. While in some cases, this was a result of syphoning out of funds, in others it was an attempt to artificially maintain share prices in adverse circumstances. But in all cases, there was a deliberate misrepresentation of financial information for which accountants, both in industry and in practice, who had privileged access to the records must accept responsibility.

It is in this changing environment that the profession needs to re-examine its ethical code. Ethics goes much beyond a mere adherence to laws and regulations. It is a code of personal behavior that recognizes that no individual is an island unto himself but is a part of the society to which he has obligations and responsibilities.

A starting point is a re-affirmation of our professionalism. In 1957 Justice Elbert P. Tuttle Sr. wrote a short piece titled "Who is a professional?" and much of what he wrote almost sixty years ago is relevant today. He said:

"The professional man, in essence is one who provides service... But the service he renders is something more than that of the labourer. It is a service that wells up from the entire complex of his personality..... In a very real sense, his professional service cannot be separate from his personal being....."

It turns out there is no right price for service, for what is a share of a man's worth? If he does not contain the quality of integrity, he is worthless. If he does, he is priceless. The value is either nothing or it is infinite.

So do not try to set a price on yourselves. Do not measure out your professional service on an apothecary's scale and say "only this for so much". Do not debase yourselves by hoarding your talents and abilities and knowledge, either among yourselves or in dealings with your clients, patients or flocks.

Rather be reckless and spendthrift, pouring out your talent to all to whom it can be of service....

Certain it is that man must eat, so set what price you must on your service. But never confuse the performance which is great with its compensation, be it money, power or form, which is trivial."

We may do well to constantly recall these words of wisdom.

KIND ATTENTION: MEMBERS

Members are requested to pass on the information to their clients

COURSE ON FINANCE FOR NON-FINANCE EXECUTIVES

– A Management Development Programme

The course is **open for Non-Finance Executives** such as Engineers, Architects, Doctors, Human Resource Personnel, Department Heads / Administrators / Entrepreneurs and various other professionals, those who are not having adequate knowledge of Accounts / Finance. The course does not call for any prior knowledge in Accountancy, Finance and Tax Laws. The course coverage will be basic in all subjects.

Duration : **11th December 2015 to February 2016**

Timings : **02.30pm to 07.30pm (Only on Fridays)**

Course Fee : **Rs.17,100/- per participant (incl. Service Tax)**

Mode of payment:

DD/Cheque in favour of Bangalore Branch of SIRC of ICAI

Contact Tel : **080 - 30563500 / 511/ 512**

E-mail : **bangalore@icai.org / blrprogrammes@icai.org**

website : **www.bangaloreicai.org**

Course Contents:

- Financial Accounts & Company Accounts
- Direct Taxes
- Project Reports
- Corporate Finance
- Financial Analysis
- Indirect taxes
- Cost Accounts

Jnanasagara CA. S. Krishna Swamy says Comparing two great leaders

(Contd. from Page 4)

2. Inventive Genius

He did the tasks entrusted to him with great perfection and won the admiration of his superiors as well as the people who benefited from the works.

He was an Inventive genius and involved himself in the construction of:

3. Honors

1904 – Elected as a member of the Institute of Civil Engineers, London. Nominated as a Fellow of the University of Bombay. Awarded with “Kaisar-i-Hind” medal by the Government.

He was the First to produce a practical scheme for the establishment of automobile industry in India.

In 1955 Visvesvaraya was made a ‘BharataRatna’, the Gem of India.

4. Self Esteem

Visvesvaraya’s extraordinary abilities attracted a very wide attention and his services were sought for by many governments. Due to his exceptional merit he got quick promotions. He was promoted over the head of others senior to him in service too. He rose by sheer merit and notable achievements to the position next to the Chief Engineer of Bombay Presidency. He felt he could serve more fully if he was made the Chief Engineer for which he would have to wait for some years. Besides, in those days Chief Engineer’s post was generally reserved for an Englishman. This position was intolerable to Visvesvaraya. He held that Indians too should be considered for the post if they showed the required merit. When he found that there was little chance of quick promotion as Chief Engineer he resigned his post. Many people persuaded him to withdraw his resignation. But he was not prepared because it was a question of self-respect as an Indian and also because he had offers from two States as Chief Engineer. He resigned after serving for twenty-three years in the Bombay Government. As per rules, he had to serve for two more years to become eligible for pension.

However, the Bombay Government made his case an exception and considered “That the services rendered by Mr. Visvesvaraya has been exceptionally meritorious and fully entitles him to the additional pension”.

5. Integrity

For some time, when the Bhadravati Factory was in trouble, Sir.M.V worked as the Chairman. At that time, the Government had not decided the salary. It took some years to do so; the Government owed him more than a hundred thousand rupees. But he did not touch a rupee even. He told the Government, “Start an institute where boys can learn some profession.”

The Institute was about to start work. The Government wanted to name it after Visvesvaraya. But he said, “Name it after the Maharaja of Mysore.” This is the Sri Jayachamaraja Polytechnic Institute of Bangalore.

In 1912, Maharaja of Mysore appointed Visvesvaraya as his Dewan. Before accepting the position of Dewan of Mysore, **he invited all his relatives for dinner. He told them very clearly that he would accept the prestigious office on the condition that none of them would approach him for favours.**

In 1918 he decided to give up the Dewanship. He had to give the Maharaja his letter. He went to the palace in the Government car. He returned in his own car. Those were days when people had to work by candlelight. MV used, for official work, the stationery and the candles supplied by the Government; for his private work he used stationery and candles which he had bought.

6. Genius

The Block System which he invented, the automatic doors which he devised to stop wasteful overflow of water, the water supply and drainage system which he planned for the city of Aden – these won high praise from engineers all over the world. The Krishna raja sagara (KRS) Dam is a brilliant proof of his genius.

7. Punctuality

Once a minister was late by three minutes; MV advised him to be punctual. A man should do any work he undertakes methodically – that was his firm faith. Every



man should understand his responsibility and do his best – which was the essence of his teaching. He practiced this very honestly, and there are hundreds of instances to show this.

8. Meticulous

Quite often he had to make speeches. Because of his genius, experience and mellow wisdom people wanted to hear him. But whenever he had to make a speech he would think about what he was going to say, write the speech, get it typed and weigh every word and revise it. He would revise it four or five times and give it final shape. Then he would remember important points.

9. Accomplishments

- MV also planned the KRS dam. The cost was estimated; it came to Rs.25,300. Officers of Mysore State were shocked and opposed the scheme. At last Visvesvaraya convinced the Mysore Government with his arguments and it agreed. A new difficulty arose. MV wanted the height to be 130 feet. The Government of India approved a height of only 80 feet. MV went ahead with a foundation for a dam 130 feet high. Later, the Central Government agreed with him.
- As Dewan of Mysore, he worked tirelessly for educational and industrial development of the state. When he was the Dewan many new industries came up.
- In 1913 Bank of Mysore renamed as State Bank of Mysore.

10. Courage

MV had the courage of his convictions. He did what he thought was right and was not afraid of opposition. We have already seen how much he did for Mysore State. At every step he had to face opposition. He was far-sighted; he could see what the country would need fifty years later, a hundred years later. **Only because MV was firm, Mysore University was born.**

He was a person of spotless honest and had self-respect without arrogance.

This matchless Dreamer and Doer lived for 108 years, 6 months, 8 days.

Top 10 Qualities of Mahatma Gandhi & why you Need to learn them (Leadership)

1. Faith in self:

“In a gentle way, you can shake the world.” Also, “Men often become what they believe themselves to be. If I believe I cannot do something, it makes me incapable of doing it. But when I believe I can, then I acquire the ability to do it even if I didn't have it in the beginning.”

2. Resistance & Persistence:

“First they ignore you, then they laugh at you, then they fight you and then you win.”

3. Forgiveness:

“The weak can never forgive. Forgiveness is the attribute of the strong.”

4. Learning from mistakes:

“Confession of errors is like a broom which sweeps away the dirt and leaves the surface brighter and clearer. I feel stronger for confession.”

5. Strength of Character:

“There are seven sins in the world: Wealth without work, Pleasure without conscience, Knowledge without character, Commerce without morality, Science without humanity, Worship without sacrifice and politics without principle.”

6. Love but never hate:

“Whenever you're confronted with an opponent, conquer him with love.”

7. Truthfulness:

“Truth stands, even if there be no public support. It is self-sustained.”

8. Live in Present:

“I do not want to foresee the future. I am concerned with taking care of the present. God has given me no control over the moment following.”

9. Take the first step and Do it anyway:

“Nearly everything you do is of no importance, but it is important that you do it”

10. Non Violence:

“My religion is based on truth and non-violence. Truth is my God. Non-violence is the means of realizing Him” Also, “An eye for an eye would soon make the whole world blind.”



CALENDAR OF EVENTS - NOVEMBER 2015

Date/Day/ Time	Topic / Speaker	CPE Credit
04.11.2015 Wednesday 6.00pm to 8.00pm	Study Circle Meet Income Tax Issues and Legal Solutions Mr. M.V. Seshachala, Advocate VENUE: Branch Premises	 2 hrs
06.11.2015 Friday 6.00pm to 8.00pm	PRACTICE ALERT - DISCUSSIONS Income Tax CA. H. Padamchand Khincha, CA. Sudheendra B.R. & CA. Shivanand Nayak VENUE: Branch Premises	 2 hrs
07.11.2015 Saturday 5.00pm to 8.15pm	Intensive Workshop on International Taxation - 6 Article 6 - Income from Immovable Property CA. Krishna .N VENUE: Branch Premises <i>No Delegate Fee</i>	 3 hrs
07.11.2015 Saturday 10.00am to 5.30pm	Commencement of Certificate Course on Valuation - 7th & 8th, 14th & 15th, 21st & 22nd & 28th Nov 2015 <i>Organised by Corporate Laws & Corporate Governance Committee, ICAI</i> <i>Course Fee: ₹ 20,000/-</i> VENUE : Jnanadayini Hall, Professional Excellence Block, Sub Branch of Bangalore ICAI, No.29/1, 1st Floor, Race Course Road, Next to SBI, Bengaluru.	—
11.11.2015 Wednesday	Holiday on account of Lakshmi Pooja	—
13.11.2015 Friday 6.00pm to 8.00pm	PRACTICE ALERT - DISCUSSIONS Service Tax CA. Rajesh Kumar T.R. & CA. Lakshmi G.K. VENUE: Branch Premises	 2 hrs
14.11.2015 Saturday 9.30am to 5.15pm	One Day Seminar on GST : Covering Payments, Returns, Refund & Registration Process Delegate fee: ₹ 1,000/- VENUE: Branch Premises <i>Details in Page No. 15</i>	 6 hrs
16.11.2015 Monday 6.15pm to 8.15pm	PRACTICE SUPPORT WORKSHOP Hands on Training on Filing of ROC e-forms: AOC-4 & MGT-7 CA. Sunitha Jain <i>Delegate fee: ₹ 250/-</i> Restricted to 40 members VENUE: Sub Branch of Bangalore ICAI Office - IT Lab, No.29/1, Race course road, next to SBI Bengaluru.	 2 hrs
18.11.2015 Wednesday 6.00pm to 8.00pm	Study Circle Meet Fraud Awareness & Detection in Current Business Environment CA. Zaid Razvi & Mr. Siddharth Sharma VENUE: Branch Premises	 2 hrs



CALENDAR OF EVENTS - NOVEMBER & DECEMBER 2015

Date/Day/ Time	Topic / Speaker	CPE Credit
20.11.2015 Friday	Corporate Accountants Meet High Tea: 6.15pm to 7.00pm, Discussion: 7.00pm to 9.00pm <i>Followed by Dinner</i> VENUE: Shangri-La hotel Grand Ballroom, S6-6B, Palace road, Bengaluru-52 <i>Details in Page No. 16</i>	2 hrs
21.11.2015 Saturday 09.30am to 05.15pm	One day workshop on ICDS Co-ordinator: CA K Gururaj Acharya Delegate Fee: ₹1000/- VENUE: Branch Premises <i>Details in Page No. 14</i>	6 hrs
21.11.2015 Saturday 05.30pm to 08.30pm	Intensive Workshop on International Taxation - 7 Article : 7 - Business Profits CA. P.V. Srinivasan VENUE: Branch Premises <i>No Delegate Fee</i>	3 hrs
22.11.2015 Sunday	Cricket League VENUE: Bangalore University Ground <i>Details in Page No. 22</i>	—
25.11.2015 Wednesday 6.00pm to 8.00pm	Study Circle Meet Indirect Taxes Implications on Sale of Software (Covering Customs, Central Excise, VAT & Service Tax) CA. N. Anand VENUE: Branch Premises	2 hrs
27.11.2015 Friday 6.00pm to 8.00pm	PRACTICE ALERT - DISCUSSIONS VAT CA. S. Venkataramani & CA. Annapurna D. Kabra VENUE: Branch Premises	2 hrs
29.11.2015 Sunday	Sports & Talent Meet VENUE: KGS Club, (Opp to MS Bldg) Cubbon Park, Bengaluru <i>Details in Page No. 22</i>	—
04.12.2015 Friday & 05.12.2015 Saturday	CENTRAL COUNCIL & SIRC ELECTIONS at 1. Bangalore Branch of SIRC of ICAI, 2. St. Johns Auditorium, Koramangala & 3. BHS Higher Education Society (Vijaya College), 4th Block, Jayanagar, Bangalore. Time : 8.00 am to 8.00 pm	—
09.12.2015 Wednesday 6.00pm to 8.00pm	Study Circle Meet Major Compliance Issues under Companies Act 2013 CS. R. Parthasarathy VENUE: Branch Premises	2 hrs
11.12.2015 Friday 6.00pm to 8.00pm	PRACTICE ALERT - DISCUSSIONS Interactive & Update Programme on Companies Act 2013 by Shri M. Jayakumar , Registrar of Companies, Karnataka Co-ordinator: CA. K. Gururaj Acharya VENUE: Branch Premises	2 hrs
12.12.2015 Saturday 05.00pm to 08.15pm	Intensive Workshop on International Taxation - 7 Article : 7 - Business Profits CA. K.K. Chythanya VENUE: Branch Premises <i>No Delegate Fee</i>	3 hrs

CALENDAR OF EVENTS - DECEMBER 2015

Date/Day/ Time	Topic / Speaker	CPE Credit
12.12.2015 Saturday onwards 10.00am to 5.30pm	Certificate Course on Concurrent Audit of Banks - 12th & 13th, 19th & 20th, 26th & 27th December 2015 <i>Course Fee: ₹ 15,000/-</i> VENUE : Jnanadayini Hall, Professional Excellence Block, Sub Branch of Bangalore ICAI, No.29/1, 1st Floor, Race Course Road, Next to SBI, Bengaluru. <i>Details in Page No. 16</i>	36 hrs
16.12.2015 Wednesday 6.00pm to 8.00pm	Study Circle Meet Ramifications of Amendment to Section 269SS & 269T of the Income Tax Act CA. H. Ganpatlal Kawad VENUE: Branch Premises	2 hrs
17.12.2015 Thursday 6.00pm to 8.00pm	One Day Workshop on Internal Financial Controls (IFC) under companies Act - 2013 CA. V. Balaji, CA. K. Gururaja Acharya & CA. Abdul Majeed VENUE: Branch Premises <i>(Details will be informed)</i>	6 hrs
18.12.2015 Friday 6.00pm to 8.00pm	PRACTICE ALERT - DISCUSSIONS FEMA CA. S. Parthasarathy & Mr. L. Bharath VENUE: Branch Premises	2 hrs
19.12.2015 Saturday 05.30pm to 08.30pm	Intensive Workshop on International Taxation - 8 Article : 8 - Shipping, Air Transport & Article 9 - Associated Enterprises CA. Vishnu Moorthi H. & CA. Vishnu Bagri VENUE: Branch Premises <i>No Delegate Fee</i>	3 hrs
23.12.2015 Wednesday 6.00pm to 8.00pm	Study Circle Meet Ind AS 101 First Time Adoption CA. Rakesh Agarwal VENUE: Branch Premises	2 hrs
25.12.2015 Friday	Holiday on account of Christmas	—

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

EDITOR :
CA. Allama Prabhu M.S.

SUB EDITOR :
CA. Geetha A.B.

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.



One Day Workshop on

Income Computation & Disclosure Standards - ICDS

on **Saturday, 21st November 2015**
at S. Narayanan Auditorium,
Bangalore Branch Premises, Bengaluru

6 hrs
CPE

Timings	Topics	Speaker
9.00AM	Registration	
Inaugural Session		
09.30 AM	Key Note Address by Ms. Nutan Wodeyar <i>Principal Chief Commissioner of Income Tax - 2, Bengaluru</i>	
Session I		
10.15 AM	Introduction to ICDS ICDS - I : Accounting Policies ICDS -II : Valuation of Inventories	CA K. Gururaj Acharya
11.30 AM	Tea Break	
Session II		
11.45 AM	ICDS - VII : Government Grants ICDS - IX : Borrowing Costs ICDS - X : Provisions, Contingent Liabilities & Contingent Assets	CA B.P. Sachin Kumar
01.15 PM	Lunch Break	
Session III		
02.15 PM	ICDS - V : Tangible Fixed Assets ICDS - VI : Effects of Changes in Foreign Exchange Rates ICDS - VIII : Securities	CA Shyam Ramadhyani
03.30 PM	Tea Break	
Session IV		
03.45PM to 05.15PM	ICDS - III : Construction Contracts ICDS - IV : Revenue Recognition ICDS – Overall Impression & Concluding	CA Padamchand Khincha H

CA. Allama Prabhu M.S.
Chairman

CA.K Gururaj Acharya
Co-Ordinator

CA. Geetha A.B.
Secretary

DELEGATE FEES FOR ICAI MEMBERS : ₹ **1,000/-** (Fee includes background material)
FOR OTHERS : ₹ **5,700/-**

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

Only Limited Seats. Registration on First Come First Served Basis.

For Registration, Please contact: **Ms. Geetanjali D.**, Tel: **080 - 3056 3500 / 3513**
Email : **blrregistrations@icai.org** | Website : **www.bangaloreicai.org**

One day Seminar on GST

Organised by
Indirect Taxes Committee of ICAI

Hosted by
Bangalore Branch of SIRC of ICAI

on **Saturday, 14th November 2015**

at **S. Narayanan Auditorium, Bangalore Branch Premises, Bengaluru**

Timings: **9.30am to 5.30pm**



Timings	Topics	Speaker
09.00 AM	Registration	
09.30 AM	Inaugural session <i>Key Note Address by</i> Mr. Nagendra Kumar <i>Honorable Principal Additional Director General of Central Excise Intelligence</i> Mr. Sanjay Pant, IRS <i>Honorable Principal Commissioner of Service Tax</i> Mr. Ritvik Pandey, IAS <i>Honorable Chief Commissioner of Commercial Taxes</i>	
11.30 AM	Tea Break	
11.45 AM	New Opportunities & Challenges for CA's under GST regime - How to gear up & get equipped	CA. Sanjay Dhariwal
01.15 PM	Lunch Break	
02.15 PM	GST Business Process for Registration	CA. T.R. Rajesh Kumar
03.15 PM	Tea Break	
03.30 PM	GST Business Process for Payment	CA. T.R. Rajesh Kumar
04.15 PM	GST Business Process for Refund & Return	CA. Deepak Kumar Jain

CA. Allama Prabhu M.S.

Chairman, Bangalore Branch

CA. Geetha A.B.

Secretary, Bangalore Branch

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



CORPORATE ACCOUNTANTS MEET

Organised by **Committee for Members in Industries**, Hosted by **Bangalore Branch of SIRC of ICAI**

on **Friday, 20th November 2015**

at **Shangri-La Hotel**, Grand Ball Room, next to Mounts Carmel College, Palace Road, Bangalore 560052

2 hrs
CPE

Timings	Topics	Speakers
6.15 PM	High Tea	Restricted to 250 Members on FCFS basis. Please confirm your participation by sending an e-mail to blrregistrations@icai.org
7.00 PM	Inaugural Session: Key Note Address by - CA. K. Raghu , Immediate Past President, ICAI CA. Charanjot Singh Nanda , Chairman, Committee for Members in Industry, ICAI	
7.30 PM	Technical Sessions	
	How to gear up & get equipped for GST	CA. Sanjay Dhariwal
	Need for Critical Evaluation of IFC as required by Companies Act 2013	CA. V. Balaji
	Recent Developments in Companies Act 2013 & Road Map for IFRS	CA. K Gururaja Acharya
9.00 PM	Dinner	

CA. Charanjot Singh Nanda

Chairman, Committee for Members in Industry, ICAI

CA. Allama Prabhu M.S.

Chairman, Bangalore Branch

CA. Geetha A.B.

Secretary, Bangalore Branch

KIND ATTENTION MEMBERS: ANNOUNCEMENT

Registrations Open for

CERTIFICATE COURSE ON CONCURRENT AUDIT OF BANKS

We are delighted to inform the Members that the **Certificate Course on Concurrent Audit of Banks** – a week end course at Bangalore (First Batch) is being organised by **Internal Audit Standards Board (IASB) of ICAI** and hosted by **Bangalore Branch** for the benefit of the Members involved in Concurrent Audit of Banks.

Dates	12 & 13, 19 & 20, 26 & 27 December 2015.	36 hrs CPE
Venue	Professional Excellence Block , Sub Branch of Bangalore Branch of SIRC of ICAI # 29/1, 1st Floor, Race Course Road, Bengaluru, Ph : 080 - 4092 9607	
Timings	10.00am to 5.30pm	
Objective	<ul style="list-style-type: none"> To make the participants understand the intricacies of Concurrent Audit of Banks To supplement the efforts of the Banks in carrying out internal check of the transactions and other verifications and compliance with the procedures laid down. To improve quality and coverage of Concurrent Audit Reports 	
Eligibility (For whom)	The course is open for Members of the Institute & the Students who have cleared CA final exams.	
Course Fee	For metro cities Rs. 15000/- per participant and for non-metro cities Rs. 12,500/- per participant.	
Mode of Payment	Cheque/ DD drawn in favour of " Secretary, Institute of Chartered Accountants of India, payable at Delhi "	
For Regn. please Contact:	Ms. Geethanjali D, 080 - 3056 3513, blrregistrations@icai.org www.bangaloreicai.org	

Note: For Course structure, application form and other details please visit: <http://220.227.161.86/29877course-structure19476.pdf>.

Only limited seats, restricted to 50 Members. Registration on First Come First Served basis.

CA. Charanjot Singh Nanda

Chairman, Internal Audit Standards Board (IASB), ICAI, Noida

CA. Allama Prabhu. M.S

Chairman, Bangalore Branch

Online Registration is available. Visit our website: bangaloreicai.org

DIGEST OF RECENT DECISIONS OF THE INCOME TAX APPELLATE TRIBUNAL

CA. K.S. Satish, Mysore



CHARITABLE TRUST

In *Gauhati Greater Sewa Nidhi Trust v. CIT (2015) 154 ITD 254 (Gau)* where the facts were that the assessee-trust constituted on 29.8.2010 filed an application for registration under section 12AA with a letter addressed to the Chief Commissioner/Commissioner, Guwahati on 4.3.2011, the Chief Commissioner forwarded the same to the Commissioner on 20.6.2011 and the Commissioner passed an order on 11.8.2011 granting registration under section 12AA with effect from 1.4.2011, the Gauhati Bench expressed the view that the assessee-trust should not be penalised for the delay in transferring the papers by the Chief Commissioner to the Commissioner and that it was to be granted registration with effect from 4.3.2011.

SALARY

Where the assessee received house rent allowance from his employer since rent-free accommodation was not provided to him by the employer and he took on rent a house owned by his employer for the purposes of his residence and paid rent thereon, the assessee did not derive any benefit in his capacity as employee as he was in occupation of the house in terms of an independent contract of tenancy and the Assessing Officer was not justified in making the addition towards perquisite under section 17(2)(ii) of Rs. 1,33,26,143 being the difference between the rent the house

could have fetched estimated by him at Rs. 1,33,46,183 and Rs. 20,040 paid towards rent by the assessee ruled the Mumbai 'F' Bench in *ACIT v. Yusuf K. Hamied (2015) 154 ITD 161 (Mum)*.

INCOME FROM HOUSE PROPERTY

In *Susham Singla v. ACIT (2015) 154 ITD 310 (Chd)* where the assessee bought properties but did not let out them resulting in the same being vacant, the Chandigarh 'A' Bench took the view that section 23(1)(c) was not applicable as the properties had never been let out and that the notional income from these properties were chargeable to tax.

BUSINESS EXPENDITURE

The Delhi 'H' Bench has in *T & T Motors Ltd. v. Addl. CIT (2015) 154 ITD 306 (Del)* opined that the demand raised by the Commissioner of Industries towards apportioned cost of common effluent treatment plant relating to the years ending 31.3.2007 & 31.3.2008 vide notice of demand dated 19.6.2008 was allowable as a deduction in the assessment year 2009-10.

DEPRECIATION

In *ACIT v. West Gujarat Expressway Ltd. (2015) 154 ITD 103 (Mum)* where the assessee-company entered into an agreement with the National Highways Authority of India in terms of which it had to develop and maintain the Jetpur-Rajkot road on 'Build-Operate-Transfer' basis and was given the right to collect toll in respect of the said road

for a period of 20 years, the Mumbai 'G' Bench held that the right to collect toll was an intangible asset falling within the scope of section 32(1)(ii) and that the assessee-company was entitled to depreciation thereon.

CAPITAL GAINS

The agricultural land owned by the assessee can be said to be used for agricultural purposes even if he does not cultivate it himself but gets it cultivated under his supervision and he is entitled to exemption under section 54B on sale of such land opined the Ahmedabad 'B' Bench in *Shree Bhagwanbhai Revabhai Prajapati v. ACIT (2015) 154 ITD 710 (Ahd)*.

INCOME FROM OTHER SOURCES

The Mumbai 'B' Bench has in *ITO v. Bhagwan T. Fatnani (2015) 154 ITD 207 (Mum)* held that the profit derived by the assessee from sale of primary school land which was encroached upon and illegally occupied by him could not be assessed as capital gain as the assessee did not have a legal right or title over the land and the land could not be considered as a capital asset under section 2(14) and that the said profit was assessable as income from other sources.

CHAPTER VI-A

The activity of assembling various parts and components of generator sets carried out by the assessee amounts to manufacture of generator sets for the



purpose of allowance of deduction under section 80-IB ruled the Pune 'A' Bench in Addl. CIT v. Kala Genset (P) Ltd. (2015) 154 ITD 73 (Pune).

PENALTY

The Cuttack Bench in N.K. Media Ventures (P) Ltd. v. JCIT (2015) 154 ITD 537 (Ctk) has expressed the view that where the assessee-company filed quarterly statements of tax deduction at source beyond the prescribed due dates due to delay in payment of tax deducted at source on account of paucity of funds, penalty under section 272A(2)(k) was leviable only from the date of payment of tax as the quarterly statements can be filed only after payment of tax to the credit of the Central Government.

TAX DEDUCTION AT SOURCE

Where the assessee-company paid sales commission to a non-resident agent who rendered services outside India and did not have a permanent establishment in India, the commission was not chargeable to tax in India in the hands of the non-resident agent and, therefore, the assessee-company was not obliged to deduct tax at source under section 195 in respect of the commission paid opined the Panaji Bench in ACIT v. Karishma Global Mineral (P) Ltd. (2015) 154 ITD 147 (Pnj). ■

Advt.

Advt.

Advt.

Advt.



COMPANIES ACT 2013 – UPDATES

CA K. Gururaj Acharya

I. Important Updates - October 2015

- MCA Updates – Last date for filing AOC – 4, AOC – 4 XBRL & MGT – 7 without additional fee extended to 30th November 2015.**

The Financial Statements, including the Consolidated Financial Statements (CFS), are required to be filed with the Registrar of Companies (ROC) vide Form “AOC-4” and “AOC-4 CFS” respectively within 30 days from the date of the Annual General Meeting (AGM) of the Company (*in case the AGM is not held, AOC-4 & AOC-4 CFS are to be filed within 30 days of the due date of AGM*) [S. 137 r/w R. 12 of the Companies (Accounts) Second Amendment Rules 2014 dated 04.09.2015]

The Annual return as on the Balance Sheet date must be filed with the ROC vide Form “MGT-7” within 60 days from the date of AGM of the Company (*in case the AGM is not held, MGT-7 is to be filed within 60 days of the due date of AGM*).

However, the last date for filing of **AOC-4** (for Standalone Financial Statements), **AOC-4 CFS** (for Consolidated Financial Statements) and **MGT-7** (Annual Return) for **FY 2014-15** without additional fees have been extended to **30th**

November 2015 (vide GC No. 14/2015 dated 28/10/2015 and 10/2015 dated 13/07/2015)

- ICAI Updates –** Withdrawal of 5 Guidance Notes on Accounting

ICAI Council, at its Special (347th) meeting, held on October 14, 2015, has decided to withdraw the following five Guidance Notes on Accounting as the same are no longer relevant in the present day context in view of the requirements of the Companies Act, 2013:

- Treatment of Reserve Created on Revaluation of Fixed Assets** GN 3 (Issued 1982)
- Accounting for Depreciation in Companies** GN 7 (Issued 1989)
- Some Important Issues Arising from the Amendments to Schedule XIV to the Companies Act, 1956** GN 8 (Issued 1994)
- Applicability of Accounting Standard - 20, Earnings Per Share** GN 26 (Issued 2008)
- Remuneration Paid to Key Management Personnel - Whether a Related Party Transaction.** GN 27 (Issued 2008)

II. CONSOLIDATED FINANCIAL STATEMENTS (CFS)

- CFS - Provisions**

As per the provisions of Section 129 of the Companies Act 2013 (the

Act), Companies having one or more subsidiaries (**for the purposes of Consolidation u/s. 129, “Subsidiary” includes Associate Company and Joint Ventures**) are required to prepare, in addition to the Standalone Financial Statements (SFA), the Consolidated Financial Statement (CFS), which shall also be laid before the AGM. **The provisions regarding Preparation (i.e provisions of Sch III of the Act), Adoption and Audit of the Standalone Financial Statements of a Holding company shall also apply to the CFS.**

It was further clarified that in the CFS, the company would need to give all disclosures relevant for CFS only and not merely repeat the disclosures made by it under SFA being consolidated. (**vide General Circular No. 39/2014 dated 14.10.2014**)

Further, a separate statement of salient features of financial statement of its Subsidiary(s), Associate Companies and Joint Ventures in **Form AOC-1, certified in the same manner in which the Balance Sheet is to be certified**, is required to be attached to the Standalone financial statement.

- Exemptions from preparation of CFS**

- Preparation of CFS by an intermediate wholly-owned subsidiary, other than a wholly-



owned subsidiary whose immediate parent is a company incorporated *outside India* (**vide Companies (Accounts) Amendment rules dated 14th October 2014**)

b. For FY 2014-15 only,

b.1. in respect of consolidation of financial statements by a company having subsidiaries incorporated outside India (**vide Companies (Accounts) Amendment rules dated 16th January 2015**).

b.2. in case of a company which does not have a subsidiary but has one or more associate companies or joint ventures or both, for the consolidation of financial statement in respect of associate companies or joint ventures or both. (**vide amendment rules dated 14th October 2014**)

(Refer Table below for Case studies on b1 & b2)

Case	SUBSIDIARY		ASSOCIATE		Prepare CFS	
	Indian	Foreign	Indian	Foreign	FY 2014-15	FY 2015-16
1.		✓			NO (Foreign S exempt)	YES
2.	✓	✓			(#1) YES (Indian) / No ??	YES (Indian + Foreign)
3.	✓		✓		YES (Indian S + A)	YES (Indian S + A)
4.		✓	✓		(#2) ?	YES (Indian A + Foreign S)
(#1)	Refer to FAQ 3B below					
(#2)	Matter Capable of dual interpretation: YES – CFS to include details of Indian Associate only as Consolidation w.r.t foreign Subsidiaries is exempt for FY 2014-15 only NO – CFS is not applicable for FY 2014-15 to Co's which have only Associates and No subsidiaries. In the instant case, the Co. has only foreign subsidiary, which too is exempt from consolidation as per dated 16th January 2015.					

3. FAQ's on CFS

A. Is the Preparation of CFS mandatory under the Act for a Private Company which has an Indian Subsidiary Company for FY 2014-15?

Answer: Yes

There is no exemption from preparation of CFS for a Company having an Indian Subsidiary.

B. Is the Preparation of CFS mandatory under the Act for Company which has an Indian Subsidiary Company and a Foreign Subsidiary for FY 2014-15?

Answer:

The text of the Amended Rules (Chapter IX) Notification dated 16th January 2015 is as under –

“Provided also that nothing in this rule shall apply in respect of consolidation of financial statement

by a company having **subsidiary or subsidiaries incorporated outside India only for the financial year commencing on or after 1st April, 2014**”

The above is capable of the following **TWO** possible interpretations –

1. Companies having **only Foreign Subsidiaries (and no Indian Subsidiaries)** need not Consolidate Accounts for FY 2014-15.
2. Companies having Foreign Subsidiaries need not Consolidate Accounts **only for FY 2014-15** irrespective of whether or not it has Indian Subsidiaries / Associates.

However, the author prefers to go with the 2nd interpretation and is of the opinion that if the Company has Foreign Subsidiaries, it need not prepare CFS for FY 2014-15 irrespective of whether or not it has Indian Subsidiaries / Associates, as otherwise the CFS (*with only Indian Subsidiaries and not the foreign subsidiaries*) would not reflect a holistic picture of all the Companies under Consolidation.

C. Is presentation of “Consolidated financial statements” required in case of an Indian Subsidiary Private Company which is fully held by a Foreign Company?

Ans: No

CFS is required to be prepared by the Holding Co. and if such a holding company is a foreign Co., the entire Companies Act, 2013 itself would not be applicable to it.

D. Are Small companies, One Person Companies (OPC) and dormant Companies Exempt from preparation of CFS?

Ans: NO

By definition, in order to qualify as a Small Company, among other criteria, the Company must neither be a Holding Co. nor a Subsidiary Co. of any other Indian Co. Therefore, if a Company has Subsidiary, then the provisions of CFS will apply to such a Company.

Further, there is no exemption to OPC's and Dormant Companies from preparation of CFS.

E. Rule 6 of the Co's (Accounts) Rules 2014 (2nd para) states that in case of a Company covered u/s 129(3) which is not required to prepare CFS under the accounting Standards, it shall be sufficient if the company complies with provisions on CFS provided in Sch III?

Explain the significance of Rule 6.

Ans:

The relevant extracts from the Act and the Rules are reproduced below –

a. Rule 6 of the Companies (Accounts) Rules reads as under –

“The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards”

Provided that in case of a company covered under sub-section (3) of section 129 which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions on consolidated financial statements provided in Schedule III of the Act”

b. Point 1 of General instructions for the preparation of CFS (Schedule II to the Act)

“Where a company is required to prepare Consolidated Financial Statements, i.e., consolidated balance sheet and consolidated statement of profit and loss, the company shall mutatis mutandis follow the requirements of this Schedule as applicable to a company in the preparation of balance sheet and statement of profit and loss. In addition, the consolidated financial statements shall disclose the information as per the requirements specified in the applicable Accounting Standards including”

Further the following difference is to be noted:

- **IAS-27 / Ind-AS 27 mandates that every Parent shall prepare a CFS.**
- **AS-21 which deals with consolidation does not impose preparation of CFS by a holding company. It only states that, if any company is preparing CFS then it must comply with the requirement stated in AS- 21.**

On a Combined reading of the above, it may be concluded that –

- In case of **Companies covered under Ind AS**, apart from preparing CFS by the Parent Company in accordance with Ind-AS 27, it must also comply with the requirement of Schedule III of the Act. **[i.e Follow Ind-AS 27 + Schedule III of the Act]**

- In case of **all other companies [Not covered by Ind-AS]**, CFS is required to be prepared by the parent company as per the requirements of Sch III of the Act. Even in this case, by virtue of clause 1 of General instructions for the preparation of CFS in Schedule III, AS-21 is to be complied with. **[i.e Follow Schedule III of the Act + AS-21]**

F. If 20% of the Voting Power of an Indian Co. is held by a foreign company, does the foreign Co. become an “Associate” of the Indian company?

Further, will the Indian Company be required to prepare CFS?

Ans: No

CFS is to be prepared only by the Parent Company (i.e the Investing Company) *(which in this case is a foreign Co. which falls outside the purview of the Act)*. The fact that the Indian Company and the Foreign Company together are called as “Associates” is not relevant and CFS will be prepared only by the Investing Co.



Bangalore Branch of SIRC of ICAI Organises,
Jointly with Karnataka State Chartered Accountants Association

SPORTS AND TALENT MEET

On 29th November 2015, Sunday

Timings : 9:00 am - 6:00 pm

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

Events CA'S

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



Family Members & Children

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



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

Registration closes on 21st November 2015.

CRICKET LEAGUE

Date : 22nd November 2015, Sunday
Time : 8:00 am – 6:00 pm
Venue : Bangalore University Ground
Fees : ₹ 3000/- Per Team

Tournament Format
8 to 10 Overs per side,
Tennis Ball
Restricted to 10 Teams only.



Registration closes on 14th November 2015.



Participants are requested to contact & send their details to
Ms. Geetanjali - 080-30563500 / 513, Email: blrregistration@icai.org
KSCAA office: Tel - 080-2222155, 22274679, Email: kscaablr@gmail.com

CA. Allama Prabhu M.S.
Chairman, Bangalore Branch

CA. Raghavendra Puranik
Vice President, KSCAA, 9632245475

CA. Geetha A.B.
Secretary, Bangalore Branch
9845526327

CA. T.N. Raghavendra
Secretary, KSCAA
9880187870

CA. Ramesh Sharma
Chairman, Sports & Public Relations
Committee, KSCAA, 9900503905

DIGEST ON RECENT DECISIONS UNDER VALUE ADDED TAX LAWS

CA Annapurna Kabra



Case 1: M/s Hicare Pharmaceuticals Pvt.Ltd. V/s The Deputy Commissioner of Commercial Taxes (Audit-3) Hubli TS-578-HC-2015 (Kar) –VAT

Supply of demineralized water in medicinal injections taxable as composite works contract

The Petitioner is a registered dealer engaged in the business of manufacture and sale of Pharmaceutical preparations and also engaged in executing works contract on job work basis for its customers. The Petitioner has entered into written agreement with the customers M/s Wallace Pharmaceuticals (P) Limited, Panaji-Goa; M/s Bliss GVS Pharma Ltd., Mumbai and M/s Indi Pharma (P) Ltd, Panjim-Goa to manufacture and supply medicinal and pharmaceutical injections of different varieties, both water based and oil based, strictly in accordance with the formula supplied by the principals and the standards laid down under the Indian Drugs and Cosmetics Act, 1940.

The issue before the Karnataka High Court was

- (i) Whether the water for injection (WFI)/ Demineralized water used as input in the execution of the works contract entered into by assessee with the principals/customers would attract levy of tax under KVAT/CST Act?
- (ii) Whether the contract executed by assessee with its principals/Customers is a contract for service or a composite divisible contract attracting levy of tax

on sale of goods under KVAT Act/CST Act

The Assessing Authority concluded the re-assessment proceedings for the year 2007-08 and 2008-09 and levied tax on 'Water For Injection' (WFI/ Demineralized water (DM)) under section 4(1) (b)(ii) of KVAT Act read with the section 9(2) of the CST Act treating the contract executed by the petitioner with its principal as a composite works contract involving transfer of property in goods. The Assessing Authority determined the tax liability on the value of goods after deducting the labour & like charges at 25 % of the total works contract receipts. The Tribunal dismissed the appeal by confirming the order passed by the FAA. Aggrieved by the above orders, the petitioner filed a petition before the High Court.

The Petitioner contented that Firstly, WFI/ DM water is an exempted commodity as per Entry No. 54 of the First schedule of the KVAT Act and therefore not leviable to tax and secondly the contract for manufacture of pharmaceuticals preparation medicines entered into with its principal is a pure service contract and not a composite contract. As per **Section 5(1) of the KVAT Act**, goods specified in the First schedule shall be exempted from levy of tax.

The Revenue submitted that the WFI demineralized water is an essential input for manufacture of water based injections.

Further, it pointed out the WFI / DM water is taxable goods under KVAT Act and there is a deemed sale of WFI / DM water in the execution of works contracts undertaken by assessee, attracting levy under KVAT / CST Act. Revenue also contended that the commodity supplied by assessee is not specified in Entry No.54 of the First Schedule, as claimed by assessee. Consequently, Revenue argued that the sale of WFI / DM water is not exempted from tax payable under KVAT Act / CST Act during the relevant tax periods.

The Honourable High Court held that WFI being water for medicinal preparation besides demineralised water is not an exempted commodity and the same is exigible to levy of tax under the provisions of KVAT Act. Also it is held that the contract executed by the petitioner to supply WFI/DM water, which is an input for the manufacture of injection, is a composite contract involving transfer of property in goods as well as labour and service.

Rule 3(2)(l) deals with labour deduction on actual basis. If such deduction is not ascertainable from the books of account rule 3(2)(m) provides deduction based on the nature of works contract. The residual 25% is the general deduction for those works contracts not specified in the table as provided under rule 3(2) (m) of KVAT Rules, 2005. In the present case the assessing authority allowed



the deduction 25% being nature of works contract not specified in the table appended to rule 3(2)(m). On appeal to FAA, the FAA allowed the labour deduction at 90% of the total contract value and considered only 10% of the total contract value as taxable turnover. It is important to analyse, the basis for arriving 10% taxable turnover, as the provision provides labour deduction either on actual basis or ad hoc. For allowing the adhoc deduction there is no scope for discretionary power for the AA. Such deduction should be as per the percentage specified in the table.

Case 2: Griha Vaibhava Marketing Pvt Ltd, Bangalore V/s State of Karnataka 2015(83) Kar. L. J. 121 (Tri.) (DB)

The appellant is a company registered under the KVAT Act and CST Act, borne on the records of the LVO - 110, Bangalore and engaged in the trading business of electrical, electronic and home appliances like TV, fridge, washing machine, sound systems, speakers and computers etc. The appellant has claimed deductions towards discount, activation charges and installation charges and the same have been allowed by AA under Sec 39(1) of the Act during re-assessment. After the original re-assessment orders, the succeeding Assessing Authority has revisited the reassessment records and by invoking Sec 69 of the Act, has levied tax on above deductions stating that the allowance of deductions are nothing but sales, pre-sales expenses or incidental to sales. Aggrieved by the above order, the appellant preferred an appeal to FAA. The FAA without answering the basic issue whether the subject matter falls within the purview of the rectification has allowed the appeal in part and has modified the rectification order of the AA. Aggrieved by the same, again an appeal

is filed before the Tribunal. The Appellant contended that the matters which have been taken up for rectification are not mistakes apparent on the records but rather involves interpretation and debate to decide whether to levy tax or not and also the FAA has not answered the same. Further appellant submitted that the discount shall not be taxable as it is not shown in the invoices and accordingly interest is not leviable. The Tribunal concluded that both the AA and FAA have erred on the subject-matter of rectification orders and its scope and hence set aside the impugned orders of the FAA and the rectification orders of the AA and the matter is remanded back to the AA to act in accordance with law. It is believed that Section 69 can be made applicable only when mistake apparent on the records and not for change of opinion.

Case 3: M/s Shree Bhawani Paper Mills Ltd., M/s Rama Shyama Papers Ltd., Versus State Of U.P. and Another 2015 (11) TMI 48 - ALLAHABAD HIGH COURT - VAT and Sales Tax:

Whether use of diesel oil in generator sets to run plant and machinery to manufacture the final products as mentioned in the Registration Certificate would qualify the essential requirement "for use in the manufacture of notified goods" under Section 4-B(2) of the Act. In order to run plant and machinery, the generators are essential, and for that purpose, diesel oil has been used in the generators. There is no denial of the fact that the entire process of manufacture carried on by the petitioners for converting raw material into finished goods essentially requires generators in which diesel oil has been used. Thus the generation of power by generators by use of diesel oil so as to run plant and machinery is integrally connected with

the manufacture of the notified goods i.e. the final product of the petitioners. Thus the manufacture of the notified goods itself is dependent upon the use of diesel oils in the generator sets directly. The power supply through generators by use of diesel, is so integrally connected with the ultimate production of notified that without it manufacture of the notified goods would be commercially inexpedient. The use of diesel oil to operate generators so as to run plant and machinery by the petitioners is so integrally related to the manufacture of their final products that without that process or activity manufacture shall not be possible. **Therefore, diesel oil required to run generators would necessarily fall within the expression "for use in the manufacture of notified goods" and accordingly decided in favour of assessee to claim the input tax credit. The expression "in the manufacture of goods" is a question of fact depends on nature of activity and such expression should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods [J K Cotton Spng. & Wvg. Mills Ltd Vs STO (1965) 16 STC 563, 568-69 (SC)].**

Case 4: Bharti Telemedia Ltd. Versus State of Tripura and others, Tata Sky Ltd. Versus State of Tripura and others 2015 (11) TMI 46 - TRIPURA HIGH COURT - VAT and Sales Tax:

Whether the petitioners-assesseees are liable to pay value added tax (VAT) on Set up Boxes (STB) in respect of contracts entered into by them with the customers whereby they have agreed to provide direct-to-home (DTH) service to the customers in the State of Tripura, It is held that As far as STBs are concerned they are in total control of the customer.

Under his effective control the STBs are installed in the house of the customer. He can use the STB when he wants to. He can use the STB to view whichever channel he wants to view. He may or may not use the STB. The company does not even have the power of entering the premises of the customer. Most importantly as per the terms of the agreement, the companies are responsible for the functioning of the STBs only for a period of 6 (six) months. The warranty is valid only for six months and thereafter there is no warranty. Therefore, if STB of a customer is spoiled after six months he will have to pay for repair or replacement of the same. We are of the considered view that this amounts to transfer of the right to use goods. - after the Forty-sixth Amendment the sale element of all the six contracts covered under clause (29A) of article 366 are separable and may be

subjected to sales tax. Finally in para 92, the apex court again held that when a telephone connection is given there may be transfer of right to use goods and where both composite contract of service and sales is concerned the State may impose tax on the sale elements provided there is discernible sale and only the sale element can be taxed. State is assessing the tax solely on the basis of the value of the STBs as given in the books of account of the petitioners. ***The petitioners claim depreciation, etc., on these STBs and the valuation given by the petitioners is the value of the goods, the right to use which has been transferred to the customers. This is easily separable and discernible and the State has the full authority to levy value added tax on the sale part of the transaction, i.e., the value of the STBs.***

It is important to note that, the equipments which are installed including STB, are only facilitates for better viewing in TV. Customers does not operate as such. The contract between customer and DTH distributor is not for using STB but for providing connection. STB is one of the equipment which facilitates for better viewing in TV.

It is important to analyse the following things while levying tax under deemed sale (right to use).

- That mere possession does not amount to right to use;
- That providing facility involves the use of goods;
- That mere use of goods is not enough;
- That delivery of possession of goods is distinguished from its custody;
- That right to use goods accrues only on account of the transfer of right. ■





CLARIFICATION ON ANCILLARY SERVICES PROVIDED IN RELATION TO TRANSPORTATION OF GOODS BY ROAD

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



Background

Goods Transport Agency (GTA) means any person who provides service to a person in relation to transport of goods by road and issues consignment note, by whatever name called. The services provided by GTAs is a composite service which also includes various additional services like loading/ unloading, packing/unpacking, transshipment, temporary storage etc.,. Doubts were raised regarding treatment given to the provision of these ancillary services.

Circular

The CBEC has clarified the above stated issues vide Circular No. 354/98/20015-TRU dated 5th October, 2015.

As per the clarification,

- **Ancillary services shall be treated as part of GTA service –**

These ancillary services provided by GTAs are not independent in nature; they are the means for successful provision of the principal service i.e., the transportation of goods by road. These services may be provided by GTA himself or may be sub-contracted by the GTA. In either case, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of ancillary services provided in the course of transportation of goods by road.

- **Components of a Single composite service need not be shown as separated service –**

The circular clarifies that a single composite service need not be broken into its components and considered as separate services in case where the services are naturally bundled in the ordinary course of business. Thus, a composite service should be treated as a single service based on the main or principal service.

The guiding principle is to identify the essential features of the transaction. In order to identify the essential service in a naturally bundled service, the principle of interpretation enumerated in section 66 F of the Finance Act, 1994 should be followed.

- **Abatement available for the entire composite services –**

Further, it is also clarified that the ancillary services provided in the course of transportation of goods by road would form part of GTA service

as the charges for such services are included in the invoice issued by the GTA. Therefore, the abatement of 70% presently applicable to GTA service (Rate of abatement was 75% for the period prior to April 1, 2015), would be available on the ancillary services also.

- **Conditions for applicability of Abatement Notification –**

It has also been clarified that transportation of goods by road by a GTA, in cases where GTA undertakes to reach/deliver the goods at destination within a stipulated time, should be considered as services of goods transport agency in relation to transportation of goods and abatement of 70% will be allowed on the same, provided the following conditions are fulfilled -

- (a) the entire transportation of goods is by road; and
- (b) the GTA issues a consignment note, by whatever name called. ■

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SERVICE TAX CASES

PARTS DIGESTED – VOLUME 40, PARTS 1 & 2

CA. A. Saiprasad



Departmental Clarifications

Rebate/ Refund Claim – Facility for payment directly to Bank Account

The procedure for crediting rebate/ refund directly to assessee's bank account is stated in this circular. The refund claims have been divided into claims filed prior to and post 1.7.15.

(Commissioner of Service Tax-I, Trade Notice No.19/2015-ST dt.23.6.15)

Case Laws

Whether Inconsistent Orders can be passed by Tribunal for same assessee?

The High Court set aside the Order of Tribunal dismissing the appeal when Tribunal in earlier appeal of same assessee on identical issue for a different period had remanded the matter to Adjudicating Authority. High Court held Tribunal ought to have remanded the second matter also and not dismissed the appeal. HC remanded the matter to Adjudicating Authority.

Indfos Industries Ltd V. CC&CE, 2015 (40) STR 4 (All)

Note: Even Department cannot take different stands in identical issues – *YellammaDasappa V. CC, 2000 (120) ELT 67 (Kar)*

Associate Company outside India deputing employees in India – Whether Associate Company in India liable under reverse charge under Manpower Recruitment Service

HC has confirmed the Tribunal Order waiving pre-deposit relying on precedent decisions on identical facts. (Tribunal had entered factual finding that employees deputed from company outside India were actually appointed in India by Indian Company – hence no manpower recruitment service)

CC V. TPSC (India) Pvt Ltd, 2015 (40) STR 8 (AP)

Note: Precedent decisions referred above are *Bain & Co Ltd case, 2012 (25) STR 588 (T)* and *ITC Ltd case, 2013 (29) STR 387 (T)*

Pending Adjudication Matters

S2 Infotech Pvt Ltd V. UOI, 2015 (40) STR 10 (Bom.)

HC passed strictures against department for 22 months delay in passing adjudication order after personal hearing. HC directed Chief Commissioner to file affidavit listing matters pending adjudication and measures proposed by department for timely disposal of cases.

Credit Card Services by Banks – Whether services provided by Acquiring Bank to Card Issuing Bank, Merchant Exporter liable to tax under BOFS

Tribunal Larger Bench held as follows:

1. Banking and Other Financial Service ('BOFS' for short), was introduced w.e.f. 16.7.01, which included credit card services.

2. However a new service called Credit Card, Debit Card, Charge Card or Other Payment Service ('CC/DC service' for short) was introduced w.e.f. 1.5.06. Consequently BOFS was amended w.e.f. 1.5.06 to delete credit card service.

3. Tribunal held that credit card services included under BOFS covers only such services as are provided by issuing bank to cardholder by way of extending credit facility.

4. Tribunal held that services provided under CC/DC services are neither impliedly covered nor inherently subsumed within the purview of credit card services under BOFS.

5. Tribunal held that BOFS does not include services provided by Acquiring Bank (Banker providing swiping machine) to Merchant Establishment (seller).

6. Therefore Merchant Enterprise Discount (i.e. commission amount retained by acquiring bank while making payment to Merchant Enterprises) and Inter-change Fee (commission shared by acquiring bank with issuing bank from the commission retained from ME) is not liable to service tax under BOFS.

Standard Chartered Bank V. CST, 2015 (40) STR 104 (T-LB)

Note: Aforesaid Larger Bench Decision Overrules *AMB Amro Bank V. CCE, 2011 (23) STR 529 (T)*



Whether Sovereign/ Public Authority providing Non-Statutory services is liable to service tax?

The Allahabad HC held that Finance Act, 94 makes no distinction between statutory body and individual. The HC therefore held that if a sovereign/ public authority provides a service, which is not in the nature of statutory activity for a consideration (and not statutory fee), then service tax would be payable as long as the activity fell within the scope of taxable service.

Greater Noida Industrial Development Authority V. CC, 2015 (40) STR 95 (All)

Whether services provided by Stem Cell Blood Banks are exempt under Health Services?

Entry No.2 of N.No.25/12-ST exempted health care services. Entry No.2A covers services provided by cord blood banks relating to preservation (inserted only w.e.f.17.2.14). Plea that amendment by way of inserting Entry No.2A was retroactive (i.e. w.e.f. 1.7.12) was rejected by HC. However issue whether services provided by cord blood banks fell within health care services under Entry No.2 was left open by HC to be decided by assessing authority.

Life Cell International (P) Ltd V. UOI, 2015 (40) STR 77 (Mad)

Whether tax can be charged in the garb of service charges?

Belgaum City Municipal Corporation (MC) was collecting municipal tax from Commissioner of Central Excise, Belgaum (CCE). However as per A.285(1) of Constitution, property of the Union is exempt from all taxes imposed by the State. Hence MC started collecting service charges instead of

municipal tax from CCE. The HC held that tax cannot be collected in the garb of service charges

CCE, Belgaum V. Commissioner, Belgaum City Municipal Corporation, 2015 (40) STR 219 (Kar)

Note: Also See Municipal Commissioner V. Senior Superintendent of Post Office, 2004 (3) SCC 92.

Whether Recovery Proceedings can be initiated before completion of Adjudication Proceedings?

Non-Payment of Service tax was admitted by the assessee during investigations. Tax was also partly paid. SCN was issued and then recovery proceedings were initiated. The HC held that recovery proceedings for the balance tax could not be initiated before completion of adjudication proceedings since tax would not be payable before adjudication.

Constant Engineering Pvt Ltd V. ADC Service Tax, 2015 (40) STR 224 (Guj)

Whether Land Development for township liable to works contract?

The Supreme Court dismissed Civil Appeal filed by the revenue against Tribunal decision which had held that development of land for township was not liable prior to 1.6.07 under Construction of Residential Complex Service or post 1.6.07 under works contract service.

CCE V. Alokik Township Corporation, 2015 (40) STR J132 (SC)

Whether arranging loans from Banks is liable for Service Tax?

The Tribunal held that arranging of loans from Banks is covered under the ambit of Business Auxiliary Service and liable to tax. Tribunal further held that

since assessee was providing service on behalf of banks by working as an agent of service provider, the said services were branded service and not eligible for small scale exemption benefit.

Ishwar Consultant V. CCE, 2015 (40) STR 336 (T)

Whether Cenvat Credit available for construction of factory?

Tribunal held that construction service for setting up factory was available to manufacturer as per definition of input service.

CCE V. Technico Industries Ltd., 2015 (40) STR 259 (T)

Note: Definition of input service has been amended w.e.f. 1.4.11. The word 'setup' was deleted from definition of input service. Hence construction service for setting up of factory/ provider of output service would not be available w.e.f. 1.4.11. Also see CCE V. Bellsonica Auto Components Pvt Ltd, 2015 (40) STR 41 (P&H)

Whether Street Light Maintenance Service is exempt from service tax?

The Authority for Advance Ruling (AAR) held that street light maintenance service was not exempt from tax under Notification No.25/12. AAR held that entry no. 13(a) of N.No.25/12 relating to construction, erection, commissioning, installation, repairs, maintenance of a road would not bring within its ambit street light supporting structures erected on road.

In Re: K. Ram Mohan, 2015 (40) STR 410 (AAR)

Whether Pipeline System embedded to earth becomes part of immovable property and hence not Capital Goods?

1. AAR held that inextricable link exists between pipes and valves used for laying pipelines and providing of output service of transportation of gas in the said pipeline.
2. AAR held that though pipes, like storage tanks may become immovable, still they would be considered as 'Capital Goods', as they are used for providing an output service.
3. AAR held that relevant date to determine if an item qualifies to be capital goods is the time of receipt of capital goods and not any subsequent date.

In Re: GSPL India Transco Ltd., 2015 (40) STR 398 (AAR)

Reversal of Credit used for Taxable and Exempted Service

1. Tribunal held that option to reverse credit @ 5% (now 7%) of value of exempted service under Rule 6(3) would not automatically apply if intimation to avail option of reversing credit as per formula prescribed in Rule 6(3A) of CCR is not provided at the beginning of the year.
2. Tribunal held that delay in giving intimation to opt for formula method can at most be treated as a procedural lapse.
3. Tribunal held that it is upto the assessee to choose the option to reverse the credit and that revenue cannot insist on availment of a particular option.

Mercedes Benz India Pvt Ltd V. CCE, 2015 (40) STR 381 (T)

Whether SEZ Act Over-rides provisions of Service Tax Laws?

Tribunal referred to S.51 of SEZ Act, 05 which provides for over-riding effect of SEZ Act in case of inconsistency with any other Act. Reliance was also placed on S.26(1)(e) of SEZ Act, 05 r/w Rule 30(10) of SEZ Rules, 06, as per which no service tax is payable on services provided to SEZ unit. The Tribunal therefore held that service tax was not liable to be paid for services provided to SEZ.

Reliance Ports and Terminals Ltd V. CCE, 2015 (40) STR 200 (T)

Whether value of free supplies of construction materials liable to service tax?

The Tribunal held that value of construction material supplied free of cost by service recipient to service provider is not liable to service tax. Reliance was placed on Tribunal Larger Bench Decision in Bhayana Builders case, 2013 (32) STR 49 (T-LB)

Unibild Engineering & Construction Co Pvt Ltd V. CST, 2015 (40) STR 195 (T)

Note: Notification No.26/12, Entry No.12 (construction service) now specifically states that value of materials supplied free of cost by service recipient shall be included in value of service. Further Rule 2A of Valuation Rules, 2006 (works contract) also states that value of service provided free of cost shall be included in value of services. However words 'by recipient of service' are missing in Rule 2A of Valuation Rules.

Whether providing technical knowhow, is taxable under Consulting Engineering Service or Intellectual Property Service?

The Tribunal held that providing technical knowhow, engineering

specifications, other relevant designs and details for manufacture is liable to tax under temporary transfer of intellectual property service and not under Consulting Engineering Service.

L.G. Balakrishnan & Brothers Ltd V. CCE, 2015 (40) STR 193 (T)

Whether Feasibility Report sent abroad to enable foreign investors to invest in India is export of service?

1. The Tribunal held that since the feasibility report has been used outside India and consideration has been received in foreign currency, conditions for export was fulfilled as per R.3(2) of Export of Service Rules, 05.
2. Tribunal held that though money was received in Rupees in their bank account, money was remitted from a bank in Mauritius. Hence it was treated as consideration received in convertible foreign exchange as per FEMA (Manner of Receipt and Payment) Regulations, 2000.
3. Rent-a-Cab and Insurance Service Credit (for quarter ended 31.3.09) was allowed as valid input service for the purpose of claiming refund.

Mount Kellet Management (I) Pvt Ltd V. CST

Note: Provisions for export of service is now to be determined as per Rule 6A of STR, 94 r/w Place of Provision of Service Rules, 12. Rent-a-Cab and Insurance (Health & Life) have been specifically excluded from the definition of input service wef 1.4.11



INTERNATIONAL TAXATION

CA Sachin Kumar B.P.



Wipro Ltd. v. DCIT

Facts of the case:

This case law is the Karnataka High Court judgment pronounced on 25th March, 2015, which covers elaborately many domestic and international tax issues. In our discussion, we shall be limiting the analysis to significant international tax matter covered by this case law.

The following is the significant international tax issue pertaining to this case law discussed in this article:

- The assessee has claimed tax credit on Foreign Taxes paid on export income from USA and Canada which is exempt u/s. 10A of the Income – tax Act, 1961 ('the Act'). The assessing officer has disallowed claim of such credit as such income is exempt in India by virtue of Sec. 10A of the Act and there is no double taxation for providing double taxation relief through the credit mechanism

The Revenue's Contention:

The assessee's claim of foreign tax credit is on the ground that the entire earnings in respect of claim under Sec. 10A have been included in computing the total income. Sec. 10A which is appearing under Chapter – III refers to "incomes which do not form part of total income". It is, therefore, clear in the first instance income falling u/s. 10A did not form part of total income of the assessee in India. Since Sec. 10A falls under Chapter III, it does not therefore partake of the

nature of total income chargeable to tax as per the provisions of Sec. 4 of the Act. In the second instance, no tax was paid on this income. The credit is being claimed under the provisions of Sec. 90, which is applicable for the grant of relief in respect of income on which have been paid both income tax under this Act and Income tax in the foreign country. The issue of credit u/s. 90 clearly does not arise.

Assessee's Contention:

Sec. 90(1)(a)(i) provides, if the income is subjected to tax, both in India and in the foreign country, the foreign income taxes paid attributable to such income are allowed as credit in India. However, Sec. 90(1)(a)(ii) is in respect of DTAA for granting of relief in respect of income tax chargeable under the Act and under the corresponding law in force in that country to promote mutual economic relations, trade and investment. Sec. 10A income is chargeable to tax in view of Sec. 4 of the Act and is includible in the total income under section 5, but no tax is charged on such income because of the exemption given under section 10A, subject to the assessee satisfying the conditions prescribed. Once the assessee is made to pay tax on such exempted income in the other contracting State then Sec. 90(1)(a)(ii) enables him to claim credit of the tax paid in the contracting country.

The Hon'ble High Court's view:

Present Sec. 90 came into force from 01.04.2004. Extract of memorandum explaining provisions in the Finance Bill

2003 relevant to Sec. 90 read as follows: "Under the existing Sec. 90, the Central Government may enter into an agreement with the Government of any country outside India **for granting of relief in respect of income on which have been paid both income – tax under the Income – tax Act and income – tax in that country, or for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country, etc.**

*In order to encourage international trade and commerce, it is proposed to insert a new clause in sub – section (1) of Sec. 90 so as to provide that the Central Government may also enter into an agreement with the Government of any country outside India, **for granting relief in respect of income – tax chargeable under this Act or under the corresponding law in that country to promote mutual economic relations, trade and investment.**"*

With effect from 01.04.2004, Clause (a) (ii) of Sec. 90 (1) was substituted to provide for entering into an agreement for granting relief in respect of income tax chargeable under this Act and under corresponding law in force in that country, to promote mutual economic relations, trade and investment. Prior to the amendment, the relief was granted in respect of income on which income tax is paid under the Income tax Act and in the contracting country. Therefore, to get the benefit of the said provision, payment of income tax in both countries was *sine qua*

non. However, by the amendment made by the Finance Act, 2003, the benefit of granting the **relief was extended to even income tax chargeable under the Act and under the corresponding law in force in the other country.** Therefore, the payment of income tax in both jurisdictions is not *sine qua non* anymore for granting the relief.

In cases covered u/sc. 90(1)(a)(ii) of the Act, it is not a case of the income being subjected to tax or the assessee has paid tax on the income. This applied to a case where the income of the assessee is chargeable under this Act as well as in the corresponding law in force in the other country. Though income tax is chargeable under the Act, it is open to the Parliament to grant exemptions under the Act from payment of tax for any specified period. Normally it is done as an incentive to the assessee to carry on manufacturing activities or in providing the services. Though the Central Government may extend the said benefit to the assessee in this country, by negotiations with the other countries, they could also be requested to extend the same benefit. If the contracting country agrees to extend the said benefit, then the assessee gets relief. In another scenario, though said income is exempt in this country, by virtue of the agreement, the amount of tax paid in the other country could be given credit to the assessee. Thus for the payment of income tax in the foreign jurisdiction, the assessee gets the benefit of its credit in this country.

Also Sec. 10A(1) provides that, subject to the provisions of the said section, profits and gains derived by an undertaking referred to in that section shall be allowed as deduction from the total income of the assessee. Therefore, by virtue of the aforesaid statutory provision, namely Sec. 10A of the Act, the income of the

assessee from the exports in respect of the said unit is exempted from payment of income tax. The very fact that it is exempted from payment of tax means **but for that exemption such income is chargeable to tax.** By insertion of Clause (ii) in sub – section (1) (a) of Sec. 90, the Central Government has been vested with the power to enter into an agreement with the Government of any country outside India for the granting of relief in respect of income tax chargeable under the Income tax Act and under the corresponding law in force in that country, to promote mutual economic relations, trade and investment. Therefore, the statute by itself is not granting any relief. But, by virtue of the statute, if an agreement is entered into providing such relief, then the assessee would be entitled to such relief.

In case of India – USA DTAA, if a resident Indian derives income, which may be taxed in United States, India shall allow as a deduction from the tax on the income of the resident, amount equal to the income tax paid in United States of America, whether directly or by deduction. The conditions mandated in the treaty are that if any “income

derived” and “tax paid in United States of America on such income”, then tax relief/ credit shall be granted in India on such tax paid in United States of America. The said provision does not speak of any income tax being paid by the resident Indian under the Income – tax Act as a condition precedent for claiming the said benefit. Therefore, this provision is in conformity with Sec.90(1)(a)(ii).

In case of India – Canada DTAA, the provisions make it clear that the benefit of Article – 23 would be available to an assessee in India only in respect of the income from sources within Canada, which has been subjected to tax both in India and Canada, which forms part of the total income of the assessee and has suffered tax in India under the Income – tax Act and has suffered tax in Canada also i.e., assessee has paid tax both in India as well as in Canada on the same income. Therefore, this provision is in conformity with Sec. 90(1)(a)(i).

Therefore, it is not the requirement of law that the assessee, before he claims credit under the India – USA convention or under the provisions of the Act, should pay tax in India on such income. However, in case of India

India – USA DTAA

Article 25 2.(a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in the United States, whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in the United States.

India – Canada DTAA

Article 23 3.(a)The amount of Canadian tax paid, under the laws of Canada and in accordance with the provisions of the Agreement, whether directly or by deduction, by a resident of India, in respect of income from sources within Canada which has been subjected to tax both in India and Canada shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax.



– Canada convention if the assessee is exempted from payment of tax in India, then if the same is subjected to tax in Canada, according to the treaty there is no double taxation. Therefore, the benefit of the treaty is not available to the Indian assessee.

In so far as the issue related to credit of states taxes is concerned, section 91 provides relief from double taxation where no agreement under section 90 for the relief or avoidance of double taxation exists with a foreign country.

Explanation (iv) to Section 91 defines the expression “income-tax” in relation to any country to include any excess profits tax or business profits tax charged on the profits by the Government of any part of that country or a local authority in that country.

The intention of the Parliament is very clear. The Income tax in relation to any

country includes income tax paid not only to the Federal Government of that Country, but also any income tax charged by any part of that country meaning a State or a local authority, and the assessee would be entitled to the relief of double taxation benefit with respect to the latter payment also.

Therefore, even though, India has not entered into any agreement with the State of a Country, the income tax paid in relation to that State is also eligible for tax credit.

Hence, the argument that in the absence of an agreement between India and the State, the benefit of Section 90 is not available to the assessee is ex-facie illegal and requires to be set aside.

Conclusion

This case law, among the other issues, has elaborately discussed the significance of Sec. 90(1)(a)(i) and Sec.

90(1)(a)(ii) of the Act. The case law provides clarity on situation where a foreign income suffering tax in the country of source and if the same is exempt in India, how should the credit on foreign taxes paid on such income be dealt with, whether the double taxation convention governing the said income is in consonance with Sec. 90(1)(a)(i) or Sec.90(1)(a)(ii) of the Act. Also in this decision of the high court, an elaborate discussion on chargeability of income to tax has been provided where the high court has taken the support of the Apex court decision in the case of **Kasinka Trading and another v. Union of India and another** in arriving at its conclusion that Sec. 10A income even though exempt is chargeable to tax for the purpose of Sec. 90(1)(a) (ii) of the Act.

Advt.

Advt.

Inauguration of PROFESSIONAL EXCELLENCE BLOCK at Race Course Road Sub Branch



Jnanadayini Hall



Adhyayana Hall



The Panoramic view of Jnanadayini Hall at Professional Excellence Block

Ayudha Pooja Celebrations with Branch Staff



At Branch Premises



At Race Course Road - Sub Branch

Online reporting of FDI through e-Biz portal - RBI Programme



Invocation



Welcoming Mr. A.O. Basheer



Inauguration



Chairman's address



Mr. A.O. Basheer,
General Manager,
RBI, Mumbai



Mr. Gopal Terdal



Mr. R.N. Panigrahi,
Officer In Charge,
RBI, Bengaluru



Mr. Sudhanshu Prasad,
General Manager,
RBI, Bengaluru



Presenting Memento to Mr. A.O. Basheer



Presenting Memento to Mr. Sudhanshu Prasad



Vote of Thanks



Group Photo with RBI Officials

Intensive Workshop on International Taxation



CA S Anantha Padmanabhan



CA Narendra J Jain



CA G Muralikrishna



CA S Ramasubramanian & CA Prateek Marlecha

Practice Alert - Discussions

Speakers at Study Circle Meetings



CA Madhur Harlalka



CS M S Sivashankaran



CA Amith Raj A N



CA Krishna Prasad



CA Babu Jayendran

Advt.

Advt.

Advt.