The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

Bangalore Branch of SIRC e-Newsletter

English Monthly

Volume 05 | Issue 5 | December, 2016 | Pages : 33

For Private Circulation only

Two Day Conference on

GST

Parivarthan

Embracing the Change

17th & 18th December 2016
Saturday & Sunday

12 hrs CPE

organized by

Bangalore Branch of SIRC of ICAI

Venue

RG Royal Convention Hall
No 19, Near ISKCON Temple, Behind Ravindu Toyota,
Near Mysore Sandal Soap Factory, Mahalakshmi Layout, Bangalore 560086.

- **FEMA in Taxation & in Demonetisation Saga** on **24th December 2016**
- **Technology Summit** on **7th January 2017**

pragathi
Serve to grow Grow to serve

Chairman's Communique . . .

Dear Professional Friends,

In the present business scenario, all of us are very busy with our work to cater to the needs of the ever increasing expectations of our clients. Of course time will not wait for anybody and with all our busy activities the calendar year 2016 has come to an end. December always reminds us to make sure whether the CPE requirements as per ICAI guidelines are complied by the Members at large.

Recent changes in the field of Accounting, Company Law and Taxation created a challenge for the Accountancy Profession and it has also provided new opportunities to capitalise on. Hence it is imperative on our part to update our knowledge about various aspects and provisions of different laws.

Taking these factors into consideration, we Bangalore Branch has organised many significant programmes of professional interest in this month.

The month ahead - Dec 2016

Two Day Conference on GST: Parivarthan – Embracing the Change

We all know that the Indian Economy is buoyant about the implementation of GST in the month of April 2017. To ensure smooth transition, it is very much essential on our part to keep abreast with the various issues foreseen while executing the law, paving way for a smooth transition and we have to gear up and welcome the dawn of new Taxation era.

GST will have a far reaching impact on almost all the aspects of the business operations in the country, for instance, pricing of products and services, supply chain optimization, IT, Accounting and Tax compliance systems. GST will create a single unified Indian Market to make our Indian Economy still stronger, abolishing the existing taxes such as Excise duty, service Tax, CST etc. In a way implementation of GST will enable India to compete globally paving way for further economic growth and development of our great nation.

Considering all these factors, we have to educate ourselves and our clients about the various issues pertaining to the Implementation of GST.

Hence a **Two day Conference on GST: "Parivarthan – Embracing the change" is being organised by Bangalore Branch of SIRC of ICAI on 17th & 18th Dec 2016 at R G Royal Convention Hall, No 19/1, near ISKCON Temple, Mahalakshmi Layout, Bangalore with 12 hrs CPE Credit**. We have invited expert speakers from the domain of GST to present papers for this mega event. Members are requested to participate in large numbers and make this year-end conference a grand success. The detail of the programme is given elsewhere in the newsletter.

National Convention for CA Students- UTKARSH- Elevation to Excellence

Motivating and supporting students of any profession to examine their experience before applying it practically is important. In this regard the efforts taken by the ICAI our Alma mater in moulding the future CAs is remarkable. In this regard a two day National convention for our students – **UTKARSH – Elevation to excellence is being organised by BOS, ICAI and Bangalore Branch of SIRC of ICAI and SICASA of Bangalore Branch on 10th & 11th Dec 2016 at Sophia School Auditorium, Near Chalukya Hotel, Race Course Road Bangalore,** the details of which are given elsewhere in the newsletter. We request all our professional friends to nominate maximum number of students for this national convention which will be a great value addition to them and make this event a grand success.

Other than these two mega events, our regular study circle meetings and Tax clinics also will be held for the benefit of the Members.

The month that was – Nov 2016

The Seminar on Direct Taxes- Search, Seizure, settlement & penalty provisions was very well received by the Members. The deliberations during the seminar by the stalwarts added great value for the programme.

The special and unique event organised on "self-defence and safety" which is the need of the hour in association with Parihar, Bangalore Commissioner of Police & Team Members was also of immense value to the delegates. The sports and Talent meet conducted in association with KSCAA and the cricket match with the Income Tax officers, in fact energised the participants to discharge their duties most diligently.

To put in a nut shell, Dec month is with innumerable significant programmes and members are requested to participate and get benefited.

Wishing you merry Christmas and a Happy New Year 2017.

With warm regards

Pampanna B E

CA. Pampanna B E
Chairman

Two Day Conference on GST

Parivarthan

Embracing the Change

12 hrs CPE

17th & 18th December 2016 | Saturday & Sunday

RG Royal Convention Hall
Mahalakshmi Layout, Bangalore 560086

organized by

Bangalore Branch of SIRC of ICAI

Saturday, 17th December 2016

08.30am Registration

09.45am **INAUGURAL SESSION**

Chief Guest:
Shri D P Nagendra Kumar
Pr. Additional Director General
DGCEI Bengaluru

Guest of Honour:
CA K Raghu
Past President, ICAI

10.30am **I TECHNICAL SESSION**

Brief Concept of Model GST Law including Concept of CGST, SGST & IGST including Supply
CA Pankaj S Jain, *New Delhi*

11.45am Tea Break

12.00pm **II TECHNICAL SESSION**

Levy & Composition, Exemption from Tax and Place of Supply & Time of Supply of Goods & Services
CA Jatin Christopher, *Bangalore*

01.30pm Lunch Break

02.30pm **III TECHNICAL SESSION**

Valuation of Taxable Supply & Valuation Rules (including related case law)
Shri Rohan Shah, *Advocate, Mumbai*

03.45pm Tea Break

04.00pm **IV TECHNICAL SESSION**

Place of Supply of Goods and Services
CA N R Badrinath, *Bangalore*

Tax Credit (Capital goods, Services & input) including Matching Concept
CA Kalyan Kumar, *Bangalore*

Sunday, 18th December 2016

09.45am **V TECHNICAL SESSION**

Brief Concept of IGST Act
CA Vishnumurthy S, *Bangalore*

11.00am Tea Break

11.15am **VI TECHNICAL SESSION**

Registrations: Law & Business Processes & Filing of Returns, Matching of Input Tax Credit
CA. Ramakrishna Sangu, *Visakhapatnam*

01.00pm Lunch Break

02.00pm **VII TECHNICAL SESSION**

JOB Work, E-Commerce Transaction Under GST
CA. Sandesh Kutnikar, *Bangalore*

03.15pm Tea Break

03.30pm **PANEL DISCUSSION**

Important Transitional Provision & Issues under the Revised Model GST Law – Nov 2016

Moderator:
CA S Venkataramani, *Bangalore*

Panelists:
CA Madhukar N Hiregange
Central Council Member & Chairman, IDT Committee, ICAI
CA Jatin Christopher, *Bangalore*
Shri K S Naveen Kumar, *Advocate, Bangalore*
CA Ramakrishna Sangu, *Visakhapatnam*

DELEGATE FEE

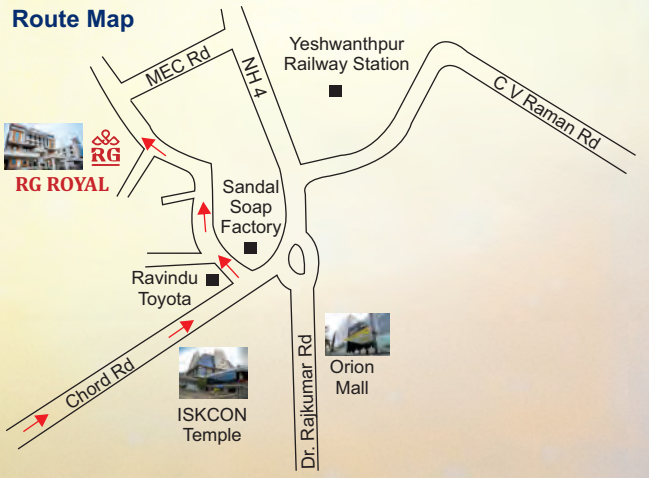
Early Bird Registrations : Rs. 2500/- (on or before 05th Dec 2016)
For Members : Rs. 3000/-
Non Members : Rs.5000/- + Service Tax

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

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

Online Registration is Available

Route Map



Bangalore Branch of SIRC of The Institute of Chartered Accountants of India

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Technology Summit

On Saturday, **07th January 2017** | **The Chancery Pavilion Bangalore**
Time: **09.00am to 5.45pm** | Residency Road, Bangalore - 560 025

ICAI, Bangalore Branch is pleased to organise the first-ever **"Technology Summit with the theme: Adapting Disruptive Digital Technologies – CAs Leading the Change"** to empower CAs with new insights and perspectives. The summit will have presentations by leading exponents of technology who will share ideas on evolving technology and its impact and how CAs can be at the leading edge of technology. The summit is focused on harnessing the power of existing and emerging technology to enable CAs to apply this digital power not only in their own area of work but also to provide assurance and advisory services for clients.

6 hrs CPE

Timings	Topics	Speakers
09.00am to 09.45am	Registration	
09.45am to 10.30am	Inauguration and Key Note address on "Digital transformation through IT innovation – India Leading the Change"	**Shri. Sharad Sharma** *Co-founder, iSPIRT*
10.30am to 11.15am	Automating Analytics using Artificial Intelligence	**CA Babu Jayendran**
11.15am to 11.45am	Refreshment break	
11.45am to 12.30pm	Automated Audit Analytics and BI Solutions	**CA A. Rafeq**
12.30pm to 01.15pm	Automation solutions for Paper-less office	**CA Guru Prasad**
01.15pm to 02.00pm	Lunch Break	
02.00pm to 02.45pm	Mobile Apps and Social Media for the digital CA	**CA B.P. Sachin Kumar**
02.45pm to 03.30pm	Business Models and Transactions of the Digital economy – auditing challenges	**CA R. Vittal Raj**, *Chennai*
03.30pm to 04.00 pm	Refreshment break	
04.00pm to 04.45pm	Protecting digital data through Cyber Security	**CA E. Narasimhan**
04.45pm to 05.45pm	Panel discussion on Emerging Technology Frontiers and challenges	*Moderator* : **CA A.Rafeq** Panelists : **Mrs. Deepa Seshadri** **CA Rajiv Gupta** **CA R Vittal Raj**, *Chennai* **CA Ajay Gupta**

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

CA. A. Rafeq
Co-ordinator

CA. Shravan Guduthur
Secretary
Bangalore Branch of SIRC of ICAI

DELEGATE FEES FOR MEMBERS: ₹ 1750/-
NON-MEMBERS: ₹ 2500/- + SERVICE TAX

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

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

CALENDAR OF EVENTS - DECEMBER 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
02.12.2016 Friday **5.00pm onwards**	***Sri P R Singhvi Endowment Lecture*** Intellectual Terrorism *along with Karnataka State Chartered Accountants Association* **CA M R Venkatesh** **VENUE:** Branch Premises 	——
03.12.2016 Saturday **6.00pm to 8.00pm**	***Study Circle Meet*** Taxation of Undisclosed Income under "PRADHAN MANTRI GARIB KALYAN YOJANA 2016 and "Analysis of Taxation Laws (second Amendment) Bill 2016" and its impact **CA. H Ganpatlal Kawad** **VENUE:** Branch Premises 	**2 hrs**
07.12.2016 Wednesday **6.00pm to 8.00pm**	***Study Circle Meet*** Issues & concerns under KVAT Audit **CA. Annapurna D Kabra** **VENUE:** Branch Premises 	**2 hrs**
08.12.2016 Thursday	***One day Symposium on*** Emerging Issues in Accounting *in association with Global Academy of Technology* Registration Fee: **Rs.200/-** **VENUE:** Rajarajeshwari Nagar, Ideal Homes Township, Bangalore- 560098, Email: mba@gat.ac.in	——
09.12.2016 Friday **6.00pm to 8.00pm**	***Tax Clinic - Direct Taxes*** Update on recent Direct Taxes decisions **CA. Sagar Nagaraj** **VENUE:** Branch Premises 	**2 hrs**
14.12.2016 Wednesday **6.00pm to 8.00pm**	***Study Circle Meet*** Anti-Profiteering and Other Miscellaneous Provisions under GST **CA Mohan R Lavi** **VENUE:** Branch Premises 	**2 hrs**
17.12.2016 18.12.2016 Sat. & Sun. **6.00pm to 8.00pm**	**Two Day Conference on** **GST -"Parivarthan- Embracing the Change"** **VENUE:** R G Royal Convention Hall, No 19/1, Near ISKCON Temple, Mahalakshmi Layout, Bangalore-560086. *Details in page No. 3*	**12 hrs**
21.12.2016 Wednesday **6.00pm to 8.00pm**	***Study Circle Meet*** Impact of newly enacted legislations - 1. The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act 2. Benami Transactions Prohibition Act and Related Rules 3. Indian Trusts (Amendment) Act, 2016 **CA. Sandeep Jhunjhunwala** **VENUE:** Branch Premises 	**2 hrs**

CALENDAR OF EVENTS - DECEMBER 2016 & JANUARY 2017

Date/Day/ Time	Topic / Speaker	CPE Credit
23.12.2016 Friday **6.00pm to 8.00pm**	***Tax Clinic - Indirect Taxes*** Recent Amendments and Important Case Laws in Indirect Taxes **CA Madhava Yathigiri** **VENUE:** Branch Premises 	2 hrs
24.12.2016 Saturday **5.00pm to 8.00pm**	***Study Circle Meet*** FEMA in Taxation & in Demonetisation Saga - FEMA viz a viz customs, Excise, Service Tax & GST - FEMA & Demonetisation - FEMA & Black into White **CA Vivek Mallya** Delegate Fees: **Rs. 250/-** **VENUE:** Karnataka State Hockey Association, Rhenius Street, Langford Town, Bangalore- 560025 	3 hrs
28.12.2016 Wednesday **6.00pm to 8.00pm**	***Study Circle Meet*** Chartered Accountants as Guardians of Governance **CS J Sundharesan** **VENUE:** Branch Premises 	2 hrs
04.01.2017 Wednesday **6.00pm to 8.00pm**	***Study Circle Meet*** Inbound Investments – structuring, funding instruments and recent changes **CA Amith Raj & CA Krishna Prasad** **VENUE:** Branch Premises  	2 hrs
07.01.2017 Saturday **9.00am to 5.45pm**	**Technology Summit** Co-ordinator: **CA A Rafeq** Delegate Fee: **Rs 1750/-** *Details in page No. 4* **VENUE:** The Chancery Pavilion Hotel, #135, Residency Road, Bangalore - 560 025 	6 hrs
11.01.2017 Wednesday **6.00pm to 8.00pm**	***Study Circle Meet*** Latest Developments in Assessment, Reassessment and Revision **CA. Narendra Jain** **VENUE:** Branch Premises 	2 hrs
13.01.2017 Friday **6.00pm to 8.00pm**	***Tax Clinic - Direct Taxes*** TDS: Recent updates & amendments **CA D Tarun Kumar Jain** **VENUE:** Branch Premises 	2 hrs

EDITOR :
CA. PAMPANNA B.E.

SUB EDITOR :
CA. SHRAVAN GUDUTHUR

IMPORTANT DATES TO REMEMBER DURING THE MONTH OF DECEMBER 2016

Due Date	Statute	Compliance
5th December 2016	Excise	Monthly Payment of Excise duty for the month of November 2016
	Service Tax	Monthly/Quarterly Payment of Service tax for the month for November 2016
6th December 2016	Excise	Monthly E- Payment of Excise duty for the month of November 2016
	Service Tax	Monthly/Quarterly E- Payment of Service Tax for the month of November 2016
7th December 2016	Income Tax	Deposit of Tax deducted / collected during November 2016.
10th December 2016	Excise	Monthly Performance Reports by Units in EOU, STP, SEZ for November 2016.
15th December 2016	VAT	Payment and filing of VAT 120 under KVAT Laws for month ended November 2016 (for Composition Dealers).
		Quarterly Payment and filing of VAT 100 under KVAT Laws for quarter ended November 2016.
	Provident Fund	Payment of EPF Contribution for November 2016 (No grace days).
		Return of Employees Qualifying to EPF during November 2016.
		Consolidated Statement of Dues and Remittances under EPF and EDLI For Nov. 2016.
		Monthly Returns of Employees Joined the Organisation for November 2016.
		Monthly Returns of Employees left the Organisation for November 2016.
	Income Tax	Payment of Advance tax (75% of tax on total income) for all assessees for the A.Y 2017-18.
20th December 2016	VAT	Monthly Returns (VAT 100) and Payment of CST and VAT Collected/payable During November 2016.
	Professional Tax	Monthly Returns and Payment of PT Deducted During November 2016.
21st December 2016	ESI	Deposit of ESI Contribution and Collections of November 2016 to the credit of ESI Corporation.
31st December 2016	VAT	Audited Statement of Account in Form VAT 240 under Section 31(4) of Karnataka VAT Act, 2003
	Income Tax	Submission of Form 15G/15H received during 1.07.2016 to 30.09.2016 by deductors. (Due date was extended vide CBDT Notification No.10/2016 dated 31/08/2016)

KIND ATTN : MEMBERS

Re : An Interactive Meeting with Elected Council and Regional Council Members from Bangalore

Members are hereby informed that an interactive Meet has been arranged to a) Report on actions taken/ not taken b) listen to various issues relating toMembers queries and suggestions on various matters affecting our profession including administrative issues and grievances at the Branch/Regional /Central levels on **Wednesday, the 21st December 2016 at 6 pm** at the Institute Premises at Vasanth Nagar.

AGENDA

1. Elected members present their report on what they set out to do, what they have been able to do and what is to be done - starting with Central Council, the Regional Council and Chairman Bangalore Branch.
2. Members questions & answers session.
3. Fixing up the next date of the meet.

Members are also encouraged to send their queries / suggestions/ ideas / grievances pertaining to the profession in advance.

AUDITING IND AS FINANCIAL STATEMENTS - FAIR VALUE OF ASSETS AND LIABILITIES

CA Mohan R Lavi

It is not going to be long before audit firms have to audit financial statements as per Ind AS and present their audit report. Though the basic audit procedures would remain the same, auditors' would need to focus on assessing the judgements made by the management as Ind AS since Ind AS appears to provide a bit more liberty to managements on their judgements. This arises due to three main components of Ind AS- the reliance on substance over form, doing away with the matching concept and using fair value as the criteria for measurement in most cases. Fair Value measurement could be an area of critical importance in an Ind AS Audit.

Summary of Ind AS 113- Fair Value Measurement

Fair Value Definition

The Standard defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

Asset or liability

A fair value measurement is for a particular asset or liability. Therefore, when measuring fair value an entity shall take into account the characteristics of the asset or liability if market participants would take those characteristics into account when pricing the asset or liability at the measurement date. Such characteristics include, the condition and location of the asset; and restrictions, if any, on the sale or use of the asset.

The transaction

A fair value measurement assumes that the asset or liability is exchanged in an orderly transaction between market participants to sell the asset or transfer the liability at the measurement date under current market conditions. A fair value measurement assumes that the transaction to sell the asset or transfer the liability takes place either, in the principal market for the asset or liability or in the absence of a principal market, in the most advantageous market for the asset or liability.

Market participants

An entity shall measure the fair value of an asset or a liability using the assumptions that market participants would use when pricing the asset or liability, assuming that market participants act in their best economic interest.

The price

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction in the principal (or most advantageous) market at the measurement date under current market conditions (ie an exit price) regardless of whether that price is directly observable or estimated using another valuation technique.

Application to non-financial assets

A fair value measurement of a non-financial asset takes into account a market participant's ability to generate economic benefits by using the asset in its highest and best use or by selling it to another market participant that would use the asset in its highest and best use. The highest and best use of a nonfinancial asset takes into account the use of the asset that is physically possible, legally permissible and financially feasible.

Application to liabilities and an entity's own equity instruments

A fair value measurement assumes that a financial or non-financial liability or an entity's own equity instrument (eg equity interests issued as consideration in a business combination) is transferred to a market participant at the measurement date. The transfer of a liability or an entity's own equity instrument assumes the following:

(a) A liability would remain outstanding and the market participant transferee would be required to fulfil the obligation. The liability would not be settled with the counterparty or otherwise extinguished on the measurement date.

(b) An entity's own equity instrument would remain outstanding and the market participant transferee would take on the rights and responsibilities

associated with the instrument. The instrument would not be cancelled or otherwise extinguished on the measurement date.

Liabilities and equity instruments held by other parties as assets

When a quoted price for the transfer of an identical or a similar liability or entity's own equity instrument is not available and the identical item is held by another party as an asset, an entity shall measure the fair value of the liability or equity instrument from the perspective of a market participant that holds the identical item as an asset at the measurement date.

Liabilities and equity instruments not held by other parties as assets

When a quoted price for the transfer of an identical or a similar liability or entity's own equity instrument is not available and the identical item is not held by another party as an asset, an entity shall measure the fair value of the liability or equity instrument using a valuation technique from the perspective of a market participant that owes the liability or has issued the claim on equity.

Valuation techniques

An entity shall use valuation techniques that are appropriate in the circumstances and for which sufficient data are available to measure fair value, maximising the use of relevant observable inputs and minimising the use of unobservable inputs.

Three widely used valuation techniques are the market approach, the cost approach and the income approach.

Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the entity can access at the measurement date.

Level 2 inputs are inputs other than quoted prices included within Level 1that are observable for the asset or liability, either directly or indirectly.

Level 3 inputs are unobservable inputs for the asset or liability.

Audit Techniques

It is clear that in case there is a quoted market price for the asset or liability that needs to be valued, arriving at the Fair Value should not pose any problem at all. We would take the unadjusted quoted market price as Level 1 input and use that as the fair value. In case there are assets or liabilities that fall into either Level 2 or Level 3 of the fair value hierarchy, ascertaining the fair value could pose a bit of a challenge. In such cases, it is advisable that the auditor obtains guidance from SA 620 – Using the work of an Auditors' Expert.

Para A1 of SA 620 illustrates that using the work of an Auditors's Expert may be necessary to value complex financial instruments. This can be illustrated by way of an example. Let us assume that an entity being audited has a credit default swap (CDS), which is not quoted. As per the business objective mandate in Ind AS 109, the CDS has to be fair valued through profit and loss. As this is an unquoted financial instrument, the management would have had some basis to arrive at the Fair Value- in all probability they would have appointed an Expert for this purpose. In case the management has appointed an Expert, Para A9 of SA 620 states that the auditor's decision on whether to use an auditor's expert may also be influenced by such factors as:

- The nature, scope and objectives of the management's expert's work.
- Whether the management's expert is employed by the entity, or is a party engaged by it to provide relevant services.
- The extent to which management can exercise control or influence over the work of the management's expert.
- The management's expert's competence and capabilities.
- Whether the management's expert is subject to technical performance standards or other professional or industry requirements.
- Any controls within the entity over the management's expert's work.

It is possible that on assessing the above factors, the auditor has reasonable assurance on the fair value arrived at. In case he does not have this assurance, he would have to use the work of an Expert who is independent of the Expert appointed by the management. In case there is a difference between the Fair Value arrived at by the Auditors' Expert and the Management's Expert, an amicable solution has to be found out.

Conclusion

The first audit of Ind AS financial statements is expected to take a lot of time and effort. There would also be multiple discussions with the management to arrive at a consensus on judgements made. In addition, Ind AS 1 categorically prohibits rectification of wrong accounting policies by disclosure in the Notes on Accounts- a tried and tested technique in many instances.

COMPANY LAW - UPDATES – NOVEMBER 2016

CA K. Gururaj Acharya

1. MCA Updates

1.1 Co's (Registration Offices and Fees) 2nd Amendment Rules, 2016 *[notified on 07.11.2016]*

a. AOC-4 filed by ***Co's other than OPC's and Small Co*'** to be **pre-certified by CA / CS / CMA** in whole-time practice

- *Prior to this amendment, AOC-4 of Co's other than OPC and Small Co's could be certified only by CA in whole-time practice.*
- *The manner in which the forms are to be certified after the above amendment is as under -*

Type of Company	Professional Pre-Certification	
	AOC – 4	MGT – 7
i. **OPC and Small Co's**	-	-
ii. **Other Co's**	CA/CS/CMA in whole time practice *(prior to amendment – only by CA in WTP)* *(Ref. R. 8(12) of Co's (Reg. Offices & Fees) Rules)*	CS / CS in practice *[Ref. S. 92(1)]*

Author's Note – Now that CS/CMA are allowed to pre-certify AOC-4 for Co's (other than OPC & Small Co's), it would be fair on ICAI's part to make a representation to MCA to allow CA's in WTP to pre-certify MGT-7 for such Co's.

b. Reg. DIN related fees -

Application for	OPC & Small Co's	Other than OPC & Small Co's
Allotment of DIN	Rs. 500 (prior to amendment – Rs. NIL)	Rs. 500 (prior to amendment – Rs. 500)
Surrender of DIN	Rs. 1,000 (prior to amendment – not specified)	Rs. 1,000 (prior to amendment – not specified)

1.2 Amendment to Sch. II (Depreciation) WEF Accounting Period commencing on / after 01.04.2016

[Notfn dtd 17.11.2016]

Under Part A of Para 3 -

(ii) For Intangible Assets, ~~the provisions of the Accounting Standards applicable for the time being in force~~ **the relevant Indian Accounting Standards (Ind AS)** shall apply. **Where a company is not required to comply with the Indian Accounting Standards (Ind AS), it shall comply with relevant Accounting Standards under Companies (Accounting Standards) Rules, 2006.** Except in case of intangible assets (Toll Roads) created under 'Build, Operate and Transfer', …..

(Struck-off portion deleted and underlined portion now added)

Author's Notes –

The "useful lives" to be considered for Depreciation Calculation in case of *Tangible Assets* are specified in Part C of Schedule II to Co's Act 2013.

As regards Intangible Assets, Para 3(ii) of Part A of Schedule II of

Co's Act 2013, specified that the provisions of Accounting Standards for time being in force shall apply. Sch II came into force WEF 01.04.2014 and was amended WEF 01.04.2014 vide Notfn. GSR 237(E) dtd 31.03.2014 and GSR 627(E) dtd. 29.08.2014. It may be noted that on the date Sch II came into force (i.e 31.03.2014), the provisions contained in Companies (Accounting Standards) Rules 2006 were the only set of Accounting Standards notified and in force.

However, with the notification of Co's (Indian Accounting Standards) Rules 2015 on 16th Feb 2015, two sets of Accounting Standards have become applicable WEF 01.04.2015 leading to a confusion as to which Accounting Standard needs to be followed for "Intangible Assets" for the purposes of Sch II, i.e AS – 26 or IND AS – 38.

The above amendment seeks to clarify that as regards "Intangible Assets" for purposes Sch II, IND AS - 38 shall apply for Class Co's (who are required to follow IND AS) and for Other Co's, AS – 26 shall apply.

1.3 Others -

a. Court of District and Sessions Judge, Shillong with jurisdiction over the State of Meghalaya designated as **Special Court** for the purposes of providing Speedy Trial of offences punishable under Co's Act 2013 with imprisonment of ≥ 2 years

(Notification dated 17.11.2016)

b. IEPF Authority *(Recruitment, Salary and other Terms and Conditions of Service Officers and other Employees)*, Rules 2016 *[approved by the Competent Authority yet to be legislatively vetted]* notified on 04.11.2016 – Rules shall come into force on the date of publication in Official Gazette.

2. ICAI Updates

2.1 Exposure Draft on **Amendments to Ind AS 7 - Statement of Cash Flows** issued on 03.11.2016

(last date to comment - 02.12.2016)

2.2 FAQ's on Elaboration of terms *'infrequent number of sales'* or *'insignificant in value'* used in **Ind AS 109 – Financial Instruments** issued (03.11.2016)

2.3 Knowledge Booklet IV: **Quality Internal Audit Reports** issued by the Internal Audit Standards Board of ICAI on 09.11.2016

The Booklet contains 11 pages covering a brief write-up on Internal Audit reports, Important Aspects of Quality Reporting and thrust on TECHNOLOGY – as AN IMPORTANT TOOL for Auditing.

2.4 FAQ's on **Dividend Distribution Tax** issued on 03.11.2016

Response on the following Question given -

What are the presentation requirements as per Ind AS for dividend and dividend distribution tax thereon, if an entity has issued certain financial instruments that are classified as debt as per the provisions of Ind AS 32, Financial Instruments: Presentation? What would be the presentation requirements in this regard, if the financial instruments issued are classified as equity or if these are compound financial instruments and bifurcated into debt and equity?

2.5 **Withdrawal of AS – 30, 31 & 32 (Reg. Financial Instruments)**

The Council at its 360th meeting held on 07-09/11/2016, noted that with implementation of Ind-AS in India, many Co's will be preparing their Financial Statements as per Ind-AS, which includes Standards on Financial Instruments which are based on current IFRS/ IAS issued by IASB. In view of the above, there may not be any users of AS30 - Financial Instruments: Recognition & Measurement, AS31 - Financial Instruments: Presentation and AS32 - Financial Instruments: Disclosures, and retaining these Accounting Standards will create confusion.

Accordingly, the Council decided to withdraw AS-30, 31 & 32.

2.6 **Clarification on Auditor's Rotation under SQC 1 vis-à-vis Companies Act, 2013**

MCA, vide "Removal of Difficulty" order dtd 30.06.2016, had clarified that the Auditors of Class Co's as on 01.04.2014, who were to have the maximum extension of 3 years from 01.04.2014, could continue to serve as auditors upto the AGM date pursuant to FY 2016-17 and need not retire on completion of 3 years from 01.04.2014 i.e 31.03.2017 or during the AGM for 2015-16.

However, it may be noted that in case of Listed Co's, Para 27 of SQC-1, applicable WEF 01.04.2009, requires rotation of engagement partner after a pre-defined period *normally not more than seven years*. The dead-line under SQC-1 for Auditor's Rotation would therefore be 31.03.2016.

On consideration of the matter, the Council of ICAI decided to issue a clarification and provide relaxation in the requirements of rotation of engagement partner as given in Para 27 of SQC 1 to be aligned with the rotation of the Audit firm in respect of those Audit firms which would be rotated by Co's in their first AGM held after 31st March 2017. **Thereby for those companies where the rotation of engagement partner as per SQC 1 is applicable from April 1, 2016, it will now be applicable from the date of the first AGM of the company held after 31st March 2017**.

2.7 **Reg. Constitution of Expert Group to look into issues related to Audit firms**

MCA, vide order dtd. 30.09.2016, had constituted an Expert group to examine the representations made by several audit firms about adverse impacts on Indian audit firms due to the structuring of certain audit firms leading to circumvention of various regulations, manner in which auditor rotation requirements is being implemented by companies, and imposition of restrictive conditions by foreign investors with regard to auditor appointment by companies

In this regard, ICAI has represented to the Expert Group that **Joint Audit** is a familiar concept in India followed by large PSU's, Insurance Co's, Public Sector Banks and Large Pvt. Sector Co's / groups and that this has stood the test of time too. Also at its 360th meeting, the ICAI Council had considered the feasibility of Joint Audit and decided to recommend to the Govt. that *Joint Audit should be extended to Listed entities beyond a particular threshold based on Net Worth, Turnover, Profit* and also to such entities where there are restrictive covenants for appointment of certain Audit Firms.

ICAI's representation was followed by a consultative meeting with Expert Group on 21.11.2016, where the Expert Group has sought further information and clarification regarding the threshold limit in terms of turnover, net worth or profit, in case joint audit is made mandatory for Co's. ICAI will soon respond to the Expert Group in that regard.

KIND ATTENTION

Students seeking Admission for the weekends GMCS Course

We are delighted to inform you that the **first batch of weekends GMCS Course** will be held by Bangalore branch of SIRC of ICAI from January 2017 to March 2017 enabling the employed newly qualified students to apply for membership and who are not able to avail 15 days leave from their firm where they are having the articled training. Interested students are requested to contact Mr. Girish at the branch on 080 30563555 or send mail: blrstudentevents@icai.org for further detail please visit Bangalore branch website www.bangaloreicai.org

RECENT NOTIFICATIONS AND CIRCULARS UNDER CUSTOMS AND FTP

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

Customs

1. **Discontinuation of practice of making manual debits on physical copy of Advance Authorizations:** As a measure of enhancing the ease of doing business for exporters, the CBEC has decided that the practice of evidencing debits manually on physical copy of Advance Authorization shall be discontinued with respect to future authorizations electronically registered at Customs EDI locations.

   The physical advance authorizations which DGFT is issuing, concurrently with electronic transmission of certain types of authorizations, shall continue to be presented for the time being till DGFT's electronic transmission to Customs server includes certain details specified by licensing authorities.

   Effective date: 28.09.2016
   (Instruction F.No.605/30/2015-DBK dated 28.09.2016)

2. **Clarification on transferability of goods procured under SFIS:** The Foreign Trade Policy 2009-14 provides that goods imported/ procured under SFIS can be alienated on completion of 3 years from import/procurement. The CBEC has now clarified the following in this regard: The goods imported/procured under SFIS issued in terms of FTP 2009-14 may be sold/transferred on completion of 3 years from the date of clearance of import/ procurement Requests for sale/transfer of goods imported/procured utilizing SFIS scrip issued in terms of FTP 2004-09 to be considered by DGFT on merits and is not deniable only on the ground that imports were in terms of the FTP 2004-09 Consumables (including food items and alcoholic beverages) are non-transferable even after 3 years since such consumables are meant to be consumed in the course of day to day business.

   Effective date: 27.10.2016
   (Circular No. 49/2016-Cus. dated 27.10.2016)

3. **AIR or Brand Rate drawback allowed on exports:** The Customs, Central Excise and Service Tax Drawback Rules has been amended to provide that drawback shall be determined where that amount or rate of drawback is less than 1% of F.O.B. value of export. Hitherto, drawback was not allowed to be determined if amount or rate of drawback was less 1% of F.O.B. value of export.

   Effective date: 15.11.2016
   (Notification No. 132/2016-Customs (N.T) dated 31.10.2016)

FTP

4. **Definition of e-commerce has been introduced in Foreign Trade Policy (2015-2020) for the purpose of MEIS:** Foreign Trade Policy 2015-2020 provides rewards for notified goods exported under Merchandise Exports from India Scheme (MEIS). MEIS also provides rewards on FOB value goods exported (subject to a maximum of Rs. 25,000/- per consignment) for notified goods exported using e-commerce. The definition of e-commerce (which was not defined earlier) for the purpose MEIS is introduced in Chapter 9 of the Foreign Trade Policy (2015-2020), which is as follows:

   "e-commerce means buying and selling of goods and services, including digital products, conducted over digital and electronic network. For the purposes of Merchandise Exports from India Scheme (MEIS) e-commerce shall mean the export of goods hosted on a website accessible through the internet to a purchaser. While the dispatch of goods shall be made

through courier or postal mode, as specified under the MEIS, the payment for goods purchased on e-commerce platform shall be done through international credit/ debit cards and as per the Reserve Bank of India Circular (RBI/201516/ 185) [A.P. (DIR Series) Circular No. 16 dated September 24, 2015] as amended from time to time."

Effective Date: 11.04.2016. (Notification No. 2/2015-20 11.04.2016)

5. **Payment received in rupee terms for notified services counted towards discharge of export obligation under the EPCG scheme and SEIS:** Payment received in rupee terms for notified services rendered in Customs notified areas to a foreign liner (including through its agents) in India shall be considered towards discharge of export obligation under the Export Promotion Capital Goods scheme (EPCG scheme) and Services Exports from India Scheme (SEIS).

Effective date: 01.04.2015. (Notification No. 06/2015-2020 date: 03.05.2016) and (Public Notice No. 04 /2015-2020 date: 03.05.2016)

6. **Single application for filing claim under MEIS for shipments from different EDI Ports:** Applicants may file single application containing shipping bills of different EDI ports for Duty Credit Scrips under Merchandise Exports from India Scheme (MEIS). Hitherto, applicants had to submit separate application for exports made from each EDI port. However, application for each port of export in case of Non EDI Shipping bills should be filed separately.

Effective Date: 27.05.2016. (Public Notice No.13/2015-2020, dated 27.05.2016)

7. **Realization of proceeds in non-foreign currency account by EPCG authorization holders on supply to SEZ:** Hand Book of Procedures (HBP) of Foreign Trade Policy 2009-14 did not stipulate that Domestic Tariff Area (DTA) units supplying goods under Export Promotion Capital Goods (EPCG) scheme to Special Economic Zone (SEZ) units had to realise payment from Foreign Currency Account (FCA) of SEZ unit for fulfilment of Export Obligation. Accordingly, it is clarified that in case of supplies which have been made prior to 01.4.2015, closure / redemption of export obligation discharge certificate (EODC) may be allowed even if proceeds have not been realized from Foreign Currency Account (FCA) where EPCG authorisation holder has made supplies to SEZ units.

However, it is clarified that as per HBP 2014-20 exports to SEZ units /supplies to developers /co-developers shall be taken in to account for discharge of export obligation (EO) only if payment is realised from Foreign Currency Account of the SEZ unit. It is further clarified that in respect of EPCG authorizations issued under the earlier policies but where exports have been made on or after 01.04,2015 or payments have been realised after 31.03.2015, the proceeds in such cases will have to be realized from Foreign Currency Account of the SEZ unit.

Effective Date: 20.07.2016 (Trade Notice No 10/2016 dated 20.07.2016)

8. **Central / State Taxes collected from the customers not to be considered while computing net foreign earnings for SEIS Schemes:** Service providers providing notified services under FTP 2014-20 are entitled to duty scrips at notified rates on the "Net foreign exchanged earned". It has been clarified that any amount collected from customers in the in the form of State/Central taxes as per the provision of tax laws should not be considered as part of net foreign exchanged earned while calculating the eligible entitlements under Services Exports from India Scheme (SEIS).

Effective Date: 21.07.2016 (Trade Notice No. 11/2015-20 dated 21.07.2016)

9. **Special Advance Authorization scheme for export of Articles of Apparel and clothing accessories are introduced in FTP 2015-20:** A new scheme for duty free import of fabric called 'Special Advance Authorization Scheme' for export of Articles of Apparel and Clothing

Accessories covered under Chapter 61 and 62 of the Central Excise Tariff Act, 1985 and the Customs Tariff Act, 1975 is introduced. In this scheme exporters are entitled for duty free import of fabrics including inter lining as input. No other input, packaging material, fuel, oil and catalyst is allowed under this authorization. Other conditions like actual user condition, physical export of goods, Standards Input Output Norms (SION)/Brand rate provision, which are applicable for Advance Authorization scheme would applicable for this new scheme. For non-fabric inputs, exporters will be eligible for All Industry Rate of Duty Drawbacks as determined by the Central Government.

Effective Date: 01.09.2016
(Notification No. 21/2015-2020 dated: 11.08.2016 and Public Notice No. 27/2015-2020 dated: 31.08.2016)

10. **New provision is introduced to allow clubbing of Advance Authorizations for Annual requirements:** Facility of clubbing of Advance Authorization is allowed under the Foreign Trade Policy (FTP) subject to conditions. Hitehrto, the facility of clubbing was not available for Advance Authorization for Annual Requirement. The FTP is now amended to provide that the facility of clubbing will be available to Advance Authorization for Annual Requirement wherever the exports and imports have taken place as per standard input output norms (SION) notified in Handbook of Procedures.

Effective Date: 04.08.2016
(Public Notice No. 24/2015-2020 dated: 04.08.2016)

11. **Option to surrender incorrectly issued benefits of Zero Duty EPCG and SHIS simultaneously:** DGFT has received the references from Directorate of Revenue Intelligence and various exporters, on the subject of incorrectly issued benefits of Status Holder Incentive Scheme (SHIS) and Zero Duty EPCG Authorization under Foreign Trade Policy 2009-14 simultaneously. In this regard, the representations have been examined by DGFT in consultation with the Department of Revenue and it has been decided that exporters who have been issued or who have availed such simultaneous benefit of these schemes shall be allowed flexibility to surrender one of the benefits subject to certain specified conditions. Further, where the holder of the scheme chooses to surrender one of the scheme and has utilized the same, the holder shall refund the same along with interest. The facility of debiting the amount in valid freely transferable duty credit scrip issued under Foreign Trade Policy or in valid SHIS scrip issued to the original holder is allowed. However, interest should be paid in cash.

Further, it is also clarified that no penal action shall be taken against exporters.

Time of 9 months is allowed to exporters from the date of issuance of this public notice.

Effective Date: 08.09.2016
(Public Notice No. 30/2015-2020., Dated: 08.09.2016)

TAX UPDATES - OCTOBER 2016

CA Chythanya K.K., B.com, FCA, L.L.B., Advocate

VAT, CST, ENTRY TAX, PROFESSIONAL TAX

PARTS DIGESTED:

92 VST – Part 4

94 VST – Part 5

Reference / Description

None

INCOME TAX

PARTS DIGESTED:

a) 386 ITR – Part 5 & 6
b) 387 ITR – Part 3 to 5
c) 388 ITR – Part 1 & 2
d) 241 Taxman – Part 2
e) 242 Taxman – Part 5
f) 48 ITR (Trib.) – Parts 4 & 5
g) 160 ITD – Part 6
h) 50 CAPJ – Part 4
i) 48-B BCAJ – Part 7

Reference / Description

[2016] 387 ITR 354 (SC): CIT v. V.S. Dempo Co. Ltd. - In the instant case the Honourable Supreme Court held that deeming fiction under section 50 treating gains from transfer of depreciable asset as gains from transfer of short term capital asset is restricted only to mode of computation of capital gains. The deeming fiction does not affect entitlement to exemption under section 54E etc., where asset is held for more than 36 months.

[2016] 387 ITR 510 (Bom. – HC): CIT v. India Capital Markets P. Ltd. - In the instant case the Assessee had made payments to M/s.Bloomberg towards subscription to e-magazines. Assessing Officer invoked Section 40(a)(ia) for non-deduction of tax in respect of the aforesaid payment.

On appeal before the Honourable Bombay High Court the Revenue contended that Bloomberg's magazines/ information is backed by solid research carried out by its employees and the same is made available on website, which results in Bloomberg's rendering consultative services.

The Court rejected the contention of the Revenue by holding that it is not a case where specific queries raised by the Assessee were answered by Bloomberg so as to treat the same consultative service. The information is made available to all subscribers to e-magazines/journal of Bloomberg.

Therefore, the Court held that the payments made by Assessee to Bloomberg cannot be considered to be in nature of consultative/professional services so as to require deduction tax at source.

[2016] 241 Taxman (Weekly Browser) Part 2; [2016] 72 taxmann.com 102 (Kar. – HC): United Breweries Ltd. v. CIT - In the instant case the Honourable Karnataka High Court held that Section 14A is applicable even where motive in acquiring shares is to obtain controlling interest in companies.

[2016] 242 Taxman 352 (Guj. – HC); 73 taxmann.com 225 (Guj. – HC): CIT v. Vodafone Essar Gujarat Ltd. - In the instant case the Honourable Gujarat High Court referred to the larger bench the issue as to whether mere deduction of provision from debtors in the balance sheet amounts actual write off and no more a mere provision for diminution in the value of assets for the purpose of computation of book profits under Section 115JB.

TS-575-SC-2016: Noorul Islam Educational Trust - In the instant case in exercise of power under Section 127(2)(a), CIT (Madurai, Tamil Nadu), transferred Assessee's case from ITO (Tamil Nadu) to ACIT (Kerala). Assessee challenged the same before Single bench of Honourable Madras High Court by way of writ petition, on the ground that CIT had the power to transfer assessee's case to ACIT within Tamil Nadu and not outside. The Honourable single judge ruled in assessee's favour and quashed CIT(A)'s order against Revenue. Revenue preferred an appeal before Honourable Division bench of Madras High Court.

The Honourable Division bench of Madras High Court observed that the only condition prescribed by Section 127(2)(a) for transfer of case from ITO to ACIT "is that such transfer should be made after giving reasonable

opportunity to the concerned assessee." Thus, the High Court concluded that "transfer is nothing, but machinery for the purpose of collecting income tax. Further Section 127 is a machinery provision." The Court held that Section 127 did not require that reason(s) for making transfer shall be specified. It also accepted Revenue's contention that transfer was made for having coordinate enquiry and investigation in respect of cases of Assessee's group and in individual capacity.

On appeal before the Honourable Supreme Court by the Assessee, the Honourable Supreme Court observed that provisions of Section 127(2)(a) provide that where the AO (from whom the case is to be transferred) and the AO (to whom the case is to be transferred) are not subordinate to the same DGIT / CCIT / CIT, agreement between the DGIT / CCIT / CIT to whom such AOs are subordinate is necessary. It noted that the counter affidavit filed by the Revenue did not disclose whether such agreement was reached at and the only fact that was "consistently and repeatedly" stated therein was that there was no disagreement between the two CITs.

In view of the above, the Honourable Supreme Court held that "absence of disagreement cannot tantamount to agreement as visualized under Section 127(2)(a) of the Act which contemplates a positive state of mind of the two jurisdictional Commissioners of Income Tax which is conspicuously absent". Thus the Court held in favour of assessee setting aside the transfer.

TS-591-SC-2016: Velayudhaswamy Spinning Mills P. Ltd. - In the instant case the Honourable Supreme Court dismissed the Department's appeal filed against the order of the Honourable Madras High Court wherein the High Court had held that loss in year earlier to initial assessment year already absorbed against profit of other business cannot be notionally brought forward and set off against profits of eligible business as no such mandate is provided in section 80-IA(5).

The High Court had also held that initial AY for the purposes of Section 80IA cannot be the year in which the undertaking commenced its operations, but the year in which assessee chose to claim the deduction under Section 80IA for the first time. Therefore, the provisions of Section 80-IA(5) treating undertaking as a separate sole source of income cannot be applied to a year prior to the year in which assessee opted to claim relief under Section 80-IA for the first time.

TS-598-SC-2016: CIT v. Karnataka Industrial Area Development Board - In the instant case the Honourable Supreme Court upheld the order of the Honourable Karnataka High Court wherein the High Court held that that in case of violation under Section 11(5) and Section 13(1)(d), exemption granted to the assessee shall not be withdrawn for the entire income but only towards income arising from the investment made in contravention of law.

TS-601-HC-2016(DEL): Machintorg (India) Ltd. - In the instant case the Honourable Delhi High Court held that penalty under Section 271(1)(c) does not apply where the non-reporting of capital gains on account of bonafide belief that it was eligible for exemption under Section 54G based on CA's device.

The Court rejected the Revenue's contention that assessee's explanation of mistake on CA's part was "specious" as every company is under a duty to have its accounts audited and CA's alleged mistake did not absolve the assessee from its primary duty cast in law to reveal its correct income.

TS-602-HC-2016(DEL): Virage Logic International - In the instant case the Assessing Officer denied Section 10A exemption on the ground that there was 'no export' sale by assessee since the computer software was merely transmitted to its Head Office and there was no sale to third party.

On appeal before the Honourable Delhi High Court, the Court referring to inter-relationship between Section 10(A)(7) and Section 80-IA(8) held that incorporation of Section 80-IA(8) to Section 10A in entirety is for the purpose of ensuring that inter-branch transfers involving exports are treated as such as long as the other ingredients for a sale are satisfied.

Thus, the Court held that Section 10A exemption is eligible in respect of sale of computer software by branch office to its Head Office.

TS-618-HC-2016(KER): Dr. K. M. Mehaboob - In the instant case Assessee and others are the co-owners of an eight storied building in Calicut. They are also the Shareholders and Directors of a company by name 'Moidus Medicare Private Limited', Calicut, which has established 'National Hospital'. A substantial portion of the building owned by the assessees was let out to the company and the agreed rent was Rs.1 per sq.ft.

The Assessing Officer applying the provisions of Section 23, assessed the annual value of the building at Rs.4 per sq.ft. on the basis that another portion of the building was let out to

the Telephone Department and the rent paid by the Department to the assessees was Rs.4 per sq.ft.

On appeal before the Honourable Kerala High Court, the Court observed that as per Section 23(1)(b) in a case where the property is let out and if the rent received or receivable is more than the sum for which the property might reasonably be expected to let, the annual value shall be the actual amount that is received or receivable. In other cases, the annual value shall be the sum for which the property might reasonably be expected to let.

In view of the above, the Court held that in the instant case annual value of a let out building is to be estimated by applying Section 23(1)(b) i.e. at Rs. 4 per sq.ft. Section 23 does not exempt cases in which buildings have been let out by owners to firms or companies in which they are interested.

[2016] 241 Taxman (Weekly Browser) Part 2; [2016] 72 taxmann.com 147 (Delhi – Trib.): Sanjeev Puri v. Dy. CIT - In the instant the Honourable Delhi Tribunal held that a flat shown as residential house in municipal records but actually used as office is not a 'residential house' for Section 54F purposes.

The Tribunal held that for the purpose of question Section 54F, the question whether assessee owns more than one residential house other than the new asset is to be determined based on actual user of the house and not what is shown in municipal records.

[2016] 241 Taxman (Weekly Browser) Part 2; [2016] 72 taxmann.com 86 (Mum. – Trib.): Dy. CIT v. Mattel Toys (India) (P.) Ltd. - In the instant case the Honourable Mumbai Tribunal held that until and unless something positive is brought on record about sharing/incurring AMP expenditure by an assessee on behalf of its Associated Enterprise (AE), it cannot be held that it should have recovered some amount from AE, as expenditure incurred by it indirectly helped in augmenting brand value owned by its overseas AE. If AMP expenditure incurred by an assessee benefits AE indirectly it would not mean that it is an international transaction.

[2016] 241 Taxman (Weekly Browser) Part 2; [2016] 72 taxmann.com 89 (Chennai – Trib.): TVS Logistics Services Ltd. Dy. CIT - In the instant case the Honourable Chennai Tribunal held that Corporate Guarantee given by assessee to its Associated Enterprise (AE) does not involve any cost to assessee, and, therefore, such a transaction is outside ambit of international transaction.

[2016] 241 Taxman (Weekly Browser) Part 2; [2016] 72 taxmann.com 87 (Bang. – Trib.): Fibres Fabrics International (P.) Ltd. v. Dy. CIT - In the instant case the Honourable Bengaluru Tribunal held that return of income could not be declared as invalid for belated receipt of Form ITR-V for denying benefit of carry forward losses.

[2016] 160 ITD 405 (Mum. – Trib.); [2016] 72 taxmann.com 315 (Mumbai - Trib.)Indogems v. ITO - In the instant case the assessee-firm was engaged in the business of trading in cut and polished diamonds. Assessee sold its office premises, which was forming part of the block of assets, and in the same year it had included another building in the block of assets claiming to have acquired the same. The claim of assessee was that there was no gain computable in terms of Section 50.

The Assessing Officer took the view that assessee was not entitled to claim accretion for the cost of acquisition of the new office premises while computing the gain specified in section 50 as there was no agreement for acquiring the property, and mere payment of full consideration did not ipso facto amount to acquisition of property for the purposes of Section 50(1)(iii) in the absence of possession or usage of the same. He, accordingly computed the capital gains on sale of depreciable asset in terms of Section 50 by reducing from the full value of sale consideration in respect of the property sold, the opening WDV of the block of assets. Simultaneously, the depreciation claimed by the assessee on the new office premises and the attendant office equipment was also denied, on the ground that the same were not put to use.

On appeal before the Honourable Mumbai Tribunal, the assessee argued that in contrast to Section 32, use of the property was not necessary in respect of acquisition thereof for the purpose of Section 50(1)(iii).

The Honourable Mumbai Tribunal held that occupation can be equated to term 'use' as contemplated under Section 32 whereas it cannot be equated to concept of possession to understand completion of process of acquisition in terms of Section 53A of Transfer of Property Act. Distinction between possession and occupation has to be kept in mind, which is relevant only for purpose of determining question of use, but not for purpose of acquisition under Section 50(1)(iii).

Thus, the Court held that where assessee had parted with full sale consideration and reduced terms of agreement into

writing by way of allotment letter and by gaining ability to have every other person excluded from dealing with property, proceeded with work of fit-outs of property, it had demonstrated that he had acquired property for purposes of Section 50(1)(iii).

[2016] 160 ITD 413 (Chandigarh – Trib.); [2016] 71 taxmann.com 246 (Chandigarh - Trib.): Nand Lal Popli v. Dy. CIT - In the instant case the Honourable Chandigarh Tribunal held that where profit declared by assessee under presumptive taxation as provided under Section 44AD was accepted, Assessing Officer could not make separate addition by invoking provisions of Section 69C.

[2016] 160 ITD 491 (Delhi – Trib.); [2016] 72 taxmann.com 198 (Delhi - Trib.): New Delhi Television Ltd. v. Asst. CIT - In the instant case the Honourable Delhi Tribunal held that where assessee established Associated Enterprise (AE) in UK and to give effect to efficient group structure performed various activities both prior to and post to incorporation of UK AE, expenditure incurred prior to incorporation of AE, such activities could not be classified as international transaction under Section 92B.

[2016] 48-B BCAJ 25 (Mum. – Trib.) (SMC); [2016] 73 taxmann.com 68 (Mumbai - Trib.) (SMC)Smt. Manasi Mahendra Pitkar v. Asst. CIT - In the instant case the Honourable Mumbai Tribunal following its Honourable jurisdictional Bombay High Court decision in the case of CIT v. Bhaichand Gandhi [2013] 141 ITR 67 (Bom. – HC), held that bank Pass Book maintained by the bank cannot be regarded as a book of the assessee for the purposes of section 68.

Thus, the Tribunal held that where Assessing Officer examined bank Pass Book of assessee and treated cash deposits in bank account as unexplained cash credit within meaning of section 68, since assessee was not maintaining any account books, bank Pass Book could not be construed to be a book maintained by assessee for any previous year, section 68 was not applicable to instant case.

[2016] 48-B BCAJ 33 (Mum. – Trib.); [2016] 73 taxmann.com 14 (Mumbai - Trib.): Praful Chandaria v. ADDIT - In the instant case the Honourable Mumbai Tribunal held that a call option simplicitor in shares is not a 'capital asset' because without exercising option no actual asset is created.

However it held that where call option was for an incredibly large period of 150 years and shareholder, a Singapore resident, executed an irrevocable power of attorney in favour of buyer of option and authorized him to exercise all rights of shareholder and undertook not to transfer shares except to option buyer when call option would be exercised, option right was to be reckoned as a transfer/alienation of a valuable right but consideration received therefor would not be taxed as capital gain in India in terms of Article 13(6) of India-Singapore DTAA as such gains are taxable only in Singapore.

TS-574-ITAT-2016(VIZ): Dr. Chalasani Mallikarjuna Rao - In the instant case the Honourable Visakhapatnam Tribunal held that once the net sale consideration has been fully applied under the provisions of section 54 of the Act, then the deeming consideration as defined under Section 50C of the Act cannot be brought into the provisions of Section 54F of the Act.

In other words, the Tribunal held that for the purpose of claiming Section 54 exemption, Assessee needs to invest the sale proceeds and not the full value consideration computed under Section 50C of the Act.

TS-896-ITAT-2016(Rjt)-TP: Woco Motherson Advanced Rubber Technologies Limited - In the instant case the Honourable Rajkot Tribunal held that ALP determination must be conducted irrespective of whether the Associated Enterprise is situated in high tax or low tax/tax haven jurisdiction.

TS-896-ITAT-2016(Rjt)-TP: Woco Motherson Advanced Rubber Technologies Limited - In the instant case the Honourable Rajkot Tribunal deleted the addition made under Section 10AA in the final assessment order as no such addition was proposed in the draft assessment order and held the same as contrary to the scheme & procedure of Section 144C.

TS-605-ITAT-2016(HYD): Quaolcomm India Private Limited - In the instant case the Honourable Hyderabad Tribunal held that payment made by assessee (an Indian company engaged in software development) to Verizon USA for providing internet and bandwidth services and also for providing equipment ('CPE') which has to be installed at the customers' premises for accessing network connection, does not amount to royalty.

The Tribunal rejected the contention of the Revenue that payment was for use of scientific or commercial equipment within the meaning of 'royalty' under the Act on the ground that CPE is not personalized/sophisticated modified equipment for specific and exclusive use of the assessee. Therefore, it was held

that payment cannot be said to be for use of equipment.

TS-608-ITAT-2016(Mum): Aditya Birla Telecom Limited - In the instant case Assessee de-merged its telecom undertaking in Bihar to Idea Cellular Ltd. ('Idea') without any consideration, pursuant to the Scheme of Arrangement approved by Gujarat and Bombay High Court.

The Assessing Officer treated the revalued assets as 'full value of consideration' for the purposes of computing capital gains on transfer of undertaking to Idea.

On appeal before the Honourable Mumbai Tribunal, the Tribunal observed that Scheme of Arrangement specifically provided that no consideration shall be paid by ICL for telecom undertaking acquired.

In view of the above, the Tribunal held as under:

(a) Since no consideration accrues or is received by the assessee, no capital gains would arise in the hands of the assessee.

(b) Business Restructuring Reserve created in the books of the assessee was merely an accounting entry passed. On account of revaluation of its investment and that, the amount representing an accounting entry could not be deemed to be the value of consideration for transfer of the telecom undertaking by the assessee.

(c) Wherever considered appropriate, the legislature has inserted specific provisions for assumption of sale consideration for transfer of assets in specified cases, since the only two other sections (i.e. Sec 50C and Sec 50D), which provide for imputation of consideration are also not applicable to present case, no consideration can be imputed in the instant case.

Thus, the Tribunal concluded that in the absence of any sale consideration for transfer of a capital asset, the capital gains computation mechanism fails and thus, no capital gains tax can be levied on such transfer.

TS-615-ITAT-2016(Ahd): Madhya Gujarat Viz. Co. Ltd - In the instant case assessee had charged service tax from its customers on the services rendered and tax so charged was not paid to the credit of government. The Assessing Officer disallowed the same under Section 43B.

On appeal before the Honourable Ahmedabad Tribunal, the Assessee contended that since service tax payable was not reflected in the profit and loss account and was only shown as liability in the balance sheet for tracking the tax payable and as assessee was acting as a mere collecting agent, Section 43B disallowance was not applicable.

The Honourable Tribunal held that Section 43B(a) does not have a direct link of the amount of tax to be passed through P&L account. Rather it is in the nature of "check" by the statute to ensure that the assessee makes payment of the tax collected to the concerned department and if he is unable to do so the amount is added to its income.

Thus, the Tribunal upheld the disallowance under Section 43B on unpaid service tax.

TS-616-ITAT-2016(Mum): B. K. Khare And Company - In the instant case the Honourable Mumbai Tribunal held that contribution made by assessee (a CA firm) to the Pune branch of Institute of Chartered Accountants of India ('ICAI') towards construction of administrative building of said branch is allowable deduction under Section 37(1).

The Tribunal held that by donating the amount to ICAI for better infrastructural facilities, assessee was able to attract good articled clerks and other professional persons who are backbone of any professional practice. Thus, the said payment satisfied the commercial expediency test as the contribution had a direct nexus with the carrying on of the profession by the firm.

The Tribunal rejected the Department's stand that since the payment was in the nature of donation, specific provision under Section 80G will be applicable over general provision under Section 37(1) by holding that if the claim is allowable under Section 37(1) itself there is no case for proceeding to Chapter VIA which applies to all assessees whether or not they are carrying on business or profession.

TS-620-ITAT-2016(Bang): Sanyo BPL Pvt Ltd - In the instant case the Honourable Bengaluru Tribunal held that disallowance of depreciation on intangible asset i.e distribution network and other assets acquired by assessee a joint venture of Sanyo Electric Company, Japan and BPL Sanyo Ltd. pursuant to acquisition of colour television business from BPL Ltd. on slump sale basis was justified as ingredients necessary for invoking Explanation 3 to Section 43(1) were satisfied and Assessing Officer was justified in his action in restricting allowance of depreciation on WDV at higher than 25 per cent of closing stock.

While holding so, the Tribunal observed the following facts:

(a) Transaction of acquiring business as a 'going concern' is between two related parties and the seller has substantial 50% interest in assessee-company

(b) Assets already depreciated in the hands of BPL Ltd., but higher values were assigned by assessee-company

With respect to acquisition of 'distribution network', it observed that there was no transfer of any distribution network as BPL was 50% stakeholder in assessee company and retained the brand name in company name

Thus, the Tribunal held that held that right to use distribution network does not result in creation of any intangible asset since none of the parties had paid any amount to the distributors. It further held that it is very ingenious attempt by the assessee-company to claim higher depreciation and avoid payment of tax in the hands of the transferor of the business by claiming to be slump sale transaction

TS-622-ITAT-2016(Ahd): Nanubhai Keshavlal Chokshi HUF - In the instant case the Honourable Ahmedabad Tribunal held that payment made by assessee to brothers who were living with him, for vacating house to be sold would be considered as expenditure incurred for improvement of asset or title and would be deducted from long term capital gain on sale of said house.

CBDT Press Order F.No. 500/39/2015 (US FT & TR-V) dated 26.10.2016: CBDT vide its Circular No. 3/2015 had clarified that only income component shall form the basis of disallowance. However, instances have been brought to the notice of the Board that this circular is not being kept in view by administrative CITs/CIT(A)s/ departmental representatives in ongoing litigation.

Accordingly, CBDT directs Pr. CITs/Pr. DGITs that the departmental officers may be sensitized to the content of this circular.

Therefore, CBDT reiterates that for the purposes of disallowance of "other sum chargeable" under Section 40(a)(i), in case of non-residents, the basis would be "appropriate portion of the sum chargeable to tax", and not the gross amount.

CBDT Circular No. 37 of 2016 dated 02.11.2016: CBDT Board has clarified that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, which results in enhancement of the profits of the eligible business.

CBDT Notification No. 103 of 2016 dated 07.11.2016 - In Income Tax Rule 5, after sub-rule (1), CBDT has inserted the following proviso w.e.f 01.04.2016:

"Provided that in case of a domestic company which has exercised option under sub-section (4) of section 115BA, the allowance under clause (ii) of sub-section (1) of section 32 in respect of depreciation of any block of assets entitled to more than forty per cent. shall be restricted to forty per cent. on the written down value of such block of assets."

As per the aforesaid proviso, in case of domestic companies opting concessional taxation under Section 115BA(4), the depreciation allowance under Section 32(1)(ii) in respect of any block of assets entitled to more than 40%, shall be restricted to 40% on the written down value of such block of assets.

Section 115BA inserted by the Finance Act, 2016, provides concessional tax rate of 25% to newly setup domestic companies engaged solely in the business of manufacture or production.

CBDT Notification No. 104 of 2016 dated 15.11.2016 - CBDT has amended Rule 114B (transactions in relation to which PAN is to be quoted) and Rule 114E (furnishing statement of financial transaction) to give effect to the Demonetisation Scheme and notifies Income–tax (30th Amendment) Rules, 2016:

(a) every person to quote PAN in all documents pertaining to cash deposits with Banks / Post office (during the period 9th November to 30th December, 2016):

i. exceeding Rs. 50,000 during any one day or

ii. aggregating to more than Rs. 2,50,000

(b) Banks/post office are required to report transactions of cash deposits of Rs. 2,50,000 or more in one or more accounts of a person during 9th November to 30th December, 2016.

CBDT Circular No. 38 of 2016: CBDT Circular No. 38 of 2016: CBDT clarifies that premium paid by a firm on keyman insurance policy of partner to safeguard firm against disruption of business is an admissible expenditure under Section 37.

CBDT directs Revenue officers that no appeals shall be filed on this ground and appeals already filed may be withdrawn / not pressed upon.

DIGEST ON RECENT DECISIONS UNDER COMMERCIAL TAX LAWS

CA Annapurna D Kabra

I) Smt. B. Narasamma v. The Deputy Commissioner, Commercial Taxes, Karnataka and Another. -2016(86) Kar. L.J. 229 (SC).

Declared Goods in Same Form at 4%

Facts:

The appellant has been issued orders from the Appellate Authority wherein, it has been stated that at the time when the iron and steel go into the cement concrete, they change their form, and therefore, they cannot be classified as declared goods and shall be taxed without any constraints as mentioned in Section 15 of the Central Sales Tax Act. Being aggrieved by the said orders, the appellant has appealed before the High Court.

Grounds of Appeal:

The appellant contends that the iron and steel products that are reinforced for cement concrete used in the buildings and structures, remains exactly the same at the point of taxability i.e. at the point of accretion, and that mere cutting into different shapes and bending does not amount to 'manufacture' and does not make these items lose their identity form being declared goods. Therefore, only tax @ 4% can be levied, and not the higher rate levied in respect of civil construction works. Also, if iron and steel products continue as declared goods, then even though they form part of works contract, they shall be subject to Section 15 of the CST Act, 1956, and shall be charged to tax @ 4%, if the said products continue to remain the same.

Also, it has been stated that the commercial goods, without change of their identity as such, are merely subject to some processing or finishing, or are joined together and therefore, remain commercially the same goods which cannot be taxed again, given the restrictions of Section 15 of the CST Act. The appellant company has further, submitted general photographs showing the progress of work of placement and binding of reinforcement bars/rods at the work sites.

The respondent has contended that the provisions stated are correct as per law but it does not apply in the given case. The appellant is engaged in the works contract of fabrication and creation of doors, window frames, grills, etc., in which they claimed exemption of iron and steel goods that went into the creation of the above items, after which, the said doors, window frames, grills, etc. were fitted into buildings and other structures.

Judgment:

The "same form " shall not include such goods after being purchased are either consumed or used in the manufacture of other goods which in turn are used in the execution of works contract. Since, the iron and steel goods, after being purchased, are used in the manufacture of other goods, which in turn are used in the execution of works contract and are therefore liable to tax as they are not used in the same form in the execution of works contract. It has been clarified that the declared goods in question can only be taxed at the rate of 4%.

II) B.K. Dhar, Chief Executive Officer, MFAR Construction Private Limited, Bangalore v. State of Karnataka. -2016(86) Kar. L.J. 244 (Tri.) (DB).

Declared goods in same form at 4%

Input tax credit on consumables allowable for earlier periods

Facts:

The appellant is engaged in the execution of civil works contract. The appellant was subjected to reassessment wherein, it was noticed that the taxable and total turnover as declared in Form VAT 240 has increased compared to Form VAT 100 for the period 2007-08, while for the year 2006-07, the taxable turnover as per the books of accounts is entirely different from Form VAT 100 and Form VAT 240 figures. The prescribed authority has also allowed claimed towards sub-contractor payments but disallowed labour and like charges towards depreciation of machinery deployed and input tax credit on consumables used in the execution

of works contract, and has levied residual rate of tax on the portion of Iron and steel used in the execution of works contract.

Grounds of Appeal:

The respondent has submitted that the appellant has relied on the judgment in the case of Larsen and Turbo Limited v. State of Karnataka, (2010) 34 VST 53 (Kar.) (DB), wherein, the methodology by them for ascertaining the amount of depreciation cannot be adopted by the appellant. In another case namely, Larsen and Turbo Limited, ECC Division, Bangalore v. State of Karnataka and Others (2014) 68 VST 353 (Kar)(DB), it was held that if **own** machinery is deployed for the execution of works contract, then the prevailing hire charges in the market at that point of time, for such machinery shall be allowed towards labour and like charges.

The appellant has contended with respect to input tax credit on consumables, by stating that there is no explicit provision under the Act which denies input tax credit on consumable used in the course of business/manufacture or job work. Section 11(a) and 11(b) do not prescribe any such type of restriction. The restriction of input tax credit under Section 11(c), has been brought into effect only from 01/04/2012. The appellant has further referred to the judgment of Ashok Iron Works Private Limited and Vinyas Innovative Technological Private Limited, wherein it was decided that the appellant is eligible for input tax credit on consumables.

Judgment:

The appeals have been allowed for the tax periods 2006-07 and 2007-08. It is held that the appellant is entitled for deduction towards labour and like charges on the machinery deployed for the execution of works contract equivalent to the prevailing market charges at that point of time if and only if such machinery is owned by the appellant. The appellant is entitled for input tax credit on consumables used in the execution of works contract. The Iron and Steel used in the execution of civil works contract in the same form are liable to tax at 4% only.

III) Paharpur Cooling Towers Limited, Cunningham Cross Road, Bengaluru v. The Assistant Commissioner of Commercial Taxes (Audit – 1.3), D.V.O -1, Yeshwanthpur, Bengaluru and Another. -2016 (86) Kar. L.J. 289 (HC) (DB).

Cancellation of Order which violates the Principles of Natural Justice.

The appellant has been subject to Assessment orders. The appellant has stated that in spite of filing objections within specified time limit of four weeks and the Learned Authority has not communicated to the appellant regarding granting of time up to 25th of April 2016, the learned Authority has passed the order on 29th April, 2016 without considering the objections filed by the appellant. Therefore, the order violates the principles of natural justice. Therefore, the appellant has filed a petition before the High court. The High court has thereby, dismissed the petitions stating that there is an alternative remedy available for preferring appeals against the Assessment Orders. The Division Bench has later, stated that the petitions of the appellant can be entertained before the High court under Article 226 of the Constitution. Availability of an alternative remedy does not restrict the power of the High Court to attend the petitions of the appellant. It has also been discovered that there is no material available to show that any communication or acknowledgment was given to the appellant granting time up to 25th of April 2016. Thereafter, the division bench has cancelled the impugned order issued by the Additional Commissioner and has thereby, ordered an issue of a fresh order after considering the objections filed by the appellant on 29th of April 2016.

IV) Kishore Kumar, Secretary, M/s Bank Officer's Housing Co-operative Society Limited, Bengaluru v. State of Karnataka. -2016 (86) Kar. L.J. 291 (Tri.) (DB).

Penalty under section 72(5) of KVAT Act leviable for Non-Registration

Facts:

The appellant is a Co-operative Housing Society Limited, carrying out the activity of Construction of residential property on the land owned by the society and has entrusted the entire work to sub-contractors, and has therefore, not taken any registration under the Act. Different materials for the purpose of construction, has been purchased by the appellant and handed over to the sub-contractors for use. The appellant has been subjected to inspection by the Deputy Commissioner of Commercial Taxes, wherein the commissioner has fastened a tax liability, treating the transactions as works contract and has issued orders levying tax, interest and penalty under Section 72(5) of the Act. Aggrieved by the same, the appellant

approached before the Appellate Authority who confirmed the levy of tax and interest, but deleted the levy of penalty. The Assessing authority has later, invoked the levy of penalty under section 72(5) of the Act at the rate of 30% on the tax payable. Hence, the appellant has once again contested the levy of penalty before the Tribunal.

Grounds of Appeal:

The appellant has contended that on verification of the books of accounts and RA bills issued to sub-contractors, it can be observed that there is no turnover of works contract at the hands of the appellant and therefore, he has not obtained registration under the Act.

It has been further submitted by the appellant that any dealer may be categorized as registered, unregistered and liable to be registered. Even if the appellant- society is liable to get registered, he has been assessed to tax as an unregistered dealer, instead of a dealer who is liable to get registered under the Act, thereby disallowing the claim towards input tax credit.

The appellant has further referred to sub-section 1 to 5 and (9-A) of Section 22 of the Act, which is related to the dealers executing works contract and is applicable to the case of the appellant. It states that if the department is of the view that the appellant has to be treated as dealer liable to register under the act, then he must be treated as deemed to have been registered for having crossed the threshold limit. It is to be further noted that the appellant has obtained a voluntary registration under the Act. It has also been contended that in case of appellant's failure to get himself registered, a separate provision exists in the Act namely Section 71 which deals with levy of penalty if any dealer fails to apply for registration, according to which the penalty shall be Rs. 2000/- only, which is different from the levy stated under Section 72(5) of the Act.

As against this, the respondent has contended that penalty under Section 71, is only for failure to register as mentioned in Section 22 dealing with voluntary registration, whereas Section 72(5) of the Act deals with levy of penalty for failure of register within the time limit, to get registered though liable to do so, wherein the penalty is fixed at 30% of the tax payable, as assessed under Section 38 and 39 of the Act. Further Section 22 has separate sub-section (9-A) in case of dealers engaged in works contract. The said sub-section is absent in Section 71 of the Act. Therefore, the appellant does not fall under the purview of Section 71, but falls under the purview of Section 72(5) of the Act. Section 72(5) is in respect of the dealer who has done business but not registered, which is applicable in the case of the appellant.

Judgment:

The case has been decided in favour of the department and the Appeals of the appellant have been disallowed. The appellant has contravened the provisions of Section 72(5) of the Act and thus liable for penalty which has been duly levied by the Assessing Authority after realizing that the levy of penalty is not correct as ruled by the Appellate authority.

V) R.K. Color Lab and Studio, Kapali Theatre Complex, Bangalore v. State of Karnataka -2016(86) Kar.L.J. 343 (HC)

State has power to levy tax only on the Material value of goods used in the works contract Under Entry 25 or Entry 10 of KST Act 1957

The petitioner is engaged in the business of photo-printing and processing along with providing allied services. For the period 2007-08, the petitioner had filed returns, claiming exemption in respect to photo printing and processing charges claiming it to be a purely a service contract as the value of goods used in such activity is almost negligible. The second respondent had initiated reassessment proceedings under Section 39(1) of the KVAT Act and has levied tax on the turnover, claiming it to be an activity of works contract, as listed in Entry 10 of the Sixth schedule of the KST Act, which is analogous to Entry 25 of the Sixth Schedule issued earlier. The second respondent has further levied tax @ 4%, by rectifying his mistake of levying tax @ 12.5% without deducting labour and like charges. The Honorable Supreme Court Ruling states that the State has power to levy tax only on the material value of goods used in the works contract whereas the learned Authority has levied tax on 100% of the gross receipts. With regard to the levy of interest, the petitioner has claimed the same to be illegal, since at that point of time, the petitioner was under bona fide impression that since Entry 25 had been struck down, claiming it to be constitutionally invalid, even Entry 10, been analogous to Entry 25 of sixth schedule of KST Act 1957, the same has also claimed to be invalid. Therefore, judgment has been passed allowing the appeals of the petitioner.

SERVICE TAX DECISIONS

PARTS DIGESTED – STR VOLUME 45: PARTS 1 & 2

CA. A. Saiprasad

Notifications

Online Information & Database Access or Retrieval Service (OIDARS)

1. The definition of OIDARS was previously provided by R.2(l) of POPS Rules, 2012.
2. Definition of OIDARS is now provided by R.2(1)(ccd) of STR, 94.
3. R.2(l) of POPS Rules, 12 now merely refers to R.2(1)(ccd) for the definition of OIDARS.
4. The POPS for OIDARS was the location of service provider as per R.9(b) of POPS Rules, 2012.
5. With effect from 1.12.16, POPS Rules, 2012 has been amended by way of deletion of R.9(b). Therefore POPS for OIDARS shall not be location of service provider wef 1.12.16.
6. The POPS for OIDARS shall be location of service recipient wef 1.12.16, as residual R.3 of POPS.
7. Proviso to R.3 states that where location of service recipient is not available in the ordinary course of business, then POPS shall be location of service provider.
8. Proviso to R.3 of POPS has been amended wef 1.12.16. Proviso to R.3 shall apply to all services other than OIDARS.
9. As per R.2(1)(d)(i)(G) of STR, 94, the recipient of service shall be the person liable to pay tax in case where service provided by a person located in non-taxable territory and received by a person located in taxable territory.
10. R.2(1)(d)(i)(G) has been amended to exclude OIDARS wef 1.12.16
11. As per R.2(1)(d)(i)(H), has been inserted wef 1.12.16, as per which the recipient of service is the person liable to pay tax, where OIDARS has been provided by a person located in non-taxable territory and received by a person other than 'non-assessee online recipient.'
12. As per 1st proviso to R.2(1)(d)(ii), service provider located in non-taxable territory shall be the person liable to pay service tax where OIDARS is provided to a non-assessee online recipient.
13. A non-assessee online recipient has been defined u/r 2(1)(ccba) (wef 1.12.16) as a Government, local authority, a governmental authority or an individual receiving OIDARS in relation to any purpose other than commerce, industry, business or profession located in taxable territory.
14. As per 2nd proviso to R.2(1)(d)(ii), where an intermediary located in non-taxable territory including electronic platform, a broker, an agent or any person by whatever name called, who facilitates provision of OIDARS but does not provide OIDARS, shall be deemed to receive service from provider of OIDARS and deemed to provide service to non-assessee online recipient, except when in satisfies 4 conditions mentioned therein.
15. As per 3rd proviso to R.2(1)(d)(ii), any person located in taxable territory representing provider of OIDARS located outside India shall be the person liable to pay service tax where OIDARS is provided by a person located in non-taxable territory to a non-assessee online recipient.
16. As per 4th proviso to R.2(1)(d)(ii), a person located in non-taxable territory, providing OIDARS to a non-assessee online recipient, may appoint a person in the taxable territory for the purpose of paying service tax and such person shall be treated as person liable to pay service tax, if the service provider does not have a physical presence or does not have a representative in the taxable territory.
17. As per 5th proviso to R.2(1)(d)(ii), where OIDARS is provided by a person located in non-taxable territory and received by a person located in taxable territory, the person receiving such service shall be deemed to be located in taxable territory if it satisfies any 2 of the 7 conditions specified therein.

18. As per 6th proviso to R.2(1)(d)(ii), a person receiving OIDARS shall be deemed to be a non-assessee online recipient if the service receiver does not have service tax registration.

19. Rule 4, 4A and 7 of STR, 94 have been amended to provide for registration of provider of OIDARS, located in non-taxable territory providing service to non-assessee online recipient.

20. Notification No.30/12 ST which prescribes services where service recipient is liable to pay service tax has been consequently amended.

21. As per amendment to Notification No.30/12 ST, where OIDARS is provided by a person located in non-taxable territory and received by a person other than non-assessee online recipient in taxable territory, then the service recipient (i.e. person other than non-assessee online recipient) is the person liable to pay tax.

22. As per Entry No.34(a) of Notification No.25/12 ST (mega exemption notification), exemption was granted where service was received by a government, local authority, governmental authority or an individual in relation to any purpose other than commerce, industry or any business or profession from a provider of service located in a non-taxable territory.

23. Entry No.34 has been amended by way of insertion of proviso wef 1.12.16 to provide that exemption shall not apply to OIDARS received by persons mentioned in Entry No.34(a).

24. The Principal Commissioner, Bangalore LTU has the exclusive jurisdiction with respect to OIDARS provided by a person located in non-taxable territory and received by a non-assessee online recipient.

Notification Nos.46/16 ST r/w 47/ ST r/w 48/ST r/w 49/ST r/w 50/ST.

Circulars

The Board has issued Circular regarding withdrawal of exemption of service tax on cross border B2C OIDARS, provided by a service provider located in non-taxable territory to consumers (i.e. non-assessee online recipient) located in taxable territory.

Circular No.202/12/2016 ST dt.9.11.16.

Case Laws

Whether filing defective appeal would be fatal to the filing of appeal?

The HC held that where verification of the appeal was not made in the prescribed manner (defect in filing the appeal), then dismissing the appeal merely because verification of appeal was not proper was held to be as not legal.

Where assessee denied receipt of order and department could not produce acknowledgement of assessee, the HC held that appeal was filed within limitation period though assessee filed appeal within the prescribed period from the date of obtaining the certified copy from the department and not the date of service of order.

BSNL V. CCE, 2016 (45) STR 3 (Gau)

What procedures are to be treated as 'procedural' and 'substantial' while interpreting exemption notification?

Exemption Notification No.41/07 ST was amended by Notification No.3/08 ST by adding the condition that details of exporter's invoice relating to export of goods should be mentioned in lorry receipt and corresponding shipping bill.

The HC held that aforesaid condition was a matter of evidence. Its object was to ensure that the goods which had reached the port was the actual consignment of the exporter and that there was no duplication of claim. The HC further held that aforesaid condition acted as a check and balance on processing of exemption claim.

The HC therefore held that non-fulfilment of aforesaid condition could not be waiver as a mere procedural condition and that availability of exemption depended on its fulfilment.

HC however held that insignificant requirements like endorsement of applications, prescribed merely for orderly conduct of business could be waived.

HC held that if things are prescribed to be done in a particular manner, they should be done in such manner and not otherwise.

PCST V. RR Global Enterprises Pvt Ltd., 2016 (45) STR 5 (AP)

Whether exemption could be granted retrospectively when the exemption notification was amended prospectively?

Base Notification No.40/07 ST and 41/07 provided list of services which were eligible for refund, when such services were used for export of goods.

The aforesaid notifications were amended in 2008 by adding further services, which could be claimed as exemption when used for export of goods. The said exemption in 2008 were expressly made prospectively.

The HC held that the terms of notification ruled out that the exemption made in 2008 were clarificatory (which could be given retrospective effect). The HC therefore held that subsequent notifications in 2008 would not apply from the date when the base notifications came into force.

The HC held that for an amending notification to be treated as clarificatory, there should be something enunciated in the base notification itself.

PCST V. TT Limited, 2016 (45) STR 25 (Del)

Whether Best Judgment Assessment can be made where Assessee has filed Service Tax Returns?

The HC held that when factual matrix clearly indicate that returns for relevant period was duly filed by assessee, thereby barring invocation of S.72(a) (provision for best judgment assessment).

HC further held that S.72(b), also could not be invoked for best judgment assessment since the department failed to specify the specific information required from the assessee. Hence assessee could not be faulted for non-supply of information.

HC therefore held that SCN invoking best judgment assessment was rightly held as not sustainable.

PCST V. Creative Travels Pvt Ltd., 2016 (45) STR 33 (Del)

Whether tax can be demanded on the basis of mere statements without allegations in SCN?

The HC held that in the absence of allegations in SCN that assessee provided services for which they were liable to service tax, mere reference to statements of officers of assessee was not sufficient to levy service tax.

The HC held that department had not alleged that services were provided by the appellant since department's plea before HC that assessee provided services to their foreign parent company or that the assessee was liable to tax under reverse charge, was neither alleged in SCN not elaborated in order.

UCB India Pvt Ltd V. UOI, 2016 (45) STR 39 (Guj)

Whether under exceptional circumstances, delay in filing appeal, beyond limitation period before Commissioner (Appeals) could be restored back?

The HC held that when appeal filed before Commissioner (Appeals) was dismissed on the ground of limitation and when the issue involved correct interpretation of S.67 as to whether reimbursement of expenses is liable for service tax, then there was a strong case of merit in favour of assessee due to Delhi HC decision in Intercontinental Consultants and Technocrats Pvt Ltd case.

The HC held that since the aforesaid Delhi HC case was not considered by the original authority, the decision of original authority led to failure of justice/ gross injustice.

The aforesaid circumstance would fall under exceptional category for exercising power u/a 226 of the constitution.

Therefore though there was a delay in filing appeal before Commissioner (Appeals) and though the appeal was dismissed by the C(A), whose decision was confirmed by the CESTAT, order of both the Commissioner (A) and CESTAT was set aside and the case was restored back to the file of Commissioner (A).

Practice Strategic Communications India Pvt Ltd V. CST Domlur, 2016 (45) STR 47 (Kar)

Whether premium for lease transfer is amenable to service tax?

The HC held that consideration for lease transfer is amenable to service tax. Premium is a one time rent charged, which would entail rebate on yearly rent to be paid. Hence premium is also part of consideration irrespective of the fact that it was a capital investment.

HC held that entire transaction of both premium and rent were amenable to service tax.

Hobbs Brewers India Pvt Ltd V. UOI, 2016 (45) STR 60 (Tripura)

Permission and charging of fee for advertisement of private property, whether liable to service tax?

Municipal Corporation granted permission to advertising agent for putting up advertising boards on private properties and collected therefor.

The HC held that grant of permission was part and parcel of the function of the Municipal Corporation in the form of duty to the public to ensure better municipal governance and cannot be termed as a service rendered to agents u/s 65(105)(zzzm). Reliance was also placed on S.244, 245 and 386 of Bombay Provincial Municipal Corporation Act, 1949.

Selvel Media Services Private Limited V. Municipal Corporation of City of Ahmedabad, 2016 (45) STR 166 (Guj)

Whether extended period of limitation is invokable when service tax is liable to be paid under reverse charge method, where tax paid is available as credit?

The Tribunal held that where service tax was payable under reverse charge method, which tax was available as credit, then extended period of limitation was not available since the issue was revenue neutral and no malafide intention could be attributable for delayed payment of service tax. The Tribunal further held that issue being interpretational, extended period of limitation was not invokable.

Persistent System Ltd V. PCST, 2016 (45) STR 177 (T)

TRANSFER OF INTELLECTUAL PROPERTY BETWEEN ASSOCIATED ENTERPRISES AND BEPS

CA Sachin Kumar B.P and CA Omar Abdullah S M

Introduction

As India propels itself on the growth path under the able leadership of our Prime Minister, one of the sunshine sectors is the services economy. A proof of that being the sky – high valuations of internet start-ups who are just few years old. Even the current demonetisation drive has been a boon for services organisations with enterprises like PayTM hitting an all-time high for the number of daily transactions during this campaign against black money. A significant number of these start-ups derive their value from the intellectual property (IP) they have created.

Usually start-ups, in case of an IP, migrate the same to a jurisdiction where strong IP protection is available and the tax costs are optimum on income derived from IP. This is a prevailing practice world over due to the mobile nature of IP assets. During migration of IP where ownership is transferred to Associated Enterprise in the chosen jurisdiction, transfer pricing provisions have to be complied with. If independent comparables are available, then one among the five traditional methods (Comparable Uncontrolled Price Method, Cost Plus Method, Resale Price Method, Profit Split Method, Transaction Net Margin Method) can be adopted to benchmark the transaction.

However, most often at the stage of migration of IP, the IP assets are at a stage when they are not ready to be commercialised but require further development. For transfer of such IP assets which are in their infancy stage amongst associated enterprise, it is unlikely that an independent comparable transaction will be found. Therefore, assessees rely on the sixth method (any other method) to establish that the transaction is at Arm's Length Price using various valuation techniques such as Discounted Cash Flow method etc. and adopting **assumptions** (likely future developments or events) to justify the valuation. It is during the transfer of these infant IP that there is scope for tax base erosion and profit shifting (BEPS).

Risk of BEPS on Intra-group Transfer of Intellectual Property

The tax authorities normally find it difficult to establish or verify what developments or events **(assumptions)** might be considered relevant for the pricing of a transaction involving the transfer of IP or rights in IP, and the extent to which the occurrence of such developments or events, or the direction they take, might have been foreseen or reasonably foreseeable at the time the transaction was entered into. The developments or events that might be of relevance for the valuation of an IP are in most cases strongly connected to the business environment in which that IP is developed or exploited. Therefore, the assessment of which developments or events are relevant and whether the occurrence and direction of such developments or events might have been foreseen or reasonably foreseeable requires specialised knowledge, expertise and insight into the business environment in which the IP is developed or exploited. In addition, the assessments that are prudent to undertake when evaluating the transfer of IP or rights in IP in an uncontrolled transaction, may not be seen as necessary or useful for other than transfer pricing purposes by the Multi-National Enterprise (MNE) group when a transfer takes place within the group, with the result that those assessments may not be comprehensive. For example, an enterprise may transfer IP at an early stage of development to an associated enterprise, set a royalty rate that does not reflect the value of the IP at the time of the transfer, and later take the position that it was not possible at the time of the transfer to predict the subsequent success of the product with full certainty. The difference between the projected results used to set the transfer pricing (ex-ante) and the actual result (ex-post) value of the IP would therefore be claimed by the assessee to be attributable to more favourable developments than anticipated during the stage of transfer. The general experience of tax authorities in these situations is that they may not have the specific business insights or access to the information to be able to examine the assessee's claim

and to demonstrate that the difference between the ex-ante and ex-post value of the intangible is due to non-arm's length pricing assumptions made by the assessee. Instead, tax authorities seeking to examine the assessee's claim are largely dependent on the insights and information provided by that assessee. These situations associated with information asymmetry between assessees and tax authorities can give rise to transfer pricing risk.

BEPS Action Plan 8-10

The OECD BEPS Action Plan 8 – 10 dealing with the overhaul of transfer pricing provisions to counter the harmful effects of base erosion and profit shifting due to gaps in the transfer pricing law and aggressive tax planning by Multi-National Companies (MNC's) has focused on transfer pricing of hard to value intellectual property (HTVI) amongst associated enterprises in Chapter – 6 of the BEPS Action Plan 8 – 10 Report.

As part of its measure to curb the BEPS risk arising from transfer of Intellectual Property which is hard to value, it has first defined Hard to Value Intellectual Property as follows:

- The Intellectual Property is only partially developed at the time of transfer
- It is not to be exploited commercially until several years following the transaction
- It is integral to the development of other Hard to value Intellectual Property
- It is expected to be exploited in a novel manner, making reliable projections from past development unavailable
- It is transferred to an associated enterprise for a lump sum payment
- It is used in connection with, or developed under, a cost contribution arrangement or similar arrangements

Next the new guidance provides that the tax authorities can use ex-post outcomes as presumptive evidence about the appropriateness of the ex-ante transfer price for the transfer of IP. It is presumed, barring unforeseen events, that the transfer pricing is not arm's length if there are material difference between the forecasts used to price the transaction and the actual results. However, assessee's may rebut this presumption based on the following assumptions:

1. The assessee documented how the original projections were determined, including how reasonably foreseeable events and risks were considered and the probabilities assigned to those events. In addition, the assessee must provide reliable evidence that any significant difference between the financial projections and the actual outcome is due to unforeseeable events, or that the probability of the occurrence of foreseeable outcomes at the time of transactions was not significantly overestimated or underestimated. An unforeseeable event is a low-probability event that could not be foreseen, such as a natural disaster.
2. The transfer of HTVI was covered by a bi-lateral or multilateral advance pricing arrangement.
3. Any significant differences between the financial projections and the actual outcomes do not cause the projected compensation for the HTVI to deviate by more than 20 percent.
4. The HTVI has generated unrelated party revenues for the transferee for a Five-year commercialisation period, and any difference between the financial projections and the actual outcomes was less than or equal to 20 percent of the forecasts for that period.

Conclusion

The service sector has been a key contributor in the growth of the Indian economy. From outsourced services, we have started moving up the value chain by creation of many blockbuster service products (IP), take the example of Girish Mathrubootham, the founder of Freshdesk. Migration of IP to different jurisdiction is a normal practice owing to the mobile nature of IP asset. The Indian judiciary has till date upheld the view that, for valuation of IP only the future projections can be adopted, and such valuation cannot be reviewed with actual figures at a later date by the tax authorities. However, this may not be the case in the future as the law evolves in India with adoption of BEPS recommendation, which will give the tax authorities power to review the transfer price of IP assets with actual figures at a later date. Therefore, assessee's must be cautious & ensure that appropriate documentation is in place, for production before the revenue authorities during transfer pricing assessment of such intra-group IP transfers as assessment of such transaction happens at a later stage and revenue authorities would have power to review the transfer price of IP assets with actual figures at a later date.

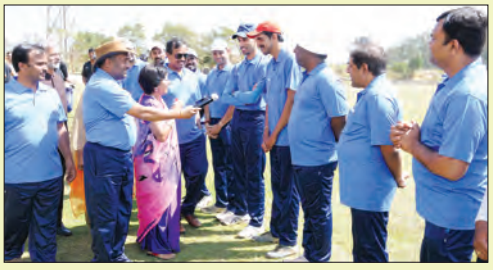
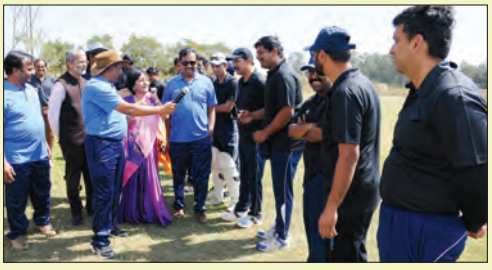
Cricket Match jointly organizing with Department of Income Tax
















Shri A S Kiran Kumar, Chairman, ISRO inviting for SICASA National convention for CA Students



World National Commerce Education Day, Carrer Counselling Committe (CCC), ICAI @ Sri. Jagudguru Renukacharya Pre-University College



CA Raveendra S.Kore,
Chairman, SICASA


CA. Geetha A B.,
Vice-Chairperson


Participants

Sports Meet jointly with KSCAA

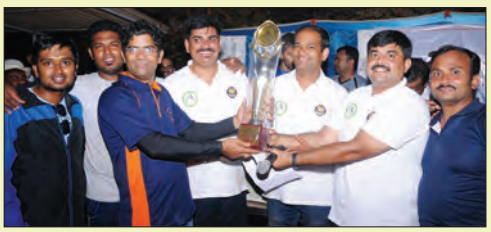










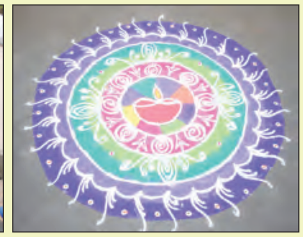



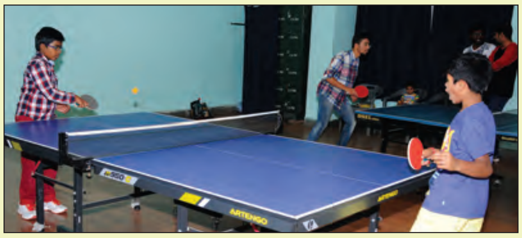
Sports & Talent Meet jointly with KSCAA







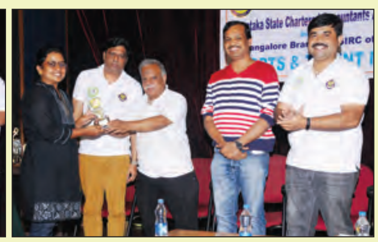
















Seminar on Direct Taxes - Search, Seizure, Settlement & Penalty Provisions

Inauguration

CA. Prashanth G S
Co-ordinator

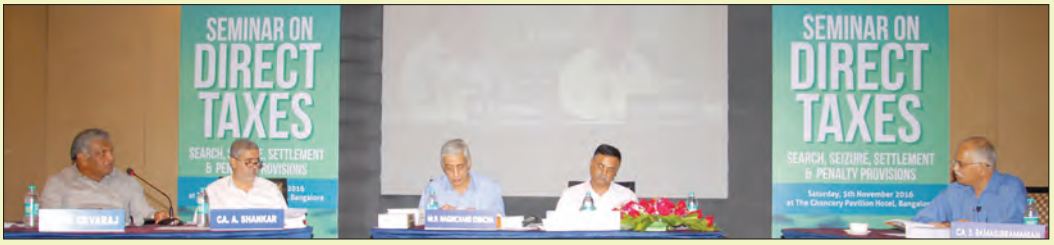
CA. A Shankar

CA. D Devaraj

CA. H Naginchand
Khincha

CA. S Ramasubramanian

CA. K R Pradeep



Panel Discussion

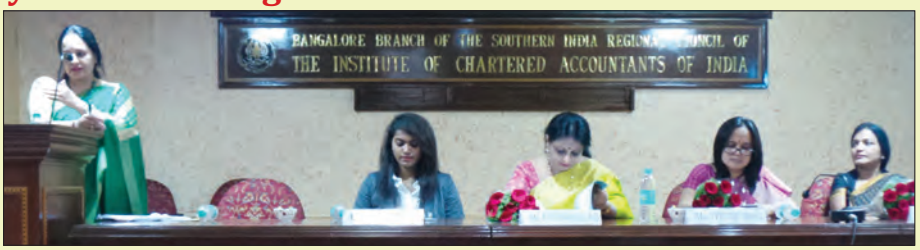
R C A Participants

Participants

Self Defence and Safety by Parihar - Bangalore Commissioner of Police

Ms. Jyothi Bhat

Mrs. Rani Shetty,
PARIHAR - Incharge



Speakers at Study Circle Meetings

CA K. Gururaj Acharya

CA Badrinath N R

CA Prashanth G S & CA. Naveen Khariwal G

CA P V Srinivasan

CA Dayaniwas

CA. Kalyan Kumar

CA H. Shivakumar

CA A Rafeq & CA E Narasimhan

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Bangalore Branch of SIRC e-News Letter English Monthly Printed & Published & Edited by Editor CA. Pampanna B.E., Chairman, on behalf of **Bangalore Branch of SIRC of ICAI**., No.16/O, 'ICAI Bhawan', Millers Tank Bed Area, Vasantnagar, Bangalore-560052, Karnataka
Tel : 080 - 3056 3500, Fax : 080 - 3056 3542, www.bangaloreicai.org e-mail : bangalore@icai.org
Printed at: **Jwalamukhi Mudranalaya Pvt. Ltd.,** 44/1, K.R. Road, Basavanagudi, Bangalore-560 004, Ph : 080-26617243, e-mail : jwalmuki@gmail.com
Published at: No.16/O, 'ICAI Bhawan', Millers Tank Bed Area, Vasantnagar, Bangalore-560052, Karnataka, **EDITOR: CA. Pampanna B.E.**