



# **Bangalore** **Branch of SIRC** Newsletter

English Monthly

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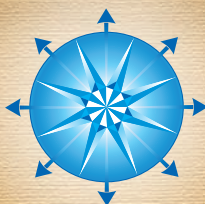
Elegant Craftsmanship of Halasoor Someshwara Temple

## Heritage of Namma Bengaluru



“Remember, your work may be only to sweep a railway crossing, but it is your duty to keep it so clean that no other crossing in the world is as clean as yours”

VICHAKSHANA



CA

The Clear-sighted Professional



“The best way to find yourself is to lose yourself in the service of others. Be the change that you wish to see in the world.”



Advt.

Advt.

## Global Challenges and Opportunities for the Profession



- By **CA K. Raghu**  
Imm. Past President of ICAI  
IFAC Board Member (2015-17)

The accounting world of the 21st century has been shaken by globalization, technology and changes in financial regulation. The pace and magnitude of changes in the accounting profession are dramatic: from new regulations and

changes in public policy to the transition of ownership within firms to meeting the challenges of globalization.

### Global Opportunities

- **Cloud Accounting** - Storing data on remote servers - opens up opportunities by making geography unimportant. Once accounts are entered in the cloud, you can work on them anywhere - in your office, at the airport, in your home 500 miles away. Cloud Computing is now evolving like never before, with companies of all shapes and sizes adapting to

this new technology. While Cloud Computing is undoubtedly beneficial for mid-size to large companies, it is not without its downsides, especially for smaller businesses.



CA K. Raghu, Imm. Past President - ICAI and IFAC Board Member greeting Olivia Kirtley, President of IFAC in New York on 9th September 2015

- **Big Data** - It has the potential to transform almost every aspect of business - from research and development to sales and marketing - and to provide new opportunities for growth. Trained to structure, gather and analyse financial information, accountants and finance professionals can apply their core skills to non-financial and other datasets - and, crucially, help make Big Data smaller and more structured.
- **Artificial intelligence (AI)** - The capacity of machines or software to create and exhibit intelligence - bring with it both promise and concern. AI could become an invaluable partner in professions that demand considerable training, technical precision, and ethical judgments—including accountancy.

(Contd. on Page 8)



**Jnanasagara**  
**CA. S. Krishna Swamy**  
**says**

## "Dharma Samsthapanarthaya Sambhavami Yuge Yuge"

**Great Incarnate persons are not born in ordinary sense of term. They descend on earth with a vision-missions.**

**Sir M Visvesvaraya was a visionary and Mahatma Gandhi was a missionary.**

### Comparing two Great Leaders.

On the front cover of the News Letter, Bangalore Branch has been publishing the quotes of the two great leaders, this spur the Article.

On Sep 15 the country observed the 155<sup>th</sup> birth anniversary of Sir M Visvesvaraya and on Oct 2 147<sup>th</sup> birth anniversary of Mahatma Gandhi. These two contemporary leaders of India, each known for **integrity, self-esteem, Inspiration, Commitment,**

**Credibility, swachhata and courage of conviction** in their own individual way contributed to do emergence of a free India and an industrialized nation. Sir M Visvesvaraya was all for Industrialization nation and Mahatma Gandhi for a free India and also India without social prejudices like untouchability, harijan temple entry etc. Sir M Visvesvaraya was for a planned development.

In the words of Jayachamaraja Wadiyar who presided over the function arranged to celebrate the birth centenary of Visvesvaraya, "There are few fields of thought and construction endeavor, of technical advancement and nation-building in which he has not made a signal contribution. Engineering, In all its branches, particularly those of irrigation, reservoirs, dam and water supply, power generation and bridge-building; University education ; technical and manufacture ; banking, commerce – in every one of these he has left the mark of his hand and brain in many parts of our great country. The State of Mysore, in particular, is full of abiding monuments of his wisdom."

### **Einstein said of Mahatma.**

"The only statesman," in Einstein's opinion, "who represented that higher conception of human relations in the political sphere to which we must aspire with all our powers."

I regard Gandhi as the only true great political figure of our age.

Letters exchanged between Sir M Visvesvaraya and Mahatma Gandhi brings out their approach to rural economy vs. industry interface with agriculture. **The correspondence shows how two leaders with diametrically opposite approaches show mutual respect and appreciation to each other in spite of having difference of opinions.**

(Contd. on Page 10)

## Chairman's Communique...

**Dear Esteemed Member,**

*Namasthe,*

### 1. TAX AUDIT CRISIS:

During the last week of September 2015, one of my CA friends who developed a minor abscess on his body postponed seeking medical advice and taking timely healthcare due to the Tax Audit commitments. He was of 48 years of age, diabetic and also had low BP, suffering also from acute stress syndrome owing to Tax Audit finalisations. The delay in getting the required medical attention to himself proved fatal, as complications developed all over the body and on 28th of September he was admitted to a Hospital. He breathed his last on the morning of 2nd of October 2015, left behind his wife and two daughters.

Because of the tremendous work pressure he deferred his own health care which resulted in an unwanted and unwarranted disaster.

Many have done like this (I am no exception), ignoring our personal life, family life, social life and the most important one – the personal health and tending to complete the tasks before the due date.

Almost every month has one or the other compliance related dead line will always be there and however meticulously one plan, due to reasons beyond his/her control, we invariably catch up the due date fever.

CA's already live at high risk and are exposed and susceptible to stress-genic ailments like diabetes, BP, Heart related problems etc., This is due to various reasons directly linked with the mandatory compliance aspects and probably the CA fraternity is the most affected

professional community when it comes to taking stress and that to the Small and Medium Practicing segment.

The time has come to introspect, draw a line and also to have a sustainable mutually supportive long term networking relationship amongst ourselves, transcending short term obligations and without compromising on the quality of the audit work.

### 2. EXTENSION OF DUE DATE

Karnataka High Court and other High Courts rejected the Public Interest Litigation filed by CA's and CA Association's praying for extension of the due dates. They were reluctant to interfere in policy and policy related matters, although it is well established that public interest overrides such an approach. When Public Interest is involved policy matters should recede to the back ground.

The President of ICAI also had made a request to the Finance Minister requesting for the extension. But, the CBDT did not extend the due date before 30.09.2015. The announcement of extension of time came on the afternoon of 01.10.2015.

If the ITR Forms are changed in the middle of the year and if it requires additional information to be compiled and provided, how is it possible to comply within the original due dates? For compliance of Income Tax law, the statute presupposes the existence of all the forms, in place, in time, on the very first day of the financial year.

This year, lot of time has been spent on analyzing the various amendments, ramifications and implications of the provisions of the Companies Act 2013 and has actually consumed sufficient time. Considering all these points, the due date for AGM's itself should have been postponed.

An audit can never be done in haste and no one wants to compromise on the quality of the audit just to meet the due date deadline.



It is surprising to note that none of the Traders or Trade bodies initiated to file a PIL asking extension either under the Income Tax Act or under the Companies Act, even though, factually they are the affected ones.

### 3. ICAI COUNCIL ELECTIONS – Our role

Bengaluru has attained a significant place in the Southern Zone because of 11866 members being stationed here and by using the advantage of numbers we can send 2 persons to the Central Council, to adequately represent the CA's in Karnataka.

As far as Bengaluru is concerned, the turnout has always been insipid and discouraging. Considering the various reasons for the poor turnout it was decided to have additional polling booths to encourage members to come and vote.

This year we have two more Additional Polling booths(totally three) and the allocation of the booth is based on the pin code of the address of the Member given to the Institute. A snap shot of the pin code wise allocation is given below for your perusal.

<b>S009 TO S015</b>	<b>BENGALURU</b> The Institute of Chartered Accountants of India ICAI Bhawan No. 16/0, Millers' Tank Bed Area BENGALURU – 560 052	<b>Bengaluru</b> 560 001-003, 005-010, 012-017, 020-026, 031-033, 036-040, 042-067, 072, 074-075, 079-080, 084, 086-087, 089-094, 096-099, 104-106, 108, 110, 561 203, 229, 571 501 & 574 227
<b>S016 TO S017</b>	BHS Higher Education Society 35/1, 11th Main, 4th Block, Jayanagar BENGALURU – 560 011	560 004, 011, 018-019, 028, 041, 069-070, 073, 078, 081-083, 085, 100 & 300
<b>S018 TO S019</b>	St. John Medical College Sarjapur Road Opp. BDA Complex Koramangala BENGALURU – 560 034	560 027, 029-030, 034-035, 068, 071, 076, 077, 095, 101-107 & 562 100-125 Bidadi

## OBITUARY



We deeply regret to inform sad demise of  
**CA Chandrakant S Halli**  
on 2nd October 2015.

May his soul rest in peace.

Booth Locator, developed by one of our SIRC member, is also hosted on our website and if you just feed in your membership number, it shall facilitate you to know the exact location of your polling booth.

Please vote, persuade your unwilling colleague to vote. Remember, your each Preference Vote is valuable in shaping the future of the profession.

With warm regards

*Dhanyavada*

**CA. Allama Prabhu M.S.**

Chairman

# KYC

## Know Your City

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## Heritage of Namma Bengaluru - 8

### Naada Prabhu Dharmaveera Sri Kempe Gowda

Within a very short period of time, Kempe Gowda had achieved success and popularity in epic proportions. His master plan for the new city was not only majestic but also resulted in the creation of a mega commercial hub which had the character of a cosmopolitan; a very well planned city !

Day by day the city prospered and became a prominent business centre. Each avocation and profession had an opportunity to establish and flourish; hence, it attracted all the sections of the society. It also had the blessings and the patronage of the Vijayanagar Empire. Fame of Kempe Gowda flourished and spread in all directions.

Jayadeva Raya, the Pallegar of Channapattana, jealous of Kempe Gowda's accomplishments, hatched a conspiracy by creating a severe misunderstanding relating to minting of coins; he might have also created an unfounded fear of independent sovereign province. He got Kempe Gowda summoned to Vijaya Nagar and succeeded in getting him imprisoned.

In the words of Mr. M.Fazlul Hasan: "Dark clouds of impending political storm had begun to gather over Vijayanagar when Nizam Shah of Ahmednagar exhorted the rulers of Bijapur and Golkonda, and later succeeded in forming an alliance of their three kingdoms to deliver an effective blow on Vijayanagar."

The Vijaya Nagar Emperor, in his apprehension to confront the new threat posed by the united trio, and after ascertaining that Kempe Gowda had not challenged the sovereignty of the Vijayanagar emperor, and also being assured of the Strategic support, loyalty and patriotism of Kempe Gowda, released him and respectfully restored his Royal Principality.

Kempe Gowda further consolidated his strength and developed Bengaluru with his remarkable administrative skills and pro-people attitude; he further embarked on construction of many Agraharas (residential layouts), numerous big lakes, tanks and ponds; he also encouraged merchants (entrepreneurs) to settle in Bengaluru.

He also constructed various temples including the bull temple and Dodda Ganapathi Temple at Basavanagudi. He extensively renovated and expanded the existing Gavigangadhareshwara Temple at Gavi Puram and Someshwara Temple at Halasur.

Benevolent, Religious and Courageous, the visionary Kempe Gowda ruled Bengaluru and the surrounding provinces till his death in 1569AD.

#### COVER PAGE PHOTOS:

The cover page photos are of Halasoor (Ulsoor) Someshwara Temple

One can witness the Rich, Exquisite, Elegant and Extraordinary Craftsmanship of the decedents of Amarashilpi Jakkanachari (the legendary master craftsman who fabricated the sculptures in Belur-Halebid) who build the Temple complex.

The temple is said to have followed many basic features of the Vijayanagara architecture. Many delicately carved pillars, relief works and beautifully carved statues are found here.

The Temple is an outstanding example of the astounding intricate workmanship of the sculptures.

The Temple beautifies and further enhances the heritage of Bengaluru.



## Guest Editorial

### Global Challenges and Opportunities for the Profession

(Contd. from Page 4)

#### Global Challenges

- **Managing Change:** The business environment has become increasingly complex and dynamic and that's something that our profession has to adapt to in the way we serve our clients and our own operating models. This dynamism is driven by trends that include globalization, demographic shifts, technological advances, and regulatory change.
- **Borderless World :** As businesses increasingly span national borders, accountants have to deal with multiple accounting systems. Accountants need to adapt to the changing environment as their work and that of auditors is changing enormously.
- **Credibility in Financial Reporting :** Building credibility in Financial Reporting in both the developed and developing world has been a challenge especially in recent years in the light of various corporate scandals, the volatility in capital markets and increased public skepticism about the financial reporting process. Today, as national economies develop and become more involved in the world market and as companies expand their markets and products across borders, there is a greater necessity to report financial information in a consistent way.
- **Convergence to International Standards:** The new challenge is to ensure that audits of companies around the world are conducted using a common reporting language and that we work to achieve convergence to international standards. This will lead to increased transparency, greater accountability and more understanding by the public worldwide.
- **Promoting strong Corporate Governance :** Finally, we must ensure that the entire profession, including those in business and industry, adhere to high professional

standards and promote strong corporate governance. The profession must be supported by management that is equally dedicated to quality and transparency.

#### INTERNATIONAL FEDERATION OF ACCOUNTANTS (IFAC) - LEADING THE CHANGE GLOBALLY

IFAC is the global organization for the accountancy profession. It works with over 175 members and associates in 130 countries to protect the public interest by encouraging high quality practices by the world's accountants. IFAC members and associates represent 2.5 million accountants employed in public practice, industry and commerce, government, and academe. Its structure and governance provide for the representation of its diverse constituencies and interaction with external groups that rely on or influence the work of accountants.

#### The Global Standard Setter for the Profession

Through its independent Standard-setting boards, IFAC develops international standards on Ethics, Auditing and Assurance, Education, and Public Sector Accounting Standards. It also issues guidance to support professional accountants in business, small and medium practices, and developing nations. In addition, IFAC issues policy positions on topics of public interest and comment letters on matters relevant to the profession.

IFAC majorly have 5 Committees and a Public Interest Oversight Board (PIOB). The roles of the Committees and PIOB are as below:

- i) Professional Accountancy Organization Development Committee:
- ii) Nominating Committee
- iii) Professional Accountants in Business Committee
- iv) Small and Medium Practices Committee
- v) Transnational Auditors Committee:
- vi) PIOB

#### IFAC Standard Setting Process

##### Standard Setting in the field of Audit and Assurance, Ethics and Education

Standard setting in these fields is the responsibility of Standard Setting Boards (SSBs) which operate with the financial



and operational support of IFAC and whose members are selected by IFAC's Nominating Committee, under the agreement that standard setting processes should be transparent, receive broad public input, including from the regulatory community and be subject to public interest oversight, with such oversight receiving regulatory monitoring. The objective of this agreement is to facilitate standard setting that is responsive to the public interest and produces high-quality international standards.

The result is a three-tier model made up of:

- (i) SSBs which have the responsibility to set international standards in the fields of Audit, Assurance and Related Services (International Auditing and Assurance Standards Board, IAASB), Ethics for Professional Accountants (International Ethics Standard Board for Accountants, IESBA), and Professional Accounting Education (International Accounting Education Standards Board, IAESB);
- (ii) An independent oversight body, the Public Interest Oversight Board (PIOB, [www.ipiob.org](http://www.ipiob.org)), with the responsibility to oversee standard-setting processes by these three Boards as well as their nominations processes, and
- (iii) A group of international public interest and financial organizations, the MG (Monitoring Group), with the responsibility to monitor the overall structure and to which the PIOB is accountable.

The IFAC Council is responsible for the overall governance of IFAC, and the IFAC Board oversees the management of IFAC.

### ICAI Role as a Board Member

As an IFAC Board Member priority will be to promote IFAC efforts in

- (i) Standard setting in international standards of auditing and assurance, education, ethics, and international accounting standards for the public sector.
- (ii) Promoting collaboration and mentoring to see that all national jurisdictions have the benefit of a accountancy profession
- (iii) The Member Body Compliance Program and learning lessons thereof for use by countries who are finding difficulties
- (iv) The development of the accounting profession; and
- (v) Being the global voice of the profession.

### Way Forward for the Profession looks exciting

So with all these changes and challenges, our profession has a great future. Society is demanding more transparency; financial and non-financial information is considered a social good, not a private matter; companies need someone to provide assurance to increase trust in their financials and the business overall; and regulation and decision-making processes are more complex, so more independent and qualified people will be needed.

But, on the other hand, we need to adapt to the great changes that our clients are facing. We need to make the profession attractive for talented, young people and integrate technology into our day-to-day work. They need to be innovative in attending to clients' demands, and to keep an open mind to different cultures and professions. The Way forward for the Profession looks really exciting. ■

#### Advertisement Tariff for the Branch Newsletter

COLOUR FULL PAGE		INSIDE BLACK & WHITE	
Outside back	₹ 40,000/-	Full page	₹ 20,000/-
Inside front	₹ 35,000/-	Half page	₹ 10,000/-
Inside back	₹ 30,000/-	Quarter page	₹ 5,000/-
<b>Advt. material should reach us before 22nd of previous month.</b>			

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.



**Jnanasagara CA. S. Krishna Swamy says**  
**“Dharma Samsthapanarthaya**  
**Sambhavami Yuge Yuge”**

(Contd. from Page 4)

**(Letter from Mahatma Gandhi to**  
**Sir M Visvesvaraya)**

**Wardha**

**16<sup>th</sup> November 1934,**

**Dear Friend,**

The All-India village industries Association which is being formed under the auspices of the Indian National Congress will need the assistance of expert advisers in the various matters that will engage its attention. It is not intended to trouble them to meet together or even the members of the Association, but merely to advise the Association whenever reference is made to them in matters in which they possess special knowledge e.g., in chemical analysis, food values, sanitation, distribution of village manufactures, initial method of developing village industries, co-operation, disposal of village waste as manure methods of village transport, education (adult and other), care of infants, and many other things too numerous to mention here.

Will you please allow your name to appear as such advisers of the All-India Village Industries Association? Naturally I approach you in the belief that the object of the Association and the method of approach to its task have your approval.

**Yours sincerely**

**Sd/-**

**(M K Gandhi)**

**KIND ATTENTION: MEMBERS**

**Members are requested to pass on the information**  
**to their Articled students**

**Admissions open for Subject wise Coaching**

**IPCC & FINAL For May 2016 Examinations**

**& CPT for June 2016 Examination**

**Coaching classes will be commencing at the**  
**Bangalore Branch of SIRC of ICAI from 26th Nov. 2015.**  
**The classes will be concluded by 7th March 2016.**

**For further details please contact:**

**Tel: 080-3056 3500 / 511 / 555**

**Email: blrstudentevents@icai.org**

**For more details, visit website : [www.bangaloreicai.org](http://www.bangaloreicai.org)**

**(Letter from Sir M Visvesvaraya to**  
**Mahatma Gandhi)**

**Dear Mahatmaji**

Your letter dated the 15th November 1934 addressed to Bangalore, reached me here-in Bombay-yesterday, where I will be staying for the next few weeks.

I have been following with great interest and sympathy your propaganda and efforts in the cause of village industries.

If it suits you, I am quite willing to give such advice or opinion as, it is in my power to do, without any official association of my name with your organisation for the present. If the work progresses on lines in the efficacy of which I can have instinctive faith - I will not wait for signs of success - I shall ask for the privilege of being associated with it.

I feel that in this machine age, we should not hesitate except in temporary situations, to utilise mechanical power to the utmost limit that circumstances permit. I also feel for sound economic advance the public should have a general plan or scheme of allround development along with the special schemes like the one now engaging your attention.

With regard to the first point, I am enclosing an extract from a speech by the Russian leader J. Stalin, and with regard to the second, namely the need of a comprehensive programme of development, I will be sending you within the next ten days a copy of a book "Planned Economy for India." It will be mailed to you from Bangalore.

I am sending by book-post today a small pamphlet on "Rural Reconstruction in India" in which I have laid stress on the importance of collecting and maintaining statistics as a yardstick to measure progress in production, etc., from year to year. This I have seen is done in Japan.

In the latest article I have read from your pen, you have stated that three points are causing you concern regarding your new Association, namely; the location of the Central Office, the composition of the Board and the Agencies. As you have invited opinions, I trust - if it is not too much to ask - you will kindly consider the specific proposals put forward in the book, that will be sent to you before coming to a decision.

**Yours sincerely,**

**Sd/-**

**(M. Visvesvaraya)**

(Letter from Mahatma Gandhi to Sir M Visvesvaraya)

Wardha,  
23 November 1934

Dear friend,

I thank you for your prompt reply. I see that we hold perhaps diametrically opposite views. My conviction based upon extensive experience of village life is that in India at any rate for generations to come we shall not be able to make much use of mechanical power for solving the problem of the ever growing poverty of the masses. We are too many and have so many idle hours at our disposal that it would be suicidal to make use of mechanical power and allow human power to run to waste. The question of leisure after toil comes into being when people learn the art of making effective use of their waste hours. Such being my view the extract that you have sent me from Stalin has no appeal for me at all. The more expressive extract from Lenin makes matters worse for me. It is like much cry and little wool. I could be no party to engaging the villagers in producing army machinery and army stores. If India has no desire to take part in the goary exploitation of un-mechanized regions of the earth, she has no need to fear aggression from foreign countries. My dream will remain wholly unrealized and India may become a willing or unwilling partner in the sin of exploitation. I want to put the whole of my force that god may vouchsafe to me in stemming the onrush of the violent current. I should take delight in perishing in the attempt.

In spite of the strength of my conviction, I entertain great regard for your fine abilities and love of the country, and that shall be unabated whether I have the good fortune to secure your co-operation or face your honest opposition.

Yours sincerely,

Sd/-  
(M.K. Gandhi)

To be continued.....

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 : **November 2015 to February 2016**

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

Course Fee : **Rs.15000/- per participant**

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


















## CALENDAR OF EVENTS - OCTOBER & NOVEMBER 2015

Date/Day/ Time	Topic / Speaker	CPE Credit
02.10.2015 Friday	<b>Holiday on account of Gandhi Jayanthi</b>	—
03.10.2015 Saturday 5.00pm to 8.15pm	Intensive Workshop on International Taxation - 4 Article 5 -Permanent Establishment (Fixed place, Article 5 (2) Installation and Exceptions, excluding Service PE) <b>CA. S. Anantha Padmanabhan</b> <b>VENUE:</b> Branch Premises <i>No Delegate Fee</i>	 <b>3 hrs</b>
07.10.2015 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Service Tax : Import and Export of Services <b>CA. Madhur Harlalka</b> <b>VENUE:</b> Branch Premises	 <b>2 hrs</b>
09.10.2015 Friday 6.00pm to 8.00pm	<b>PRACTICE ALERT - DISCUSSIONS</b> FEMA <b>CA. G. Murali Krishna</b> <b>VENUE:</b> Branch Premises	 <b>2 hrs</b>
14.10.2015 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Critical Issues in the Implementation of Companies Act 2013 <b>CS. M.S. Shivashankaran &amp; CS. Ms. Mangala Rohith</b> <b>VENUE:</b> Branch Premises	  <b>2 hrs</b>
15.10.2015 Thursday 2.30pm to 4.30pm	Online reporting of FDI through e-Biz portal - by <b>Mr. A.O. Basheer</b> , <i>General Manager, RBI, Mumbai</i> - Overview by <b>Mr. Sudhanshu Prasad</b> , <i>General Manager, RBI, Bengaluru</i> <b>Restricted to 100 (on FCFS basis)</b>	<b>2 hrs</b>
16.10.2015 Friday 6.00pm to 8.00pm	<b>PRACTICE ALERT - DISCUSSIONS</b> VAT Updates <b>CA. S. Ramasubramanian &amp; CA. Prateek Marlecha</b> <b>VENUE:</b> Branch Premises	  <b>2 hrs</b>
17.10.2015 Saturday 5.00pm to 8.15pm	Intensive Workshop on International Taxation - 5 Article 5 - Permanent Establishment (Service PE & Agency PE) <b>CA. Narendra J. Jain</b> <b>VENUE:</b> Branch Premises <i>No Delegate Fee</i>	 <b>3 hrs</b>
21.10.2015 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Start up deal cycle - Structure and raising of Funds <b>CA. Amith Raj A.N. &amp; CA. Krishna Prasad</b> <b>VENUE:</b> Branch Premises	  <b>2 hrs</b>
23.10.2015 Friday	<b>Holiday on account of Vijayadashami</b>	—
28.10.2015 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Digital Threats and Cyber Law - Growing need and Professional Opportunity <b>CA. Anand P. Jangid</b> <b>VENUE:</b> Branch Premises	 <b>2 hrs</b>
04.11.2015 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Income Tax Issues and Legal Solutions <b>Mr. M.V. Seshachala</b> , <i>Advocate</i> <b>VENUE:</b> Branch Premises	 <b>2 hrs</b>

## CALENDAR OF EVENTS - NOVEMBER 2015

Date/Day/ Time	Topic / Speaker	CPE Credit
06.11.2015 Friday 6.00pm to 8.00pm	<b>PRACTICE ALERT - DISCUSSIONS</b> Income Tax <b>CA. H. Padamchand Khincha, CA. Sudheendra B.R. &amp; CA. Shivanand Nayak</b> <b>VENUE:</b> 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 <b>CA. Sharath Rao</b> <b>VENUE:</b> Branch Premises <i>No Delegate Fee</i> 	3 hrs
11.11.2015 Wednesday	<b>Holiday on account of Lakshmi Pooja</b>	—
13.11.2015 Friday 6.00pm to 8.00pm	<b>PRACTICE ALERT - DISCUSSIONS</b> Service Tax <b>CA. Rajesh Kumar T.R. &amp; CA. Lakshmi G.K.</b> <b>VENUE:</b> Branch Premises  	2 hrs
18.11.2015 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Fraud Awareness & Detection in Current Business Environment <b>CA. Zaid Razvi &amp; Mr. Siddharth Sharma</b> <b>VENUE:</b> Branch Premises  	2 hrs
20.11.2015 Friday 6.30pm to 8.30pm	<b>Corporate Accountants Meet</b> <i>Details will be informed later</i>	2 hrs
21.11.2015 Saturday 09.30am to 04.30pm	One day workshop on ICDS Co-ordinator: <b>CA K Gururaj Acharya</b> <i>Details will be informed later</i> 	6 hrs
21.11.2015 Saturday 05.30pm to 08.30pm	Intensive Workshop on International Taxation - 7 Article : 7 - Business Profits <b>CA. P.V. Srinivasan</b> <b>VENUE:</b> Branch Premises <i>No Delegate Fee</i> 	3 hrs
25.11.2015 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Indirect Taxes Implications on Sale of Software (Covering Customs, Central Excise, VAT & Service Tax) <b>CA. N. Anand</b> <b>VENUE:</b> Branch Premises 	2 hrs
27.11.2015 Friday 6.00pm to 8.00pm	<b>PRACTICE ALERT - DISCUSSIONS</b> VAT <b>CA. S. Venkataramani &amp; CA. Annapurna D. Kabra</b> <b>VENUE:</b> Branch Premises  	2 hrs



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

CA. K.S. Satish, Mysore



## CHARITABLE TRUST

In DIT v. Women's India Trust (2015) 277 CTR (Bom) 180 where the facts were that the assessee-trust was formed to carry out the object of education and development of natural talents of the people having special skills, more particularly the women in the society, it educated them in the fields of catering, stitching, toy making, etc., trained them to earn while learning, it sold some finished products like pickles, jam, etc., produced in the process of carrying out the objects through shops, exhibitions and personal contacts for Rs. 69,72,052 and earned a surplus of Rs. 47,15,249 therefrom, the Bombay High Court upheld the order of the Tribunal to the effect that the trust sold the articles produced only to teach or impart skills and to instill confidence in the women, that occasional sales were for furthering the objects of the trust, that it was not indicative of trade, commerce or business and that the proviso to section 2(15) was not applicable.

## DEEMED DIVIDEND

Trade advance made for purchase of goods or a capital asset which indirectly benefits the company making the advance does not fall within the expression 'advances' used in section 2(22)(e) and trade advances

made to give effect to commercial transactions cannot be treated as deemed dividend under section 2(22) (e) opined the Karnataka High Court in Bagmane Constructions (P) Ltd. & Ors. v. CIT & Anr. (2015) 277 CTR (Kar) 338.

## UNABSORBED DEPRECIATION

The entire depreciation, that is, the depreciation of the current year and the unabsorbed depreciation carried forward from the earlier assessment years has to be taken into consideration before setting off the carried forward unabsorbed investment allowance ruled the Supreme Court in Seshasayee Paper & Boards Ltd. v. CIT (2015) 277 CTR (SC) 448.

## SECTION 43B

The Supreme Court has in CIT v. Travancore Sugars & Chemicals Ltd. (2015) 277 CTR (SC) 333 taken the view that vend fee levied by the Government of Kerala on sugar mills in respect of arrack sold by them constitutes a 'fee, by whatever name called' and that section 43B is attracted to the vend fee payable.

## NOT CAPITAL GAINS

Where the assessee entered into an oral agreement with a company to purchase an immovable property for

Rs. 5.80 crores and paid Rs. 5 lakhs as advance, on the company going back on the said agreement, the assessee filed a suit for specific performance and in the alternative, for grant of damages for breach of the agreement and the court passed a consent decree under which the company agreed to pay Rs. 5 crores to the assessee by way of damages, the damages received by the assessee for breach of the agreement was not liable to be taxed as capital gains held the Bombay High Court in Sterling Construction & Investments v. ACIT (2015) 277 CTR (Bom) 202.

## CASH CREDITS

In Aalok Khanna v. CIT (2015) 277 CTR (MP) 60 where the assessee carrying on the business of manufacture & sale of tin containers and acting as a clearing & forwarding agent received gifts aggregating to Rs. 1,52,67,939 from two non-resident Indians, the Madhya Pradesh High Court upheld the order of the Tribunal disbelieving the transaction and concluding that it did not amount to a gift for the reasons that there was no business relation or blood-relationship between the assessee and the donors and there was no explanation for two unknown persons giving such a huge amount to the assessee as a gift.



## REASSESSMENT

The Punjab & Haryana High Court has in *State Bank of India v. CIT & Anr.* (2015) 375 ITR 109 (P & H) where the facts were that the Assessing Officer had allowed depreciation on automatic teller machines @ 60% treating them as computers in the course of assessment made under section 143(3) for the assessment year 2005-06, he allowed depreciation thereon @ 15% by treating them as plant & machinery while completing the assessment for the assessment year 2008-09 and based on the assessment made for the assessment year 2008-09, he issued a notice under section 147 for the assessment year 2005-06, expressed the view that since the reasons recorded for reopening the assessment for the assessment

year 2005-06 did not indicate that there was any failure on the part of the assessee to disclose fully and truly all the material facts, it was merely a change of opinion on account of the assessment made for the assessment year 2008-09 and quashed the notice issued under section 147.

## REVISION

Where the view taken by the Assessing Officer in the course of assessment granting deduction under section 36(1)(viii) to the assessee was a possible view and this view was fortified by the decision of the Tribunal which had been accepted by the Department, the Commissioner could not under section 263 revise the order of the Assessing Officer opined the Bombay High Court in *CIT v. State Bank of India* (2015) 375 ITR 20 (Bom).

## TRIBUNAL

In *R.W. Promotions (P) Ltd. v. ITAT & Ors.* (2015) 277 CTR (Bom) 401, the Bombay High Court took the view that mere filing or pendency of an appeal against the order of the Tribunal under section 254(1) before the High Court does not mean that the power of rectification conferred on the Tribunal by section 254(2) cannot be invoked by the assessee or the Department.

## TAX DEDUCTION AT SOURCE

The Karnataka High Court has in *Bangalore Turf Club Ltd. v. UOI & Ors.* (2015) 277 CTR (Kar) 221 ruled that the provisions of section 194B are not attracted to the stake money or prize money paid by race clubs to the horse owners.

Advt.



# COMPANIES ACT 2013 – UPDATES

CA K. Gururaj Acharya



## I. Annual Forms for FY 2014-15

Relevant dates for Filing without additional fee - *vide General Circular No. 10/2015 dated 13/07/2015*

AGM Date	Financial Statements - AOC-4 (Formerly 23AC & 23 ACA)	AOC-4 XBRL (Formerly 23AC- XBRL & 23ACA- XBRL)	AOC-4 CFS (non XBRL)	Annual Return MGT-7 (Formerly Annual Return 20B)	ADT-1 (#1) (Formerly 23B)
Apr – Aug 2015	By 31/10/2015	By 31/10/2015	By 30/11/2015	By 31/10/2015	Within 15 days Of AGM
Sept. 2015	By 31/10/2015	By 31/10/2015	By 30/11/2015	Within 60 Days from AGM	Within 15 days Of AGM

**(#1) No relaxation provided in respect of filing of ADT-1.**

**Further, ADT-1 is to be filed only for fresh appointments and not for Ratification of appointment as required u/s. 139(1) – This view is also supported by the former ROC (Karnataka) in the interactive session held on 24.04.2015 [Comprehensive Workshop on Companies Act, 2013 – Bangalore Branch of ICAI].**

A clarification has however been sought by the author from the Ministry on filing of ADT-1 for ratification of Appointment of Auditor and Ministry's revert on the same is awaited.

## II. Highlights of MGT-7 (Annual Return)

a. **Annual return** is now to be prepared as on the financial year end date (i.e 31.03.2015) and not as on the date of the AGM as required under 1956 Act.

b. Annual return is to be prepared and filed in e-form MGT-7. The requirement of attaching the scanned version of the signed hard copy of Annual Return as per Schedule V- Part II of Companies Act, 1956 to e-form 20B is dispensed with.

c. Additional details required in MGT-7:

a. PAN of the company (*vide notification dated 24.09.2015*)

b. Details of shares/Debentures Transfers since closure date of last financial year to be filled in the form itself; (*separate sheet attachment or submission in a CD/Digital media can be made only if the list of transfers during the year exceed 10*)

c. Principle business activities of the company, main activity code, Business activity code, description of business activity, % of total

turnover of company from the business activity.

d. Particulars of Holding, Subsidiary, Joint Ventures and Associate Companies.

e. Turnover and Net Worth of the company

f. Indebtedness including debentures, secured loans, unsecured loans & deposits.

g. Number of Promoters, Members, Debenture holders-at the beginning, addition during the year, cessation during the year and as at the end of the year.

h. Details of Directors & KMPs at the beginning and end of the year and % of shares held.

i. Details of Meetings Of Members / Class Of Members / Board / Committees of the Board w.r.t. date of meeting, no. members attended,

% of shareholding, no. of directors attending the meeting and % of attendance.

- j. Remuneration of Directors and KMPs.
- k. Matters related to Certification of Compliances and disclosures.
- l. Details reg. Certification of Compliances, Penalty & punishment - Details thereof.

Most of the details to be provided in MGT-7 are covered in the extract of Annual Return in form MGT-9 which forms part of Directors Report.

### III. Annual return certification

- a. Annual Return of All Co's (**except OPC's and Small Co's<sup>(#2)</sup>**) mandatorily to be signed by a director and the Company Secretary (in-house CS or Practicing CS).
- b. Annual Return of the following Class Co's to be certified by Practicing Company Secretary in Form MGT-8

a. All Listed Co's
b. All Co's with Paid up Capital ≥ 10 Crore
c. All Co's with Turnover ≥ 50 Crore

### **(#2) Small Co. – All the conditions must be satisfied [S. 2(85)]**

Co. must not be a Public Company
Paid up Capital < INR 50 Lacs
Turn Over < INR 2 Crores ( <i>as per its last P&amp;L Account</i> )
Co. must neither be a Holding Co. nor a Subsidiary Co. of any other Indian Co.
Co. must not be registered u/s. 8 of Co's Act 2013
Co. / Body corporate must not be governed by any special Act

### IV. Deposits [Companies (Acceptance of Deposits) Second Amendment Rules, 2015 dated 15.09.2015]

- a. Amounts received by a **Private Company** from **Relative of Directors** are excluded from the purview of deposits (*subject to furnishing of declaration in writing to the effect that the deposit is not given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report*)
- b. A Private Company, may accept Deposits from **members** upto 100% of its [Paid up Capital + Free Reserves + **Securities Premium Account** (*new inclusion*)]

### V. Important MCA Notifications issued in September 2015

- 1. **04.09.2015:**
  - (i) Financial statements shall be in the form specified in Schedule III to the Act, and comply with AS or Ind AS as applicable.
  - (ii) The requirement of furnishing details under Rule 8(3) not to apply for Govt. Co. engaged in producing defense equipments.
  - (iii) Every Co. shall file financial statement with Registrar together with form AOC-4 and the consolidated financial statement if any in form AOC-4 CFS.
- 2. **09.09.2015:** Companies (Filing of Documents and Forms in Extensible Business Reporting Language -- XBRL) Rules, 2015 are notified.

Companies required to file e-Form AOC-4 XBRL -

a. All Listed Co's
b. Indian Subsidiaries of Listed Co's
c. All Co's with Paid up Capital ≥ INR 5 Crore
d. All Co's with Turnover ≥ INR 100 Crore

- 3. **04.09.2015:** Government Co's producing Defense Equipment including space Research, exempt from disclosing certain Additional information contained in General Instructions for preparation of Statement of Profit & Loss in Schedule III Co's Act, 2013 subject to fulfillment of conditions specified. Exemption to apply in respect of Financial Statements prepared for year ending on or after 31<sup>st</sup> March 2016.

### 4. **04.09.2015: Alteration to Schedule III**

- (i) Under the heading "Equity and Liabilities",  
Following shall be substituted (*on the face of the Balance Sheet*), namely:-

#### 4. (b) Trade Payables:

- a. total outstanding dues of micro enterprises and small enterprises; and
- b. total outstanding dues of creditors other than micro enterprises and small enterprises."

- (ii) General Instructions for preparation of Balance Sheet -

#### "Trade Payables

The following details relating to Micro, Small and Medium Enterprises shall be *disclosed in the notes:-*





- (a) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier at the end of each accounting year;
- (b) the amount of interest paid by the buyer in terms of section 16 of the MSMED Act, 2006, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;
- (c) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under the MSMED Act, 2006;
- (d) the amount of interest accrued and remaining unpaid at the end of each accounting year; and
- (e) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are

actually paid to the small enterprise, for the purpose of disallowance of a deductible expenditure under section 23 of the MSMED Act, 2006.

5. **01.09.2015:** The last date for filing Form CRA-4 (Cost Audit Report) to the Central Government for the FY 2014-15 without any penalty / late fee is extended upto 30<sup>th</sup> September 2015.

**VI. Significant points from Secretarial Standard 1 (Board Meetings) & 2 (General Meetings) to be complied by every Company WEF 1<sup>st</sup> July 2015 vide S.118 (10)**

**SS – 1: Board Meetings**

1. **Every Board Meeting to be serially numbered. Further, Each item of business to be taken up at the Meeting shall be serially numbered.**
2. **Disclosures:**

Annual Report or Annual Return

shall disclose the No. & dates of Board Meetings and Committee meetings held during the Financial Year indicating No. of Meetings attended by each Director.

3. Notice shall specify the **serial number, day, date, time and full address** of the venue of the BM.

**SS – 2: General Meetings**

1. **Notice**
  - a. To be hosted on Company's website, if any.
  - b. Must contain complete particulars of venue of Meeting **including route map & prominent land mark** for easy location.
2. **Minutes** - Each item of business taken up at the Meeting shall be **numbered.**
3. Every **Listed Co.** must file a **Report on AGM** in form **MGT-15** with RoC within 30 days of AGM.

**KIND ATTENTION: MEMBERS**

**CERTIFICATE COURSE ON CONCURRENT AUDIT OF BANKS**

We are delighted to inform the Members that a **Six day week end course** is being organised by **International Audit Standards Board (IASB) of ICAI** and hosted by **Bangalore Branch** on **12&13, 19&20, 26&27 December 2015**

at Bangalore for the benefit of the members involved in Concurrent Audit of Banks.

Course Fee : **Rs.15,000/-** Per participant – Metro Cities., **Rs.12,500/-** Per participant – Non-metro cities.

Mode of Payment: Cheque /DD in favour of "Secretary, Institute of Chartered Accountants of India, payable at Delhi"

For Course Structure and Application Form: <http://220.227.161.86/29877course-structure19476.pdf>

Venue: Will be informed later.

**Only limited Seats: Registration on First come First Served basis.**

Please contact: Ms. Geethanjali D. on **080-3056 3513**, [blrregistrations@icai.org](mailto:blrregistrations@icai.org)

For further details, visit website: [www.bangaloreicai.org](http://www.bangaloreicai.org)

# DIGEST ON RECENT DECISIONS UNDER VALUE ADDED TAX LAWS

CA Annapurna Kabra



## **Case 1: Chamundeshwari Electricity Supply Corporation Limited, Saraswathipuram, Mysore V/s State of Karnataka 2015(82) Kar. L.J. 504 (Tri.) (DB)**

The Appellant is an undertaking of Government of Karnataka registered under the KVAT/CST Acts and engaged in the business of distribution and transmission electricity within the revenue districts of Karnataka. The Appellant purchased CFL Bulbs in the course of inter-state purchases by issuing 'C' Forms. On the view of above facts, the Registering Authority initiated penalty proceeding on the dealer u/s 10-A(1) of the CST Act for violation of section 10(d) of the said Act and imposed penalty equal to one and half times of the tax payable on CFC Bulbs on the ground that there is misuse of 'C' Form and the purchase of CFC Bulbs is not within the scope of the Section 8(3) (b) of the CST Act. The Appellant contented that the RA has not recorded any clear finding that there was a 'false representation' by the Appellant while purchasing CFC Bulbs since the same was covered under the certificate of registration obtained under CST. The reading of section 10(d) clearly shows that there must be false representation or the element of without reasonable excuse on the part of the registered dealer in purchasing any class of goods and those goods of such class are covered by his certificate of registration. In the registration certificate of Appellant, all

kinds of electrical goods are mentioned and thus CFC Bulbs naturally falls under the same class of goods. Therefore, there is no false representation by the appellant company even it is assumed or interpreted that all kinds of electrical goods appearing in the registration certificate does not cover CFC Bulbs. Hence, there is no violation of Section 10(b) of the CST Act so as to attract to invoke Section 10-A(1) to impose penalty. **Also the penalty is impossible only when a person fails to make use of goods for the specified purpose 'without reasonable excuse' or has made 'false representation' in effecting such purchases.** Therefore, it is imperative on the part of the authorities to establish there is ingredient of 'without reasonable excuse'. Such ingredient is absent in the present case of the appellant while executing centrally sponsored scheme and consequently, penalty imposed is cancelled. Therefore CFC bulbs are electrical goods for the purpose of section 8(3)(b) of CST Act 1956.

## **Case 2: B. Mohammad Ali V/s State of Karnataka 2015(82) Kar L.J. 583 (Tri.) (DB)**

The Appellant is the registered dealer engaged in the business of buying and selling of M.S. Steel, Steel pipes, nuts and bolts etc. The Assessing Authority made a reassessment on the dealer based on the inspection report forwarded by the enforcement authority. The estimation made by the enforcement authority

is adopted by Assessing Authority by simply stating that 'it is proposed to estimate the sales turnover equivalent to suppression reported and to levy penalty and interest' and has made an addition to the declared turnover further in addition to sales suppression already taken for consideration by enforcement authority. The Assessing Authority has not assigned any reason for the same and issued reassessment order against the dealer. Aggrieved to the above order, the dealer filed an appeal to First Appellate Authority, but the First Appellate Authority confirmed the estimation made by the Assessing Authority. Again an appeal was filed before the Tribunal. The Tribunal modified the reassessment order by restricting the sales suppression as reported by the enforcement authority and held that further estimation and addition is not permissible. The Tribunal also set aside the penalty levied by the Assessing Authority and directed Assessing Authority to issue revised demand notice accordingly. Therefore estimation of turnover made by enforcement Authority without any base is not permissible.

## **Case 3: Rane (Madras) Limited, Mysore V/s State of Karnataka 2015(82) Kar. L.J. 544 (Tri.) (DB)**

The Appellant is a registered dealer under the Act and has admitted turnovers of machinery and lubricants for the purpose of entry tax whereas entry tax has not been admitted on



cutting tools such as drill-bits, reamers, cutters, taps etc. The Assessing Authority made a reassessment on the appellant u/s 6 of the Act and levied entry tax on such machine tools for the reason that the cutting tools used by the appellant are accessories of machinery, fall under the entry 52 of the First Schedule of the Act and thus liable to entry tax. Also penalty and Interest is levied by the AA under section 6(2) and 7(2) respectively. The Appellant contends that the cutting tools are only consumable goods and when used in machinery, within two or three days the same get worn out and becomes scrap losing their identity. These tools are separate from the machinery and the parts of machinery and have separate entry under the Act. Thus the same cannot be treated as machinery parts or accessories but to be treated as consumable goods. In this context, the meaning and nature of tools are examined. The meaning of tools as per common dictionary proves that they are machine tools and used by fixing the same to machinery for specific task or functioning to have desired result. It enhanced the utility of machinery and thus, they are in the nature of accessories of machinery without which the desired task of drilling, cutting and finishing of a component cannot be done. With the view of the above, the Tribunal upheld the order of First Appellate Authority in connection with levy of entry tax on cutting tools as accessories of machinery. Therefore even tools even worn out during use are accessories of Machinery.

**Case 4: ORACLE Financial Services Software Limited (Formerly known as M/s I-Flex Solutions Limited) Bangalore V/s State of Karnataka 2015(82) Kar. L. J. 511 (Tri.) (DB)**

The Appellant is a company registered

under the Indian Companies Act. The appellant has entered into the 'Licence agreement' with 'Canara Bank' and such licence is granted as non exclusive, non transferrable, royalty free and intangible right to use the Software System. The Assessing Authority considered such software licence transaction as sale of software licence and levied tax at the rate of 12.5% for the tax periods 2005-2006 and 2006-2007 under the KVAT Act, 2003 along with Interest and penalty. The FAA upheld the levy of tax @12.5% on the basis that such commodity does not fall under entry 34 of Third Schedule during the relevant tax periods. The FAA relied on the amendment where the word "including software licences by whatever name called" has been inserted after the words 'Patents and the like' in the Entry 34 of Third Schedule with effect from 01-04-2007. Aggrieved by the same, again an appeal was filed before the Tribunal. The Appellant contends that the licensing of software does not amount to transfer of right to use goods. The Appellant further contends that the software licence as such falls within the ambit of 'and the like' and thus the insertion of said words 'including software licences by whatever name called' takes colour from the entry and illustrative in character and therefore when the Entry 34 read as such then it is clear that Software Licence falls under the said entry during the period 2005-2006 and 2006-2007. The Tribunal held that licensing of software during the impugned tax periods is nothing but permission to use the particular copyright of the copyrighted software for limited purpose and thus liable for tax at 4% instead of 12.5% both under KVAT/CST Acts. Consequently, the penalty and interest levied is also set

aside. Therefore "License agreement" to use software system is not sale of system but fall under entry software licenses by whatever name called under section 34 of III schedule of KVAT Act 2003.

**Case 5: BASF India Limited (Formerly known as a BASF Coating (India) Private Limited), Mangalore V/s State of Karnataka 2015(82) Kar. L. J. 594 (Tri.) (DB)**

The appellant is a Private Ltd company engaged in the business of manufacture and sale of automotive paints. The Assessing Authority denied exemption claimed on account of stock transfer on the ground that movement of goods from state of Karnataka was occasioned as a result of contract of sale of goods and thus deemed to be inter-State sales u/s 3(a) of the CST Act. The Assessing Authority examines the purchase order placed by the OEMs and other customers to the branch to prove that there are direct sales between the manufacturing unit and the customers of the branch. But the appellant proves that there is no name of OEMs and other customers of the branch are mentioned in the stock transfer Challan. The stock transfer transactions effected to warehouses and after manufacture it is dispatched. These goods are stored in the warehouses batch wise and coats bear the labels printed with production description, material SAP Codes, Batch No manufacturing and expiry dates. The supply chain and delivery is on the basis of JIT model and based on sales forecasts, production plan is prepared and goods manufactured to maintain stock inventory at each of the warehouses. Thus the appellant proves this point that the production planning, production and subsequent dispatches of paints is NOT in pursuant



to the orders placed by the OEMs and other customers. When the OEMs order for dispatches to the sales team, then the same is intimated to the supply chain department which is located at Mumbai who issue instructions to the warehouses or branches to supply the goods. Such sales by warehouses or branches are supported by tax invoices and the goods are dispatched to the OEMs or other customers on the strength of such invoices. Therefore, it is nothing but sale made by the branch and the branches file returns in the respective States admitting to pay taxes at local rate. In view of this background as the goods are stock transferred, the appellant has claimed exemption under Sec 6-A(1) of the CST Act supported by Form 'F' declarations. Therefore goods despatched to branches outside the state based on "for cost" or demand analysis by the branches where no transaction linkage for particular customer cannot be treated as interstate sale.

***Case 6: Larsen and Toubro Vs State of Andhra Pradesh Hyderabad and Others TS-507-HC-2015(TEL and AP): Telangana & Andhra Pradesh HC***

***In case of Pre Existing order sale in transit is not permissible.***

All the petitioners have executed turnkey projects for different customers. They claimed that the goods supplied by them, for being used in the turnkey projects, were subsequent sales exempt from tax under Section 6(2) of

the CST Act, import sales under Section 5(2) of the CST Act, and the respondents lacked jurisdiction to subject these transactions to tax under the AP VAT Act treating them as intra-state sales. The High Court rejects Appellant claim that supply and erection contracts are divisible / independent and that supplies

there under qualify as subsequent in-transit sale u/s 6(2) r/w Sec 3(b) of Central Sales Tax Act. Existence of 'cross-fall breach' clause or clause which enables owner to terminate supply contract for breach of erection contract and vice-versa, would mean that while in form there are two separate contracts, in substance, there is one single indivisible contract. For a sale to be exempt u/s 6(2), sale contract should come into existence and title to goods should be transferred during movement, contract entered prior to commencement of movement of goods from one State to other or after its completion is not covered. The Parties intended that title to goods would be transferred from contractor to owner only post erection and commissioning, so title transferred only after goods incorporated in works in State of AP and therefore, Revenue justified in rejecting assessee 's claim of 'subsequent sale'. The presence of an inspection and certification clause in supply contract defers passing of title till owner has expressed assent, states, ".....distinction between a "deferred payment" and "fulfillment of conditions after which payment is to be made" must be borne in mind....". The SC ruling in A&G Projects and Technologies which considered scope of Sec 6(2) applicable, obiter dicta of SC binding upon other Courts absent any direct pronouncement on that question elsewhere by SC and is entitled to considerable weight; However, accepts assessee 's alternate plea that supplies in turnkey contracts were inter-state sales falling u/s 3(a), mere fact that goods delivered within State and appropriation took place is inconsequential, if parties envisaged movement of goods from one State to another and such movement is an incident of contract

of sale. Therefore the goods moved inter-state for incorporation in works would not make deemed inter-state sale an 'intra-State sale'. It states that principles involved in intra-state deemed sale equally apply to inter-state deemed sale of goods involved in works contract execution.

It is an accepted rule that the incidence, levy of tax and restrictions prescribed for normal sale holds good even for the interstate works contract also. The transfer of property happens during incorporation of goods but for the purpose of section 3(a) of the CST Act, it is deemed to be sale in the course of interstate trade or commerce when goods are moved from one state to another irrespective whether transaction falls under works contract or not. In various cases Honourable Courts have accepted the principles that even in case of pre existing contract sale in transit is possible. Therefore the contention that in order to fall under section 6(2), the contract should emerge during the movement of goods from one state to another runs contrary to the law declared by the Courts and also the object of providing exemption for second and subsequent interstate sales. On the other hand if sale is not falling under section 3(b) thereby not exempt u/s 6(2) then it should fall under section 3(a) of the CST Act. As per section 9(1) of the Act in case of sale fall under section 3(a) the state from where the goods have move has the authority to levy tax, the same state cannot levy multiple tax on different dealers for the single movement of goods merely for the reason that there are two or more persons are involved and goods are moved in pursuance of the existing contract. (A&G Projects).



## CIRCULARS ISSUED BY THE BOARD PARTICULARLY WHEN THEY ARE CONTRARY TO THE JUDGMENT OF HONOURABLE SUPREME COURT OR HIGH COURT WILL NOT BE A BINDING - CENTRAL EXCISE – CIRCULAR DATED 21.09.2015

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



Under the Central Excise law, the statute specifically provides that the Central Government is empowered to issue notifications. Basis this provision, notifications are broadly issued with respect to collection, assessment or may relate to procedural or compliance matters.

However, with respect to issue of Circulars, there is no direct or specific provision to empower the authorities. In such a scenario, there arises a question of legal sanctity of the circulars issued by the authorities. The question on relevancy of circulars becomes significant, specifically where the circulars are contrary to the judgment of the Honourable Supreme Court or High Court.

Honourable Supreme Court has in many occasions dealt with the issue on the relevancy and legal positions of the circulars issued by the authorities. In the case of Dhiren Chemical Industries (2002-TIOL-83-SC-CX), while construing interpretation of a particular entry giving exemption of duty for goods which are manufactured using the duty paid inputs, the larger bench of the Honourable Supreme Court struck down the interpretation adopted by the Revenue. Further, while concluding

the judgment, larger bench (in para 9) also made it clear that, **if the Board has issued any circulars clarifying the interpretation of the exemption notification, such circular would be binding on the Revenue regardless of the interpretation placed by the larger bench.** This actually questioned the prominence of the judgment of higher courts vis-a-vis the contrary clarification issued by the Board.

The mis-perception that took birth in terms of para 9 of judgment in the case of Dhiren Chemical Industries was given clarity in the case of Kalyani Packaging Industries (2004-TIOL-82-SC-CX) wherein it was re-clarified that the larger bench of Honourable Supreme Court in the case of Dhiren Chemical Industries is not meant to say **that circulars are binding on the authorities even if there exists a contrary judgment on the matter.**

Due to different positions held by the same court in the above two cases, the two member bench of the Honourable Supreme Court in the case of Ratan Melting & Wire Industries (2005-TIOL-41-SC-CX-LB), referred the matter relating to validity of Circulars to five member bench of Honourable Supreme Court. **The constitutional**

**bench vide the judgment reported in 231 ELT 22 held that, the circulars and interpretations issued by the Board represent merely the understanding of the statutory provisions. A circular which is contrary to the statutory provisions has really no existence in law.**

Subsequent to the law laid down by the Constitutional Bench, the Board has issued a **Circular dated 21.09.2015** clarifying that the pending cases on the issue relating to interpretation and applicability of circulars shall be disposed-off in terms of the judgment of the Constitutional Bench of Honourable Supreme Court in case of Ratan Melting & Wire Industries. Instructions have also been issued to refer the circulars to the Board where such Circulars and interpretations are contrary to the judgments of Honourable Supreme Court and the High Courts for further action.

With this, there seems to be clarity on this aspect – **Circulars issued by the Board particularly when such Circulars are contrary to the judgment of Honourable Supreme Court or High Court will not be a binding.**

# SERVICE TAX CASES

## PARTS DIGESTED – VOLUME 39, PARTS 5 & 6

CA. A. Saiprasad



### Notifications

A regional bench of CESTAT has been constituted at Allahabad having jurisdiction over appeals arising from State of UP.

Notification No. CESTAT/ New Delhi, 1/2015 dt.14.8.15.

Note: Also see CCE V. Kailash Electricals, 2015 (39) STR 949 (Allahabad), where HC issued notice to Joint Secretary, Department of Revenue, GOI, to file affidavit explaining why permanent bench at Allahabad was not working.

### Case Laws

#### Whether indivisible works contract prior to 1.6.07, liable to service tax?

CCE V. Larsen & Toubro Ltd, 2015 (39) STR 913 (SC)

The Apex Court while deciding whether indivisible works contract was liable to service tax prior to 1.6.07 (i.e. the date works contract service was inserted in FA, 94) held as follows:

1. There was no charging mechanism to tax works contract in FA, 94 (before 1.6.07).
2. The Delhi HC decision in G.D. Builders V. UOI, 2013 (32) STR 673 (Del) which held at para 36 that 'Computation of service tax is a matter of detail and not a matter relating to validity of imposition of service tax. Merely because no rules are framed, it does not follow

that tax is not leviable' has been **overruled**.

3. Aforesaid Delhi HC decision holding that service tax would be leviable on indivisible works contracts falling under erection commissioning and installation service, commercial or industrial construction service, construction of complex service is **wholly incorrect** since there was no machinery provision for deduction of value of goods transferred in execution of works.
4. SC held that exemption notifications (material portion) for aforesaid services were immaterial and had to be disregarded since levy of tax itself was not existent and hence question of exemption would not arise.
5. SC **overruled** Full Bench (i.e. 5 member bench) decision in L&T V. CST, 2015 (38) STR 277 (T-LB) and held that the **minority judgment** had arrived at correct conclusion.
6. SC held that Works Contract is different from contracts for services simplisiter. Hence works contract has to be taxed separately.
7. SC held that taxable services (i.e. 119 services u/s 65(105)) referred to pure 'service contracts' since 'taxable service' referred to 'any **service** provided' and since there was no statutory deduction for value of goods transferred in execution of

works contract in valuation provision as required by Gannon Dunkerly-II, 1993 1 SCC 364 .

Note: Also see CST V. Turbotech Precision Engineering Pvt Ltd, 2010 (18) STR 545 (Kar), wherein Karnataka HC had held that works contract was not liable to service tax prior to 1.6.07.

#### Whether loans by way of inter-corporate deposits (ICDs) u/s 301 of Companies Act, 1956 liable to service tax?

Reliance Infratel Ltd V. CST, 2015 (39) STR 829 (T)

Tribunal held that loans by way of ICDs alleged as advances for services to be rendered as not liable to tax since the amount was returned/ repaid. Tribunal noted that assessee and its subsidiary's accounts did not indicate any co-relation in payment of loan and receipt of service charges. Hence ICDs did not qualify as advance received for services to be rendered.

#### Whether service tax leviable on legal services?

Bombay Bar Association V. UOI, 2015 (39) STR J303 (SC)

The SC granted 'interim stay' against the decision of Bombay HC levying service tax on legal services. The Bombay HC had held that levy of service tax on legal profession was not violative of Articles



13, 14, 19(1)(g), 246, 265 and 268A of the constitution. The HC had further held that reverse charge mechanism applicable to legal services from 1.7.12 cannot be made retrospective since advocates cannot claim exemption as a matter of right.

*Note: For the Bombay HC decision, kindly refer P.C. Joshi V. UOI, 2015 (37) STR 6 (Bom)*

### **Whether Circulars can be issued directing adjudicating authority to adjudicate in a particular manner?**

#### **UOI V. Karvy Stock Broking Ltd., 2015 (39) STR 705 (SC)**

The Apex Court confirmed the HC decision quashing Board Circular dt.5.11.03. The HC quashed the Circular on the basis that it amounted to foreclosing discretion/judgment to be exercised by quasi-judicial authority while deciding a pending *lis*.

*Note: Proviso to S.37B of CEA, 44, which grants power to CBEC to issue circular specifically states that no orders or instructions or directions shall be issued requiring adjudicating authority to dispose a particular case in a particular manner.*

### **Whether tax collected on export of service is valid?**

*Geojit BNP Paribas Financial Services Ltd V. CCE, 2015 (39) STR 706 (Ker)*

Service Tax paid mistakenly on export of service for the period Apr 12 to Mar 13. Refund rejected on the ground of delay in filing the refund application. (beyond one year). HC grants refund on the premise that there was **no validity or legal authority for collection of tax** and hence limitation period prescribed for refund would not apply. HC has further held that payment of

service tax was on account of '**mistake of fact**' in understanding law and hence service tax wrongly paid was refundable.

*Note: Though favourable decision, author respectfully disagrees with reasoning of HC for period prior to 1.7.12. Export of service was 'leviable' to tax prior to 1.7.12 as per S.66. However service provider had option to export services without payment of tax (Rule 4) or on payment of tax (Rule 5) of Export of Service Rules, 05. Post 1.7.12 tax is leviable only on services provided in the 'taxable territory', as per S.66B. Hence argument may be taken that tax is not payable on export though rebate provisions (i.e. tax paid on export) continue in S.93A r/w R.6A(2) of STR, 94.*

### **Whether interest is payable on Credit availed but not utilized?**

*CCE V. Sun Electronic Technologies Ltd., 2015 (39) STR 709 (Kar)*

The HC has held that when Credit availed is reversed, it amounts to non-utilisation of credit and hence interest is not payable. HC held that only in cases of wrong utilisation, liability to pay interest arises.

*Note: Rule 14 of CENVAT Credit Rules, 04 has been amended w.e.f. 1.3.15 to determine credit wrongly availed and wrongly utilized. Interest as per amended rule is payable only on wrong utilisation.*

### **Whether credit could be availed on construction materials prior to 7.7.09?**

*Mundra Ports & SEZ V. CCE, 2015 (39) STR 726 (Guj)*

HC held that input credit taken on cement and steel, used in construction could be availed as credit. HC held amendment to definition of input

**excluding credit on** cement, angles, channels, CTD, TMT bars and other items used for construction of factory, building, laying of foundation etc. w.e.f. 7.7.09 was **not clarificatory (i.e. not retrospective)**.

*Note: Tribunal (Larger bench) in Vandana Global case, 2010 (253) ELT 440 (T-LB) had held the aforesaid amendment (excluding credit on construction material) as clarificatory and applicable prior to 7.7.09. HC held that Larger Bench decision based on 'conjectures and surmises'.*

### **Applicability of Service Tax to Continental Shelf and Exclusive Economic Zone**

*Greatship (India) Ltd V. CST, 2015 (39) STR 754 (Bom)*

The HC held as follows:

1. Sovereignty over Continental Shelf (CS) and Exclusive Economic Zone (EEZ) can be exercised only after notifications are issued under Maritime Zone Act, 76. Areas so notified are 'deemed' to be Indian Territory. Only then statutory provisions apply to such areas.
2. Only 'designated areas' (as declared by Min of External Affairs) in CS and EEZ, brought into ambit of service tax for first time by N.No.2/02 ST dt.1.3.02.
3. N.No.21/09 ST dt.7.7.09 (which amended N.No.2/12 ST) made service tax applicable only '**to**' installations, structures, and vessels in CS, EEZ (whether or not in designated areas).
4. N.No.14/10 ST dt.27.2.10, extensively expanded tax, made substantial changes and superseded N.No.2/12 (as amended by N.No.21/09). Services provided



**'by'** such installations, structures and vessels in CS and EEZ made exigible to tax only w.e.f. 27.2.10 by N.No.14/10.

**Whether VCES Order Appealable?**

*Narasimha Mills Pvt Ltd V. CCE, 2015 (39) STR 795 (Mad)*

The HC held that order passed by 'designated authority' under VCES is appealable before Commissioner (Appeals), if not it would tantamount to granting uncontrolled or unquestioned powers to adjudicating authority.

**Whether Mandatory Pre-Deposit can be waived by HC?**

*Sree Annapoorna Hospitality Services Pvt Ltd V. CCE, 2015 (39) STR 804 (Mad)*

HC held that mandatory pre-deposit of 7.5% / 10% cannot be reduced by HC.

**Whether service of decisions, order, summons by Speed-Post valid?**

*Premier Garment Processing V. CESTAT, 2015 (39) STR 812 (Mad)*

HC held that communication by speed post as 'mode of service' was inserted only w.e.f.10.5.13. Hence service by speed post prior to 10.5.13 not a valid mode of service.

*Note: S.37C of CEA, 44 deals with service of orders (also made applicable to service tax by S.83 of FA, 94). Prior to 10.5.13 mode of service was by registered post acknowledgement due. From 10.5.13 service by way of speed post and by 'courier' added.*

**Whether Departmental Official can refuse to sign Prescribed Authorisation Forms?**

*Sai Wardha Power Co V. UOI, 2015 (39) STR 952 (Bom)*

HC held that action of Deputy Commissioner in refusing to sign

prescribed authorization (Form A-2 for SEZs claiming exemption from service tax) was illegal and directed officer to authorize Form A-2 and grant exemption.

**Whether Recovery & Coercive Measures could be initiated by the department pending adjudication?**

*GSP Infratech Development Ltd V. UOI, 2015 (39) STR 945 (Kar)*

The HC held that freezing bank account without determining amount due and without adjudicating SCN was incorrect.

HC held that recovery provisions were invocable only after determination of tax due (i.e. adjudication).

**Whether Tribunal can dismiss appeal for default in making Pre-Deposit?**

*Top Security Ltd V. CCE, 2015 (39) STR 964 (Bom)*

The HC held that Tribunal could not have dismissed the appeal without adjudication on merits for default in making pre-deposit relying on SC decision in Balaji Steel Re-Rolling Mills, 2014 (36) STR 1201 (SC).

**Whether input service can be availed by company if cost borne by its employee?**

*Dalmia Cement Ltd V. DCCE, 2015 (39) STR 982 (Mad)*

The HC held that credit would not be available if cost is borne by employees or workers (and not company). However HC found that there was nothing on record to show that employees had borne the cost and hence allowed credit. Department was granted liberty to initiate fresh action if it was found that cost of services were borne by employees.

**Whether expenses directly incurred by service recipient includable in gross amount charged by service provider?**

*CISF V. CCE, 2015 (39) STR 994 (T)*

CISF was providing security service to ONGC. ONGC incurred expenses on telephone, rent-a-cab, insurance and health services on facilities extended to CISF by ONGC. The Tribunal on a *prima-facie* view held that such expenses were not includable in value of service provided by CISF.

**Whether service tax could be demanded on the basis of nomenclature used in books of accounts?**

*HEG Ltd V. CCE, 2015 (39) STR 826 (T)*

Tribunal held that financial support received in the form of donations and gifts, would not be exigible to tax under sponsorship service merely because it was 'accounted' as sponsorship in the absence of any actual evidence of providing sponsorship service.

*Note: Donations received are not in the nature of consideration since concept of quid-pro-quo is absent.*

**Whether there is any statutory time limit for filing stay application?**

*Vikram Hospital Pvt Ltd V. CCE, 2015 (39) STR 827 (T)*

The Tribunal held that there was no legal provision prescribing time limit for filing stay application. The Tribunal therefore held that rejection of appeal by Commissioner (Appeals) for delay in filing of application for waiver of pre-deposit was incorrect especially when stay application was filed before granting personal hearing.



# NOVO NORDISK INDIA PVT LTD. V DCIT

CA Sachin Kumar B.P.



## Facts:

The assessee is an Indian company (Subsidiary of a Foreign Co.) engaged in the business of pharmaceutical products, dealing mainly in the area of diabetes treatment drugs. The assessee was purchasing finished pharmaceutical products from its AE in Denmark and distributing the same in India (Business Category – 1). The assessee was also purchasing finished goods from an unrelated Indian private limited company and distributing these products in India (Business Category – 2).

In case of Business Category – 2 (Bus Cat – 2), the unrelated third party Indian private limited company was purchasing raw material from an AE of the assessee from Denmark, manufacturing as per the required standards, where the quality of the manufactured goods was tested by the AE supplier itself and finally the assessee was purchasing the goods from the unrelated Indian private limited company for distribution activity in India.

The assessee under its TP Study had classified itself as a distributor for the purpose of benchmarking. The TPO during assessment proceedings rejected the TP study of the assessee and proceeded to identify new comparables, classifying the function of the assessee as a manufacturer rather than as a distributor and making substantial addition.

The TPO, while making the assessment for the purpose of benchmarking considered both the purchases directly from the AE and the purchases from the unrelated Indian company classified the function of the assessee as a manufacturer.

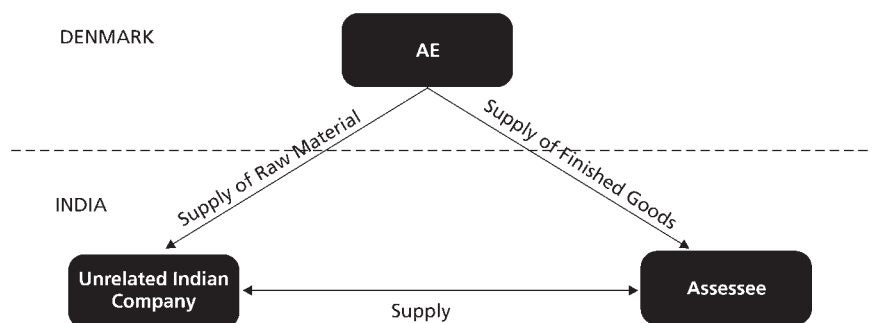
The assessee before the ITAT argued among other things that the transactions between the unrelated Indian company and the assessee do not fall within the ambit of an international transaction as both the parties are residents in India, therefore the transfer pricing adjustment on transactions between the assessee and the unrelated Indian company are unwarranted and in its support

the assessee supplied the decisions in Swarnadhara IJMII Integrated Township Development Co. Pvt Ltd., Hyd ITAT – 2012, and Kodak India Pvt Ltd., Mum ITAT – 2012.

The Departmental Representative argued that the transactions between the assessee and the unrelated Indian company fall within the ambit of deemed International transaction by virtue of Sec. 92B(2) of the Income – tax Act, 1961 (the Act) and in its support evidenced the agreements between the AE situated in Denmark and the unrelated Indian company, agreements between the assessee and the unrelated Indian company, the agreements between the assessee and the AE in Denmark.

## Held:

The Bangalore tribunal after a detailed analysis of the facts of the case and the agreements, held that since all the agreements (mentioned supra) between parties refer to each other and specifically incorporate the terms of one agreement into the other, the parties to the arrangement are the assessee, the AE situated in Denmark and the unrelated Indian company. Since one of the parties to the transaction is a non – resident, the conditions specified in Sec. 92B(1) of the Act are satisfied and the deeming provision of Sec. 92B(2) of the Act is not applicable to the impugned transactions; nevertheless, by virtue of falling within the scope of Sec. 92B(1)



of the Act, the TPO may make an adjustment under the transfer pricing provisions.

The tribunal further held that for the purpose of benchmarking only the transactions of direct purchases by the assessee from its foreign AE and purchases by the unrelated Indian company and the AE of the assessee need to be considered. The purchases between the assessee and the unrelated Indian company do not warrant adjustment under the transfer pricing provisions as the same will not result in tax base erosion.

The tribunal, while adjudicating on the matter of functional classification of the assessee for the transfer pricing study held that the assessee had to be classified as a manufacturer for the purpose of benchmarking the purchases between the AE situated in Denmark and the unrelated Indian company, and it has to be classified as a trader for the purpose of benchmarking the purchases directly made by the assessee from its AE situated in Denmark.

**Observation:**

This decision of the tribunal has poured light on situations where the revenue authorities can take a holistic view to proceed with charging tax based on the substance of the transaction ignoring the form where through concerted action or arrangement it is brought out in a form which apparently is intended and framed in such a manner as not to attract the provisions of Sec. 92B of the Act.

**Lionbridge Technologies Pvt Ltd. v ITO (International Taxation) (TDS)**

**Facts:**

The assessee is engaged in the business of providing information technology

services. In the current case, the assessee has made a payment for purchase of standard off the shelf software to its group company Lionbridge Technologies Inc., USA.

Lionbridge Technologies Inc., USA has entered into an agreement with Microsoft Inc., USA and Skillsoft (vendors) for the purchase of standard off the shelves software to be used by the Lionbridge entities across the globe. Lionbridge USA has made the payment to the vendors for the purchase of the software, which in turn was reimbursed by the various group entities including the assessee who are using the software. The cost of the software has been allocated amongst the various group entities based on headcount (number of desktops at each location) on no mark – up basis.

The assessee while making payment to its group company Lionbridge Technologies Inc., has not made any tax deduction at source treating the payment as re-imbursement of cost. The revenue authorities on the other hand have taken a stand that the assessee should have withheld the tax on the amount remitted to Lionbridge Inc., USA as such a payment amounts to payment towards ‘royalty’.

**Held:**

After hearing the rival contention and also perusing the relevant finding given in the impugned order, the tribunal has made the following observations.

Lionbridge Inc., USA has entered into an agreement with vendors like Microsoft Inc. for the purchase of Standard off Shelves Software to be used by Lionbridge group entities across the globe. The cost of the purchase of the software has been allocated amongst various group

entities based on allocation key of number of desktop in each office. The said allocation was made at cost and no mark-up was charged. Accordingly, all the group entities had reimbursed their share of cost to the Lionbridge USA. In support, the copy of the agreement along with invoices by the Vendors and allocation key has been placed in the paper book. It has not been disputed that the cost of reimbursement paid to Lionbridge USA is not chargeable to tax in India. If that is so, then assessee was not required to withhold the tax u/s 195 and this proposition is well supported by a decision of Hon’ble Supreme Court in the case of GE India Technology Centre P Ltd. Secondly, here in this case, it is not a question where Lionbridge US has developed software which has been given for use to the assessee. The software has been purchased from Microsoft, the cost of which has been distributed amongst all the group entities. It is pure case of reimbursement of cost and admittedly, there is no mark-up. Accordingly, there was no liability to deduct TDS on such reimbursement of cost.

**Observation:**

This decision of the tribunal reinforces the well settled principle that where reimbursement of costs to non - resident group companies is made in which there is no element of income chargeable to tax, there is no obligation on the assessee to deduct tax at source.

**DCIT v AVL Technical Centre Pvt Ltd.**

**Facts:**

The assessee is an Indian Company and part of the AVL group (Austria). AVL group AVL is the world’s largest privately owned and independent company specialized in the design and



development of internal combustion engines. The assessee serves as a single window facility offering a broad range of powertrain design development and testing services to the Indian automotive industry. The worldwide network of AVLTC and AVL's instrumentation & test systems divisions provides additional support.

In the current case, the assessee's transfer pricing study has been rejected and a fresh study has been undertaken by the departmental authorities classifying the assessee as a "technical support service provider". The assessee's main contention is: owing to the intensity of its functions with its AE's being different from its functions with non-AE's, it cannot be classified as a technical support service provider. In turn, the comparables used by the

Ld. TPO are all engaged in high-end technical consultancy services and hence reflect high margins commensurate with the functions provided by them. The business model of AVLTC is such that it can cater to limited requirements of the ultimate customer.

**Held:**

Ld. AR has taken the argument that the intensity of functions with the non-AEs are higher than the intensity of functions with the AE's; the nuanced difference, if any, on the business model of the assessee has to be seen. This difference in the intensity of functions is stated to be impacting the characterization of the business model itself which difference is stated to be not considered either by the DRP or the TPO, a position which is borne out from the record. Thus consideration

of the difference in the intensity of functions with non-AEs as comparable to lesser intensity of function with AE's also, as per judicial precedent on facts, is warranted - **Bose Corporation of India Pvt Ltd. v ACIT (2014) 150 ITD Delhi.**

**Observation:**

In the present case though the assessee is providing technical services, the contention of the assessee is that it cannot be compared against full-fledged technical consultancy providers owing to the intensity of the functions performed by the assessee vis-à-vis its AE's. This decision of the tribunal highlights the importance of determining and considering the intensity of functions undertaken by the assessee while conducting a transfer pricing study.

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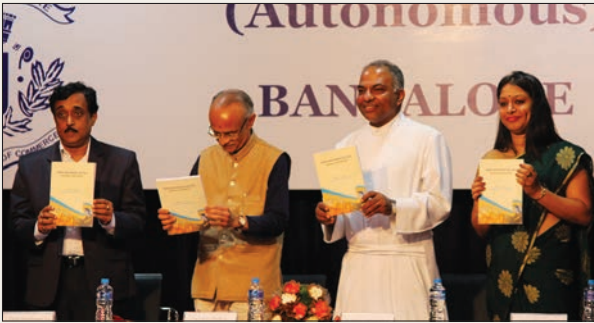
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Group photo with the participants

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CA K. Raghu, Imm Past President - ICAI and IFAC Board Member greeting Rachel Grimes, Vice President of IFAC in New York on 9th September 2015.



CA K. Raghu, Imm.Past President - ICAI and IFAC Board Member is seen along with IFAC Board Members in New York on 9th September 2015.

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