



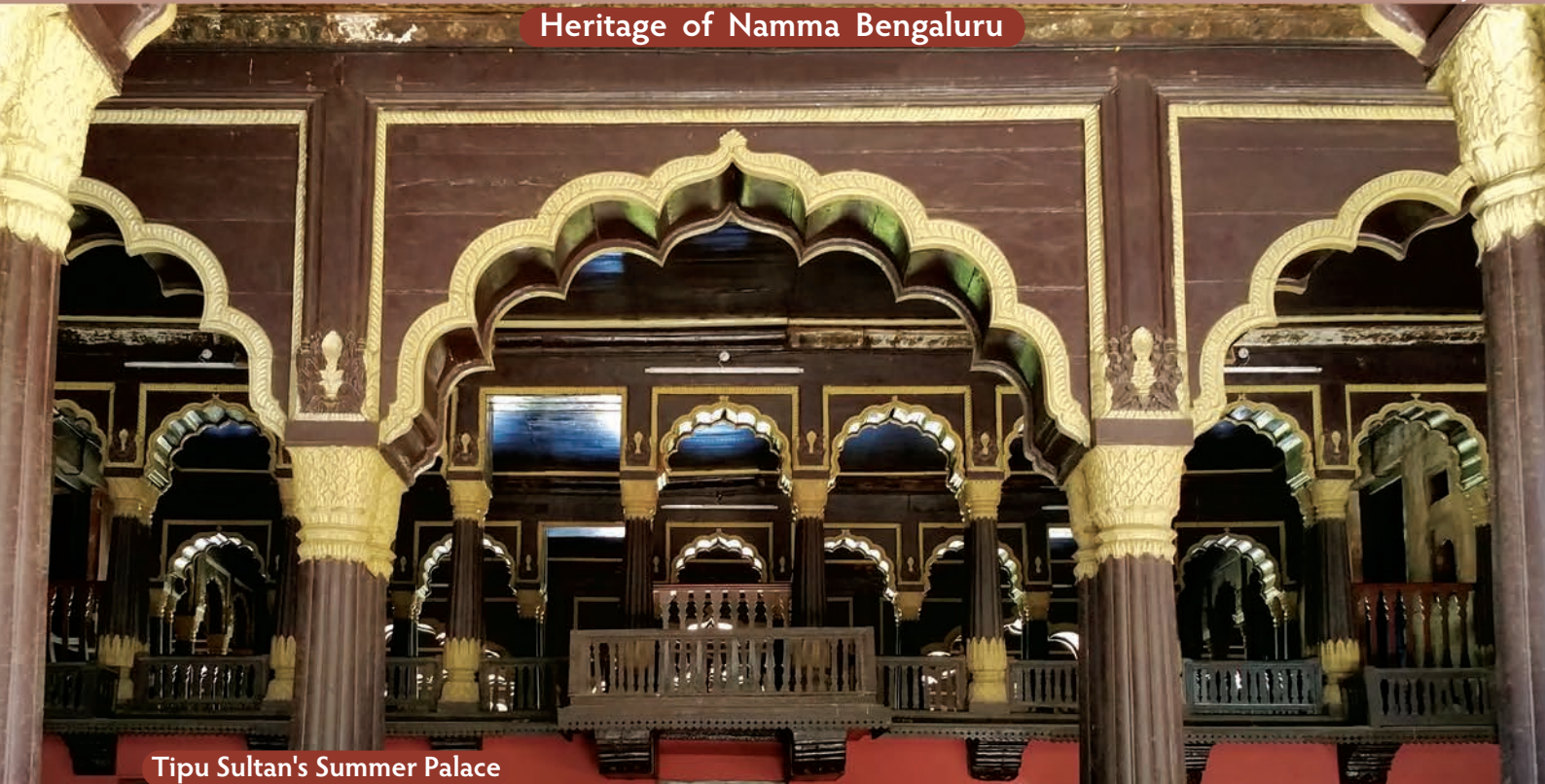
Bangalore Branch of SIRC Newsletter

English Monthly

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Heritage of Namma Bengaluru



Tipu Sultan's Summer Palace



Tipu Sultan's Armoury

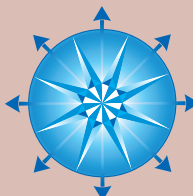


**Branch Election
on 13.02.2016**



*"If you feel that by giving this title,
I will praise your Government,
you will be disappointed.
I am a fact finding man"*
(Sir M.V. to Jawaharlal Nehru,
when Bharata Ratna was awarded)

VICHAKSHANA



CA

The Clear-sighted Professional



*"I entertain great regards for your fine
abilities and love of the Country and
it shall be unabated, whether I have the
good fortune to secure your cooperation
or face your honest opposition"*
(Mahatma Gandhi to Sir M.V.)

Advt.

Advt.

Words of Appreciation!



Kudos to Allama Prabhu and his team
The old order changeth yielding place to new but not without leaving its foot prints.
Our expectations for one more fruitful year was happily met. The Branch was well equipped to handle new legislations under the horizon notably among them being the new Companies Act 2013, which we had a number of Seminars, Workshops and Study Circle Meets.

We also noticed innovation in the programmes – one of which was practice alert discussions. The Continuing Education programmes were well planned and comprehensive. The monthly newsletter was put out on time and included new features like guest articles by eminent persons and especially a new column KYC – Know Your City – showcasing and highlighting the important heritage places of the City.

We also saw a lot of streamlining in the administration responding to the growing needs of the Student Community and the CA Fraternity.

All in all, it has been one of the best periods in the history of the branch.

- Jnanasagara CA. S. Krishna Swamy



Dear Mr. Prabhu

It is good to see that during your tenure Bangalore Branch news letter has turned out to be a quality magazine which I always looked forward to get and read. Your well researched information on Bangalore would have helped non Karnataka residents to know the glory of city they live in.

During your tenure, the programmes were conducted professionally ensuring that the delegates' time was not wasted on needless formalities.

- CA. Chythanya K.K.



Dear Chairman Allama Prabhu,
I am in receipt of the Activity Report of Bangalore Branch for the year 2015.

During the year you have conducted a wide spectrum of activities, for both, the member and students.

You have also highlighted social and cultural issues of the city and the state leading towards all-inclusive awareness so essential to all of us. Especially to all those millions from other parts of our country, who have made Bengaluru their home.

The quality and number of activities speaks volumes of your commitment and dedication to ICAI.

My compliments and congratulations to you and your team.

- CA. Nanu R. Malliya



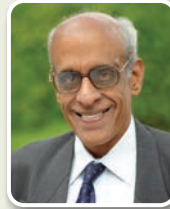
Dear Allama Prabhu

The activity charted by you was well planned and neatly executed with selfless effort, keeping only the professional growth in mind.

Kudos to your leadership skills ably backed by your resourcefulness. I was always delighted to work for the Bangalore Branch of ICAI and more so under your chairmanship.

I wish that you use the leadership skills and your knowledge base for furthering the larger interest of the profession and the community.

- CA. K. Gururaja Acharya



Newsletter coverage KYC is superb

I am very much delighted to go through the newsletter.

KYC coverages enhances our knowledge.

Opening page photo (Halsur Temple), I have to visit the temple again after numerable visits to locate with my defective eyes and vision.

Practical Discussions and Workshops, you have given New Leadership at Bangalore Branch for CAs.

You are able to plan ahead and get commitment from Resource persons many months in advance.

Wishing you and your team many more laurels in the coming months.

Excellent value with inputs from Shri Raghu & Shri Krishnaswami.

- CA. Ramachandran Mahadevan



"Mr. Allama Prabhu has exceeded my expectations in his deliverables to the members of Bangalore Branch. He has once again proved his sincerity and dedication in leading our Bangalore Branch by conducting good quality programmes, taken up new initiatives. Wish him more success in future."

- CA. Sanjay M Dhariwal



Dear Chairman,

Hearty congratulations on bringing out a wonderful newsletter for the month of August 2015.

Truly your vision to make us knowledgeable on our own city is commendable. Your selfless vision to not even bring out your own editorial is 'GANDHIAN' in every aspect and detail.

Guest editorials are informative and captivating.

I congratulate you in inviting Sri S. Krishnaswamy for the guest editorial. He has brought out a great aspect of Mahabharata and correlated it to our profession and life. Sanjaya as an ace reporter and auditor surely is the first auditor of the world. Our noble profession has its roots in Mahabharata makes us more formidable than we are. What a Learned Man!! We are truly blessed in having him in our brethren.

Please accept my humble wishes in adopting a Internationally worth emulating selfless model.

- CA. Sadashiv R. Prasad



Performance speaks than million words.

My good wishes to you and the entire team for arranging such a wonderful conference and the year under your chairmanship will be benchmarked as one of the very finest in terms of quality and taught behind every program conducted. I have no doubt in my mind that after this years performance you will be in most sought after by many Professional as a true leader. Performance speaks than million words.

Due to my pressing professional commitments i am not able to attend the regular programs at institute but i am keenly following through the live tv / article students interactions and news letters in past 6 months time and i am very happy for you and have learned very new concepts by your initiatives taken so far.

- CA. Manoj Kumar G

Chairman's Communique...

Dear Esteemed Member,

Namasthe,

I happen to be the 45th Chairman of the Bangalore Branch in its 54th Year.

All of my predecessor Chairmen had performed exceedingly well and there was a tremendous expectation from the members; it was definitely a challenging task for me to cope with their expectations and deliver to their satisfaction.

"The Quality of a person's life will be determined by the depth of their commitments to excellence, no matter what their chosen field is"

- Jnanasagara CA S Krishna Swamy

The above golden words of Jnanasagara CA S Krishna Swamy has been the guiding principle and the source of inspiration for me ..throughout my period.

This is my last communique as the Chairman of the Bangalore Branch and while signing off, the various novel initiatives taken by me for making the Branch more Vibrant and the Newsletter more attractive run through my memory like a series of cascade.

During my tenure, enough number of events have been conducted on diverse topics relevant to our Profession. On every Wednesday Study Circle meetings were conducted and almost on every Friday's Practice Alert Discussions were conducted. Series of Intensive workshops on International Taxation was commenced, being scheduled on 1st and 3rd Saturday of every month. This is apart from the various Practice Support hands-on training programmes, workshops, seminars and conferences that we conducted to satisfy the thirst for knowledge of our members.

My tenure has been a wonderful one and the Branch was brimming with Members, actively participating in all the events conducted/hosted by the Branch.

It is my firm belief that the Speakers/Resource Persons are the Heart and the Brain of our Organisation; we the organisers-the limbs; the distinguished participants the life blood, without whom any organization would drop dead.

The collective demonstrative quest for knowledge by our members, in pursuit of professional excellence has been

the hall mark of achievement. With your total support, co-operation, blessings and good wishes our Team has emerged as a successful one.

"All good men and women must take responsibility to create legacies that will take the next generation to a level we could only imagine."

- Jim Rohn

In a Clock, only the two hands will be apparently visible; likewise, what is visible to outsiders is only 2 things viz., Programmes and Exams. They will not be privy to the other internal activities which will be continually happening on the hindsight. Some of the important steps taken towards better administration and good governance are highlighted below.

Towards Better Administration:

1. Inauguration of Professional Excellence Block of Bengaluru Branch, at 1st Floor of Sub-Branch of Race Course Road office, Adhyayana Hall, Abhyasa Hall, Jnanadayini Hall. Bangalore Branch, being the largest branch in India in its member strength with 12800+ Members, is also one of the largest branch having students more than 27,000+. It has always been a challenge to cater to the various requirements of both members and students. The new premises is equipped with 3 halls, Jnanadayini Mini auditorium, Abhyasa Hall and Adhyayana Hall.
2. Sufficient number of CCTV's are being installed in all the three buildings at strategic locations to ensure the safety of the Members/Students.
3. During Rainy days our Basement was fully waterlogged, and at the four corners huge water leakages were causing lot of inconvenience for the last one decade. Appropriate civil repair works were carried out; four sides Rain water pipe lines were fixed for easy flow of water and avoid leakages.
4. Front Entrance is neatly maintained by increasing the parking space.
5. A glamorous face lift being given to the Lobby by erecting an attractive name board of the Branch using Brass letters. A heavy duty vacuum cleaner is purchased and importance is given for maintaining cleanliness in the premises.
6. File racks all over Administrative, Accounts, Records, and other sections were fabricated to improve the storage space for the records.
7. Bar Code introduction was made to ease the billing at the sales counter.



8. A separate Fresh Room for Guest Speakers & Committee Members has been constructed by optimally using the existing space.
9. Planning of all the events atleast 3 months in advance and publishing the same for the information of the members has been done throughout the year.
10. Huge scraps, old Books and unwanted items all weighing approx. 9.3 Metric Tonnes were cleared in 4 trucks from the basement and could realized Rs.1,29,754 for the branch. The same space is being converted into an effective storage area for storing the publications of ICAI.
11. Sufficient staff was newly recruited, trained, oriented and motivated for better service.
12. e-sale of ICAI publications being successfully initiated.
13. Introduction of new and FDP faculties for Coaching Classes that resulted in drastic increase in the number. The strength of the Coaching Classes has increased gradually during year and it has touched to CPT - 40, IPCC - 116, FINAL - 154 as on date and likely to increase shortly. Students from outside the State are also joining our Classes.
14. No fee being collected for Study Circle Meets/Impact Seminars/Intensive Workshops on International Taxation.
15. Special arrangements were made to serve Good Snacks to members during Study Circles on complimentary basis.
16. Revision of salary to staff has been made considering the current cost of living.
17. Motivational excursion for staff was conducted to increase the morale & improve their internal relationships.

Towards good governance..

During the year many steps have been taken towards better governance, which interalia include :

1. +91 7204 121 121 - Chairman's Mobile Number: A separate mobile number is being dedicated for the *Chairman-In Office*, which will invariably pass on to the next Chairmen. A separate handset is purchased for the Chairman wherein all the numbers of the Resource Persons and other important persons are stored for the future usage by the Successors.
2. Photos of speakers/Resource persons are published in the Calendar of events in advance.
3. SMS Content - Refined : SMS's are being regularly sent informing about the happening of the events. It contains the topic and the speakers name and no mention of the

name of the Chairman is given. We understand that the Members are interested in knowing about the details of the event and not about who sent the SMS.

4. Live CCTV Viewing is made available in the Handset of the Chairman to monitor the activities of the staff and others. Many a time appropriate instructions for the effective functioning of the staff have been given after viewing the live feeds.

The above are only few examples and much more has been done for providing the effective service to the members and students.

I feel as if all my previous Births' *Punya's (punya visheshana)* got converged in the Bangalore Branch to successfully sail me through my tenure.

Even though I still feel that I could have done much more, I do have the satisfaction of serving the Fraternity to the best of my abilities. Our aspirations to make it a fruitful year were realized making the journey delightful and a rewarding one.

I am always indebted to your encouragement and support, without which I wouldn't have achieved anything worthwhile.

To conclude, my heart is remembering the following song from Gurudev Rabindranath Tagore's – *Gitanjali*:

*"I have had my invitation to this world's festival,
And thus my life has been blessed.
My eyes have seen and my ears have heard.
It was my part at this feast to play upon my instrument,
And I have done all I could.
Now, I ask, has the time come at last
when I may go in and see thy face and
offer thee my silent salutation?"*

Dhanyavada

CA. Allama Prabhu M.S.

Chairman

06/02/2016

"That man alone will be able to get the best of nature, who, having the power of attaching himself to a thing with all his energy, has also the power to detach himself when he should do so."

- Swamy Vivekananda on WORK AND ITS SECRET
(Delivered at Los Angeles, California, January 4, 1900)

KYC

Know Your City

ನಮ್ಮ ಬೆಂಗಳೂರು

Heritage of Namma Bengaluru -12

ಅಂದದೂರು ಬೆಂಗಳೂರು... ಅನಂದದ ತವರೂರು...

Abode of Happiness and Envy of Heaven !

Tipu also has played a notable part in the history of Bengaluru. Even in times of War, he never neglected Agriculture, Industry and Trade and always strived for the overall economic development & prosperity of his provinces. He had made a separate department to take care of the economic affairs of the State more specifically the Trade and Commerce.

By his sheer business acumen and magnitude of business, Tipu obtained monopoly to trade over spices, Sandal, Silk, Ivory and Tobacco. Market developed multifariously and business flourished. Because of the relentless and determined endeavours of Hyder Ali and Tipu Sultan, Vibrant Bengaluru attained worldwide fame again.

In his book "*Bangalore Through the Centuries*", the author, Mr.M.Fazlul Hasan, makes a very interesting comment; there cannot be a more respectful act for me than to reproduce the entire paragraph as it is and to conclude my writing as well:

"At Present it is a big industrial and commercial centre in the south. And, Bangalore's Present Prosperity and trends of development threaten to make it a city destined more for India of the future than for India of the Past.

This then, is the Prologue to the stupendous saga of Bangalore. Needless to say the whole course of events which took place here justifies its founder's conviction that the place where it stands indicated '*Gandu-Bhumi*' or 'Heroic Land'. But it is unfair to think that the present prosperity of Bangalore has obscured its glorious

past, because **what is in a people, their life, soul and sap, has filtered, drop by drop, down the centuries and has collected into a heritage.** However, before the reader enters into the broader aspects of Bangalore's history, it is worthwhile to remember that **this is a city where the past blends harmoniously into the present.** And although this city is rapidly growing and getting a tremendous face-lift through its new edifices, wide roads and sprawling extensions, still there remain a few old temples, old mosques, old tanks and the remnant of an once superb fort **symbols of the energy and lavish benevolence of those who erected them** – amidst its modern environment. In these old temples, one almost hears the echo of tolling of the old bells. In these old mosques, one almost listens to the erstwhile sound of the Muezzin's call. And, one almost smells the gun-powder in the turrets of its old fort, a part of which is still preserved as a curio to rouse the interest of not only the visitors from the other parts of this country and abroad, but also of the inhabitants of this city. Indeed, **these relics of the past remind us of a fascinating history, a glorious past and those acts of heroism and valour,** which the citizens of Bangalore may well claim to be a part of their patrimony."



Tipu Sultan Summer Palace



Inscribed on a Stone in the Tipu Sultan Palace

The below text is the extract from EPIGRAPHIA CARNATICA, VOL IX , INSCRIPTIONS IN THE BANGALORE DISTRICT, by B. LEWIS RICE.

(inscribed on a Stone in the Tipu Sultan Palace, translation of Persian text)

(In Persian)—As soon as the foundation of this palace was laid, its head was raised to heaven with joy. Oh, what a lofty mansion, a home of happiness, its summit being above the skies. It is a house of glass in purity, all who see it are struck with wonder. In magnificence it rivals the sky, which hangs down its head with shame. The description alone of this palace, when heard by Faridun, caused him to go to his long sleep. I sought by computation according to Zar# for the date, and an unseen angel said—**"A house of happiness,"** 1196(1781 A.D.). When the painting of this new palace was finished, it cast the beauty of China into oblivion. I sought for this date from Khizir@ the wise, who said—**"Doubtless it is envied by heaven,"** 1206(1791 A.D.)*

* An ancient model King; of Persia, noted for his justice and generosity.

A system invented by Tipu Sultan, calculating by abtas instead of the ordinary abjad, the Arab notation in common use among Muhammadans. (See Mysore Gazetteer, revised edition of 1397, Vol. I, Appendix, p. 812).

@ A Prophet who was minister to a king of Persia. He discovered and drank of the fountain of life and became immortal. By some he is confounded with the prophet Elias, and likewise with St. George of England, whom they call Khizir Elias.

B. LEWIS RICE comments about the palace:

"The palace of Tipu Sultan in the Bangalore Fort was a building in the style of the DaryaDaulat at Seringapatam. The building was of two storeys and not without some degree of magnificence. A large open space in front was surrounded by a corridor, in the centre of which, opposite the palace, was the *naubat khana* or bandstand, in a gallery. The upper storey of the palace contained the public and private apartments of the Sultan and his ladies, with two balconies of state from which he gave audience. Paint and false gilding decorated the walls. The offices of the Mysore Commission were held in the building until the new range of Public Offices in Cubbon Park was occupied in 1868."

TIPU SULTAN ARMOURY

This Armoury once sheltered Guns, Shells, Rockets and other Artilleries and served as an instrumental arsenal for Tipu.

It was really a difficult and time consuming task for me to find the hidden 200 year old Armoury, built by Tipu Sultan. I enquired at least 15 people and each of them directed me either to the Tipu Sultan Palace or to the Bengaluru Fort, meaning even the residents and the business persons dwelling there has no idea about the existence of this historical heritage monument, which has gone unnoticed amidst chaotic Kalasi Palya's concrete jungle.

This historical monument lies hidden in a by lane behind the Bangalore Medical College.

This is where Tipu Sultan stored his cache of ammunition. In fact, the Fort, the Palace and the Armoury are situated within 200 meters of each other. It is believed that there was a tunnel linking this to the Fort, but, no traces of them could be seen now.

CANONS OF TIPPU TIMES

“Namma Metro” Workers were digging the earth for Bangalore Metro Line and the spot being dug was almost at the centre of the three historical sites viz., Bengaluru Fort, Kote Venkataramana Swamy Temple and the Tippu Armoury; in fact, the Tipu Palace lies just next to the said temple. The location is full of historical significance.

1. On Thursday, 22.11.2012, in the early hours, the workers accidentally hit the metallic surface of an object which was buried under the ground; carefully they could excavate a full 12 feet Canon and a Canon Ball belonging to the Tipu Era.
2. Next day, i.e., on Friday, 23.11.2012, history repeated itself; the workers discovered yet another similar Canon !
3. Again, during mid May 2015, Construction workers digging inside the BMC campus unearthed one more Canon !

Why these were buried – the reason is not clear.

Were they actually been buried?

I was just deliberating about the reason why the canons were buried. I could not envisage even one. Old Photos and ancient paintings of the Bangalore Fort reveal that the fort was surrounded by a ditch filled with water. The Fort is also situated in a relatively elevated place when compared to its immediate precinct's. Even the armoury lies nearly 2 meters below the existing ground level.

The Wheels of the Canons are missing. Therefore, what I feel is that the wheels of the Canons, which are easy to carry, might have been removed and the Canons, each weighing nearly 2 Tonnes, were just abandoned there itself. Over a period of time, probably, when the ditch was filled up, even these canons also might have got covered up. (A possibility)

NAMMA BENGALURU:

We know that the word Bengaluru has appeared in the Begur inscription (900AD). Bengaluru was also known as **Kalyaana Nagara**. In the inscription of Madivala, we find the use of the word Vengaluru (1247AD)



Canons kept at the Backyard of Venkatappa Art Gallery



Kempe Gowda-I was just fascinated about the name Bengaluru.

It is propounded by few famous historians that Bengaluru is derived from Vengaluru.

In many Indian languages the letter “Va” will be substituted and popularly used as “Ba” (Eg., Vasathi > Basathi; Vaidyanath > Baidyanath)

Lord Vishnu is also known as Vengalanatha/ Venkatanatha/ Venkateshwara ; many temples in this form are found in and around Bengaluru. Therefore, the Historians feel that from Vengalanatha the word Vengala might have been derived and the City became Vengalanathanuru >> Vengalanuru >> Vengaluru >> Bengaluru >> Bangalore >> Bengaluru

One of the shloka describing Vishnu goes as follows:

*Kalyaanadbhuta Gaatraya
Kaamithartha Pradayini
Srimadvenkatanathaya
Srinivaasaaya tey namaha*

“You are the embodiment of all the auspicious virtues; your glory grants us all our wants and bestows on us all the prosperity that we may desire! Salutations to your Glory !”

Vengalanatha >> One who grants us Prospects and Prosperity!



Kalyaana Nagari-Bengaluru

In Sanskrit the word *Kalayana* is synonymous to *Shreyas*, *Shivam*, *Bhadram*, *Mangalam*, *Shubham* – meaning affluence, joy, Delight, Happiness, good fortune, etc.

True to the elucidation, the blessed City - Bengaluru is conferring all the auspicious virtues to its residents.

Overwhelmed by what Bengaluru has granted to me, I touched the ground beneath, took the divine earth in both of my hands, with devotion I gratefully offered my emotional salutations to Bengaluru – the auspicious city which is shaping destinies and granting fortunes for millions of inhabitants.

Glory to Bengaluru !

In this fascinating journey of “Heritage of Namma Bengaluru”, I have tried to ignite interest in the history of the City and Legacy of many of its Heritage signature monuments.

Many have told me that they are preserving the copy of the News Letter just for this purpose. Many said that they were just eagerly waiting for the next issue to reach. Many CA's have visited the places elucidated in the Articles and have expressed their gratitude in superlatives.

This will be the last Article on the series. The journey was more exciting than reaching the destination.

I am grateful to the groundswell of support & encouragement given to me, which was actually firing zeal and inspiration in me to write this series of Articles on “Namma Bengaluru”

Please accept my Salutations.. Namaskara.

1200 year old Kalyani found adjacent to Halasuru Someshwara Temple





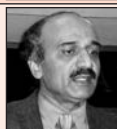






The photo is of the 1200 year old abandoned Kalyani (stepped pond) which was unearthed in April 2010 and the entire history was brought alive. The Pond is square in shape and has descending steps on all the four sides. This proves the existence of the temple even before Kempegowda 1 reconstructed it during early 16th century. The water was considered sacred and was used for worshipping and other purposes of the Temple. To speak about the present condition of the waterless said is better !



Statue of Kempe Gowda - 1 at Kempe Gowda Museum, Mayo Hall, Bengaluru






CALENDAR OF EVENTS - FEBRUARY & MARCH 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
03.02.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet IFC Deficiencies & Preventive controls in Smaller entities CA. Ramachandran Mahadevan VENUE: Branch Premises	 2 hrs
05.02.2016 Friday 6.00pm to 8.00pm	PRACTICE ALERT - DISCUSSIONS Companies Act CS. M.S Sivashankaran Iyer & CS. Ms.Mangala Rohit VENUE: Branch Premises	  2 hrs
06.02.2016 Saturday 9.45am to 5.15pm	National Conference on FAFP Delegate Fees : Rs. 500/- VENUE: Sri Devaraj Urs Bhawan Auditorium, Opp. to Bangalore Branch	6 hrs
06.02.2016 Saturday 5.30pm to 8.30pm	Intensive Workshop on International Taxation Article-12 : Royalties CA. K K Chythanya VENUE: Branch Premises <i>No Delegate Fee</i>	 3 hrs
10.02.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Income Tax Issues Mr. M.V. Seshachala, Advocate VENUE: Branch Premises	 2 hrs
13.02.2016 Saturday	Branch Election Timings: 8.00 am to 6.30 pm <i>Details at Page # 32</i>	—
17.02.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet TDS - Latest Amendements and Critical Issues CA. D R Venkatesh VENUE: Branch Premises	 2 hrs
20.02.2016 Saturday 9.45am to 5.15pm	Workshop on Ind AS Co-ordinator : CA Gururaj Acharya Delegate Fees : Rs 750/- VENUE: Branch Premises <i>Details at Page # 13</i>	 6 hrs
20.02.2016 Saturday 5.30pm to 8.30pm	Intensive Workshop on International Taxation Article 12: Fees for Technical Service CA. Subramanian K R VENUE: Branch Premises <i>No Delegate Fee</i>	 3 hrs
24.02.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet GST - Model GST Law CA. A Saiprasad VENUE: Branch Premises	 2 hrs
26.02.2016 Friday 5.00pm to 8.00pm	Regulations of NBFC's - Expectations from Charteterd Accountants By RBI Officials Mr. Susobhan Sinha, GM (RBI) & Mr. NCN Acharya, DGM (RBI) VENUE: Branch Premises	3 hrs
01.03.2016 Tuesday 4.00pm to 8.00pm	An awareness programme - Analysis of Union Budget 2016 - In association with FKCCI Moderators: CA. T V Mohandas Pai & CA. H. Padamchand Khincha VENUE: Chowdaiah Memorial Hall, Malleshwaram, Bangalore <i>Details at Page # 14</i>	  Approval awaited for Structured CPE Hours*



CALENDAR OF EVENTS - MARCH 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
02.03.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Mandatory quoting of PAN and furnishing information of financial transaction under Income Tax Act CA. D. Tarun Kumar Jain VENUE: Branch Premises	 2 hrs
05.03.2016 Saturday 5.30pm to 8.30pm	Intensive Workshop on International Taxation Article 13 : Capital Gains CA. Krishnan S VENUE: Branch Premises <i>No Delegate Fee</i>	 3 hrs
09.03.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Updates under the Commercial Tax Laws CA. Annapurna D Kabra VENUE: Branch Premises	 2 hrs
11.03.2016 Friday 10.00am to 5.00pm	Clause by Clause Discussion on Union Budget - DIRECT TAXES <i>Speakers:</i> CA. H. Padamchand Khincha CA. S Ramasubramanian CA. K K Chythanya <i>Delegate Fees : For Members - Rs 1000/-</i> VENUE: Ambedkar Bhawana Auditorium, Adjacent to B'lore Branch <i>Details at Page # 14</i>	6 hrs
12.03.2016 Saturday 10.00am to 5.00pm	Clause by Clause Discussion on Union Budget - INDIRECT TAXES <i>Address by : CA. Madhukar N Hiregange, Central Council Member, ICAI</i> <i>Speakers:</i> CA. V Raghuraman Mr. K S Naveen Kumar, Advocate CA. N R Badrinath <i>Delegate Fees : For Members - Rs 1000/- For both days - Rs 2000/-</i> VENUE: Ambedkar Bhawana Auditorium, Adjacent to B'lore Branch <i>Details at Page # 14</i>	6 hrs Total 12 hrs
16.03.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Reassessment U/S 147 & Revision U/S 263 as per IT Act CA. Prashanth G. S VENUE: Branch Premises	2 hrs
19.03.2016 Saturday 9.00am to 5.30pm	CA Women Conference <i>Delegate Fees: for members - Rs 800/-</i> VENUE: Hotel Paraag, behind Hotel Capitol, #3, Rajbhavan Road, B'lore-560001	6 hrs
19.03.2016 Saturday 6.00pm to 8.00pm	Intensive Workshop on International Taxation Article 14 : Independent Personal Service CA. Krishna Tata VENUE: Branch Premises <i>No Delegate Fee</i>	2 hrs
22.03.2016 Tuesday 5.30pm to 8.30pm	Hands on Training on using Excel Worksheet for Bank Audit CA. H. Shivakumar <i>Delegate Fee: Rs 500/- (Computers will be provided by the Branch)</i> VENUE : Race Course Road Sub Branch, II Floor, Next to SBI, Bengaluru	3 hrs
23.03.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Recent issues on Taxation of Charitable Trust / Institutions and recent changes in FCRA, Rules 2015 Dr. CA. N Suresh VENUE: Branch Premises	2 hrs

CALENDAR OF EVENTS - MARCH 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
25.03.2016 Friday 6.00pm to 8.00pm	Ammendements in Karnataka State Budget and recent Pronouncements CA. Venkataramani S VENUE: Branch Premises	2 hrs
26.03.2016 Saturday	Seminar on Bank Branch Audit Delegate Fees : For Members - Rs. 2,100/- (Details will be informed) VENUE: Hotel Le-Meridien, Sankey Road, Bangalore	6 hrs
29.03.2016 Tuesday 5.30pm to 8.30pm	Hands on Training on using Excel Worksheet for Bank Audit (Computers will be provided by the Branch) CA. H. Shivakumar Delegate Fee: Rs 500/- VENUE : Race Course Road Sub Branch, II Floor, Next to SBI, Bengaluru	3 hrs
30.03.2016 Wednesday	Study Circle Meet IAS 17 - Leases - CA. Vidyasarathy VENUE: Branch Premises TIME: 6.00pm to 8.00pm	2 hrs

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EDITOR :
CA. Allama Prabhu M.S.

Workshop on Ind AS

On **Saturday, 20th February, 2016**

Venue: **S. Narayanan Auditorium, ICAI Bhawan, Bangalore Branch**

6 hrs
CPE

Timings	Topics / Speakers
09.45am	Inaugural Session
10.00am	IND AS - Presentation & Disclosure Standards CA K. Gururaj Acharya
12.00Noon	IND AS - Income & Expenditure Standards CA Vinayak Pai

Timings	Topics / Speakers
01.30pm	Lunch Break
02.30pm	IND AS - Assets & Liabilities based Standards CA Mohan R. Lavi
04.15pm	IND AS - Group Reporting & other Miscellaneous Standards CA Adarsh Ranka

CA. Allama Prabhu M.S.
Chairman

CA K. Gururaj Acharya
Co-Ordinator

DELEGATE FEES: FOR MEMBERS: ₹ 750/- FOR OTHERS : ₹ 5,153/- (Incl. Service Tax & Cess)

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An Awareness Programme

Analysis of Union Budget 2016

In association with **FKCCI**

On **Tuesday, 1st March 2016**

Approval awaited for
Structured CPE Hrs*

Venue: **Chowdiah Memorial Hall, Malleshwaram, Bangalore**

Timings	Topics	Speakers
4.00pm to 4.30pm	Registration & High Tea	
4.30pm to 5.00pm	Inauguration	
5.00pm to 8.00pm	An Awareness Programme Analysis of Union Budget 2016	<i>Moderators:</i> CA. T V Mohandas Pai & CA. H. Padamchand Khincha

Clause by Clause Discussion on Union Budget

Direct Taxes & Indirect Taxes

Venue: **Dr. B. R. Ambedkar Bhawana Auditorium, Adjacent to Bangalore Branch**

On Friday, 11th March 2016			6 hrs CPE
Timings	Topics	Speakers	
10.00am to 5.00pm	Clause by Clause Discussion on Union Budget - DIRECT TAXES	CA. H Padamchand Khincha CA. S Ramasubramanian CA. K K Chythanya	

On Saturday, 12th March 2016			6 hrs CPE
Timings	Topics	Speakers	
10.00am to 5.00pm	Clause by Clause Discussion on Union Budget - INDIRECT TAXES	<i>Address by :</i> CA. Madhukar N Hiregange <i>Central Council Member, ICAI</i> CA. V Raghuraman Mr. K S Naveen Kumar, Advocate CA. N R Badrinath	

DELEGATE FEES:

	<u>Members</u>	<u>Non Members</u>
Both the Days :	₹ 2000/-	₹ 3435/-
Per Day :	₹ 1000/-	₹ 6870/-

Total
**12 hrs
CPE**

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

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Special Article

Charitable Trust's Tryst with Tax Department - 2



● Jnanasagara
CA. S. Krishna Swamy

In the last article I dealt with tax Department's approach of exemption of Charitable Trusts in the context of the proviso to sec 2(15) which defines "Charitable Purpose" I stated that in interpreting the proviso Courts have held that the "totality of the facts of the Case" must be considered before taking the ground of a solitary profit generating activity to deny exemption.

In this article I deal with how at the threshold - when considering a Registration application the proviso is invoked and several Courts have interpreted the relevant section 12AA as not to admit of such approach.

Section 12AA reads :

- (a) Call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf ; and
- (b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he -
 - (i) shall pass an order in writing registering the trust or institution;
 - (ii) Shall, if he is not so satisfied, pass an order in writing refusing the trust or institution,and a copy of such order shall be sent to applicant.

Several reasons for refusing registration by the dept can be summarized

1. Director of Income Tax(E) Vs R.J.B.V.V. Vasudevan Educational and Charitable Trust [2015] 370 ITR 217 (Mad)

The Court holding that registration is different from exemption and rejecting the Dept's View held

"The bona fides of the trust should not be doubted on this ground. The authority has to test the nature and the activities of the trust to grant registration. The original authority had not doubted the bona fides of the trust or the activity of the trust but on the ground the trust had spent low quantum towards charitable activity, the authority had declined registration of the trust. A trust can only do activities within its financial capability. A trust is not measured by its financial clout but by its philanthropic disposition. Therefore, the interpretation given by the original authority declining to register the trust has no legal basis."

Dept :

"For more than four years, there was no activity worth its name undertaken by the assessee- trust except some small amount of donations."

2. Matru Vandana Trust Vs. Director of Income Tax(E) [2015] 39 ITR (Trib) 30 Mumbai

Need Not Have Commenced Activities

"The whole premise of the provision, as we understand from its holistic reading, is a state of satisfaction by the competent authority with regard to the nature of the objects, i.e., qua their being charitable, legitimate, etc., and a genuine and bona fide intent to pursue those objects. The decision rejecting the assessee's application could after all only be based on an absence of such satisfaction or, rather, existence of a positive non-satisfaction, i.e., dis-satisfaction, with the genuineness of the activities presupposes their existence. The law, however, does not either postulate a waiting period for the assessee to apply for registration, i.e., after its formation, or for it to carry out the activities for a certain length of time before it could seek registration, making, implicitly, their being carried on a precondition therefore. In fact, in the myriad situations that arise in general or public life, it is difficult to stipulate such a time frame, which would vary with circumstances as also the nature and type of activity to be carried out ; the project size ; access to material and financial resources, etc.

Dept.

The Dept must be satisfied about

- (a) The objects of the Trust
- (b) The genuineness of the activities

A positive satisfaction cannot be arrived at in the absence of conduct of activities

3. Kanika Art Foundation Vs. Deputy Commissioner of Income Tax (E) [2015] 39 ITR (Trib) 53 (Mumbai)



Trustees have discretion to spend on non-charitable activities not a ground for rejection.

Tribunal Observed

"That at the time of the registration under section 12A, the commissioner of Income Tax is required to verify the objects of the trust and genuineness of its activities. If the objects of the trust are charitable and its activities are genuine, the registration is to be granted. If subsequently it is found that the assessee is not following its objects or that the objects are not charitable or its activities are not genuine then during the course of the assessment, the Assessing Officer has all the powers to tax such receipts of the trust which are not charitable or commercial in nature or to apply the provisions of section 13 of the Act so as to exclude income from the properties held under a trust for private religious purposes which does not ensure for the benefit of the public."

4. Life Shines Educational And Charitable Trust Vs Assistant commissioner of Income Tax [2015] 39 ITR (Trib) 291 (Chennai)

Activity need not have commenced

Tribunal Observed :

"Held, that the assessee's objects were covered by the definition of "Charitable Purpose" under section 2(15) of the Act and was entitled to registration under section 12AA. The issues of carrying on of charitable activities, application of income, etc., were left to be considered in appropriate proceedings."

Dept : The assessee not carrying on any reasonable charitable activity.

5. IP INDIA FOUNDATION Vs Director Of Income- Tax (E) [2015] 38 ITR (Trib) 195 (Hyderabad)

Look at the Primary Purpose

When the main object of the institution was charitable in nature the activities carried out towards the achievement thereof, being incidental or ancillary to the main object, even if resulting in profit and even carried out with non-members, were all held to be charitable in nature. The basic principle underlying the definition of charitable purposes remains unaltered even after the amendment in section 2(15) of the Act, though the restrictive first proviso was inserted therein. The assessee's primary purpose was advancement of objects of general public utility and it would remain charitable even if an incidental or ancillary activity for the purpose of achieving the main purpose was profitable in nature. Hence,

the order of the director of Income-Tax (E) was not correct.

Dept : Ancillary object commercial in nature and hence rejected.

6. Commissioner of Income Tax Vs. Sri Guru Gorakh Nath Charitable Educational Society [2015] 378 ITR 685 (P&H)

Registration is not Assessments Proceedings

Court Observed :

The provisions of the section 12AA also give the power under sub section 3 to cancel the registration of the trust if it is not carried out in accordance with the object but the commissioner has to keep in mind that he is not to act as an assessing authority while deciding the application under section 12AA and the enquiry regarding the genuineness of the activity with a charitable purpose is to be kept in mind. The objects of the trust, thus, have to be taken into consideration.

Dept :

The Commissioner rejected the application having come to the conclusion that the society had not proved its case whether the activities were being run in a Charitable manner and the society was not created wholly and exclusively for charitable purpose. The reasons which prevailed with commissioner where that fresh evidence had not been furnished to prove that there was any provision for subsidized education for poor and whether there was any element of public element. It was further found that the land and building on lease have been taken from the daughter of the general secretary of society. The terms of the lease were also taken into consideration pertaining to the annual lease and the fact that the society had also taken the name of another school. It was further noticed that the amount of income was likely to exceed rupees one crore in the financial year 2012-13 and the details of the office bearers and the members of the general body had not been furnished along with the identity of the office bearers.

7. Indian Epilepsy Association Vs Commissioner Of Income Tax(E) [2015] 44 ITR (Trib) 108(Chennai)

Consider Object of the trust not accounts

Tribunal Observed : Learned Commissioner of the Income Tax had rejected to grant registration to grant registration under section 12AA of the Act to the assessee-trust has not filed its statement of accounts for the period July 21,2013 to march 31,2014. we do not agree with this view of the learned Commissioner of Income - tax(Exemptions). As rightly argued by the learned authorized representative commissioner of the

(Contd. in page 19)

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

CA. K.S. Satish, Mysore



ACCRUAL OF INCOME

The Supreme Court has in CIT v. Henkel Spic India Ltd. (2015) 379 ITR 322 (SC) ruled that where the application money for shares received by the assessee-company during January & February 1992 was kept in a separate bank account as required under section 73 of the Companies Act, 1956 and allotment of shares was made in June 1992, the interest accrued to the assessee-company only on the allotment of the shares and it was, therefore, taxable in the assessment year 1993-94.

INTEREST ON BORROWED CAPITAL

Where the assessee-company had a credit balance in its bank account on the date when the advances were given by it to its directors and reserves/surplus to the extent of Rs. 15 crores which it could utilise for giving advances to its directors, interest paid on borrowings could not be disallowed opined the Supreme Court in Hero Cycles P. Ltd. v. CIT (2015) 379 ITR 347 (SC).

REVENUE EXPENDITURE

In CIT v. Reliance Industrial Infrastructure Ltd. (2015) 379 ITR 340 (Bom) where the assessee-company engaged in the business of letting out assets on hire took on lease a land for a period of thirty years and paid stamp duty of Rs. 23,42,560 in respect of the lease deed,

the Bombay High Court held that as the stamp duty had been paid on the lease deed for the purposes of carrying on the business, it was allowable as a revenue expenditure.

ERRONEOUS APPLICATION OF SECTION 40(a)(ia)

The filing of Form 15-I/J is only directory and not mandatory and section 40(a)(ia) cannot be invoked for failure of the assessee to file Form 15-I/J opined the Karnataka High Court in CIT & Anr. v. Sri Marikamba Transport Co. (2015) 379 ITR 129 (Kar).

CAPITAL GAINS

In ACIT v. Kamlakar Moghe (2015) 280 CTR (Bom) 544 where the facts were that the assessee sold his immovable property on 7.7.2006, he wanted to invest only in Bonds of Rural Electrification Corporation Ltd. to avail exemption of capital gains under section 54EC, the said Bonds were not available during the period though Bonds of National Highways Authority of India were available, the Bonds of Rural Electrification Corporation Ltd. were available for investment on 22.1.2007 and the assessee invested in those Bonds on 24.1.2007, the Bombay High Court observed that section 54EC gives an assessee the option to invest either in Bonds of Rural Electrification Corporation Ltd. or National Highways

Authority of India and that he cannot be forced to invest in the Bonds whichever is available because the period of six months is about to expire and held that the investment made by the assessee on 24.1.2007 in Bonds of Rural Electrification Corporation Ltd. which became available on 22.1.2007 could not be said to be after an undue or unreasonable delay and that the assessee was entitled to exemption under section 54EC in respect of such investment.

SECTION 14A

The Gujarat High Court has in CIT v. Banaskantha District Co-operative Milk Producers' Union Ltd. (2015) 280 CTR (Guj) 609 taken the view that deductions to be made in computing the total income provided in Chapter VI-A cannot be compared with exempted income which does not form part of the total income provided in sections 10 to 13 under Chapter III and, therefore, section 14A has no application to deductions under sections 80-A to 80-U falling under Chapter VI-A.

SPECIAL AUDIT UNDER SECTION 142(2A)

The Assessing Officer has the power under section 142(2A) to direct an assessee to get the accounts audited

(Contd. in page 21)



DIGEST ON RECENT DECISIONS UNDER COMMERCIAL TAX LAWS

CA Annapurna Kabra



CASE 1: Frontline Buildcom, No.70, Brigade Road, Bangalore V/s State of Karnataka 2015(83) Kar.L.J 486(Tri.)(DB)

- The appellant is a partnership concern and registered as hotelier under the KVAT Act. The Appellant contesting levy of entry tax on elevators on the ground that appellant is not at all dealer in lifts.
- As per section 2(A)(4) of the Act, which defines a dealer as any person who in the course of business, whether on his own account or on account of a principal or any other person, brings or causes to be brought into local area any goods or takes delivery or is entitled to take delivery of goods on its entry into a local area and includes an occasional dealer.
- Admittedly appellant caused entry of three elevators for hotel and with reference to definition of occasional dealer and also being caused the entry of lifts which are notified goods into local area for use in the hotel business., it is held that appellant is liable for payment of entry tax.

CASE 2: Prakash Rao Vs State of Karnataka 2015(83) Kar.L.J. 567 (Tri.) (DB)

- The Appellant is a partnership firm engaged in hotel business.
- The Assessing Authority has adopted various methods for calculation of

taxable sales like manufacturing method and price list method for the estimation of sale of food and drinks liable for tax. The Assessing Authority has also based on the consumption of milk and daily sales have made backward interpolation to estimate the taxable turnover for the tax periods of April 2005 to March 2009. Also the Assessing Authority has adopted the establishment expenses to estimate the taxable sales.

- The First Appellate Authority after due examination of each aspect has rightly modified the reassessment orders of the Assessing Authority and has clearly recorded in the impugned appellate orders that the manufacturing method and price list method adopted by the Assessing Authority is not correct.
- Even the estimation on the basis of daily sales or consumption of milk to arrive at taxable turnover is considered as hypothetical by the First Appellate Authority.
- The First Appellate Authority has adopted the correct method of establishment expenses formula in the absence of clear demarcation of expenses between the hotel and the lodging section.
- The Assessing Authority instead of following one procedure systematically has mixed up the different methodologies to estimate the taxable sales.

- After noticing that the books of accounts are not maintained in the regular course of business and in the absence of purchase vouchers for certain items like vegetables, disproportionate ratio in purchase of kirana and other goods has rightly invoked the formula of five times the establishment expense to arrive at taxable sales.
- The First Appellate Authority has drawn strength from the decision of our Hon'ble High Court rendered in Hotel Mayura Restaurant's case and also other decisions to justify for having adopted the establishment expenses formula.
- Thus, the First Appellate Authority has adopted fair and just method while modifying the reassessment orders of the Assessing Authority.

CASE 3: Rajesh Jain V State of Karnataka 2015(83) Kar.L.J. 544 (Tri.) (DB)

- The appellant is regularly filing Form VAT 100 before the concerned authority and the selling dealers are also registered
- The appellant has complied with the registration provision and also by adducing the necessary proof that the selling dealers are registered dealers and have submitted returns including even the tax invoices which are issued by them to the appellant as per Section 29 and Rule 29(1) of the Act/Rules.

- The documentary evidence is available on the assessment records of the Assessing Authority and also available on appeal memorandum records.
 - The appellant has discharged fully the burden of proof for the claim of deduction of input tax as per the tax invoices.
 - The Appellate Authority and Assessing Authority have held that selling dealers are only bill traders not conducting any business. Therefore the purchasing dealer is not entitled for input tax credit.
 - The appellant has furnished payment proof as well as the goods movement proof and the existence of the selling dealers during the tax periods. It is held that the appellant is entitled for input tax credit and the Assessing Authority and First Appellate Authority has failed to appreciate the material evidence produced by the appellant.
- Case 4: Bharath Earth Movers Limited Vs State of Karnataka STA 369/2015(Tribunal) dated 06/01/2016**
- The appellant is a registered dealer and filled monthly returns discharging the tax as per the provisions of the Act. It is stated that raw materials and consumables are purchased from the local VAT registered dealers. The materials so procured are taken to stock and added as purchases only after they pass the quality check and are accepted as confirming to the quality parameters.
 - The appellant has stated about the purchase procurement process. It is first by issuing the purchase orders (Pos) to the vendors/ sellers by prescribing a delivery schedule and subject to terms and conditions of the purchase orders. Even after the receipt of the goods by the sellers, the goods undergo series of test and quality checks at the inward stage by the Quality Engineering (QE) Department. This process usually takes time duration of three to six months and sometimes even beyond the same.
 - The appellant submits that there is no delay in availing input tax credit by the appellant. It is submitted that the 'Input Tax Credit' has been disallowed by the learned Authority on the ground that the said Input Tax Credit related to purchases made during earlier tax period. The reason for the denial being that there is contravention of Section 10(3) of the Act.
 - Section 10 (3) of the Act states that "Subject to input tax restriction specified in Sections 11,12,14,17,18 and 19, the net tax payable by a registered dealer in respect of each tax period shall be amount of output tax payable by him. In that period less the input tax deductible by him as may be prescribed in that period and relatable to goods purchased during the period immediately preceding five tax periods of such tax period, if input tax of such goods is not claimed in any of such, five preceding tax periods and shall be accounted for in accordance with the provisions of this Act."
 - It is held that amendment to Section 10 (3) by Act No, 15/2015 is clarificatory in nature and thus applicable retrospectively and therefore appellant is entitled for input tax credit which is claimed within six months for prior to 01.4.2015 also.
 - It is also held that the appellant is not entitled for the benefit of availing input tax credit which is claimed beyond six months with reference to Section 35(4) and Section.10 (3) of the KVAT Act. ■

Charitable Trust's Tryst with Tax Department - 2

(Contd. from Page 16)

Income - tax(Exemptions) ought to have examined the objects of the trust is in incubation stage and yet to commence its activities. At this juncture it is premature to determine the genuineness of the trust by seeking its statement of accounts.

Dept : Barred by the accounts not filed

8. Raghunath Das Damodardas Lohia Charitable Trust Vs Director of Income Tax [2015] 44 ITR (trib) 161 (Hyderabad)

Combined Charity and Religious Purpose Permissible

Dept : Rejected the application of the assessee on the grounds that the assessee-trust had religious and charitable objects

and was making donations to the temple and maintenance of the temple was activity of religious nature.

Tribunal Observed : Section 12A did not prohibit a charitable institution from having mixed objects charitable and religious in nature. The maintenance expenses incurred for the building related to the charitable activities and not the religious activities. The temple was open to everybody without restriction of caste or creed and the temple did not show partiality to a particular religion. The temple was a place where people gathered for the temple could not be regarded as for religious purpose and it was for the benefit of the general public. Hence, the Director of Income-Tax (Exemptions) was to grant registration under section 12AA of the Act. ■



CERTAIN RECENT CIRCULARS UNDER CUSTOMS LAW

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



1. **Safeguard Duties can be claimed as drawback under an application for Brand Rate:** The CBEC has clarified that the drawback of safeguard duties can be claimed under an application of Brand Rate i.e. in cases where the amount / rate of drawback has not been determined or what is determined is very low. The drawback would be admissible only where the inputs which have suffered safeguard duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate. Further, where the imported goods (which are subject to safeguard duties) are exported out of India, as such, the same would be eligible for drawback subject to fulfilment of the conditions specified therein. [Circular No. 23/2015 dated 29.09.2015].
2. **Issuance of Electronic Delivery Orders (EDO) instead of paper-based Delivery Order:** Issuance of the Delivery Order is a pre-requisite to enable the importers / Custom brokers to collect the cargo imported by them. The CBEC has now introduced electronic issuance of Delivery Order (along with electronic payment of delivery order charges) instead of a paper based Delivery Order to simplify the cargo clearance process. [Circular No. 24/2015 dated 14.10.2015]
3. **Guidelines for valuation of imports of second hand machinery issued:** New guidelines have been issued by the CBEC for valuation of second hand machinery. Following are the highlights of the same:
 - a. All imports of second hand machinery / used capital goods are to be accompanied by an inspection / appraisal report issued by an overseas chartered engineer or equivalent in Form A specified therein, prepared upon examination of the goods at the place of sale;
 - b. In the absence of the report, the goods may have to be inspected by the agencies in India, notified by the DGFT;
 - c. Importers may continue to avail of the services of locally empanelled chartered engineers at the customs stations where agencies notified by DGFT are not present. The report should be prepared by the agencies or the chartered engineers in Form B specified therein;
 - d. Upon verification of the values declared, explanation may be sought in relation to differences noticed in the declared value (if any) and dealt with accordingly. [Circular No. 25/2015 dated 15.10.2015]
4. **Custom documents to be filed under Digital Signature Certificates mandatorily:** All documents to be filed by importers or exporters should be signed digitally. This is mandatory and physical signature will not be insisted upon. This will be applicable for all documents to be filed by importers or exporters, using services of Customs Brokers for formalities under Customs Act, 1962 or the shipping lines. However, the importers/exporters desirous of filing Bill of Entry or Shipping Bill individually will continue to have the option of filing declarations/ documents without using digital signature. [Circular No. 26/2015 dated 23.10.2015]
5. **Revised guidelines notified in relation to launching prosecution, Arrest and Bail provision for punishable offences:** Revised guidelines have been issued by the CBEC with regard to launching prosecution, arrest and bail provision in relation to offences punishable under Customs Act, 1962. The threshold limits have been notified as follows:

Category of case	Threshold Limit
Baggage and Outright smuggling cases	<ul style="list-style-type: none"> - Cases involving unauthorized importation in baggage / cases under Transfer of Residence Rules, where the CIF value of the goods involved is Rs. 20,00,000/- or more (Hitherto, the limit was Rs. 5,00,000/- or more). - Outright smuggling of high value goods such as precious metal, notified restricted / prohibited items or foreign currency where the value of offending goods is Rs. 20,00,000/- or more (Hitherto, no limit was prescribed).
Appraising Cases/ Commercial Frauds	<ul style="list-style-type: none"> - Import / export of traded goods involving wilful mis-declaration in value / description or concealment of restricted goods where CIF value of the offending goods is Rs. 1 crore or more. - Cases related to fraudulent availment of drawback or attempt to avail drawback or any exemption from duty provided under the Customs Act 1962 where the amount involved is Rs. 1 crore or more. (Hitherto, the limit was Rs. 10,00,000/- or more)

The above threshold limits for launching prosecution would not apply in case of persons indulging habitually in such violations or where criminal intent is evident in ingenious way of concealment, where prosecutions can be considered irrespective of the value of goods/currency involved in such professional or habitual offenders, etc. provided the cumulative value of 3 or more such offences in past five years from the date of the decision exceeds the threshold limit(s) indicated supra.

The threshold limits mentioned supra for prosecution, arrest and bail would not apply in cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, launching of prosecution should be considered invariably, irrespective of value of offending goods involved. [Circular No. 27/2015 and 28/2015 dated 23.10.2015] ■

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

(Contd. from Page 17)

if he, having regard to the nature and complexity of the accounts of the assessee, is of the opinion that it is necessary for the assessee to get his accounts audited, complexity of the accounts can be judged only when the books of account are perused and, therefore, an order under section 142(2A) could not be passed in the case of the assessee on the basis of the seized material when a hearing did not take place on 4.12.2009 on which date the assessee was required to produce the books of account ruled the Allahabad High Court in RPS Associates v. DIT & Ors. (2015) 280 CTR (All) 582.

REASSESSMENT

The Bombay High Court has in CIT v. Trend Electronics (2015) 379 ITR 456 (Bom) expressed the view that non-furnishing of reasons recorded for issuing a notice under section 148 to the assessee when sought for will make an order of reassessment bad in law.

PENALTY UNDER SECTION 271(1)(c)

In CIT & Anr. v. Ankita Electronics Pvt. Ltd. (2015) 379 ITR 50 (Kar), the Karnataka High Court has held that penalty under section 271(1)(c) cannot be levied in respect of disallowance of a deduction claimed by the assessee against which a substantial question

of law has been admitted by the High Court.

TAX DEDUCTION AT SOURCE

Where the assessee-company paid wheeling charges to Power Grid Corporation of India Ltd. for transmission of electricity to it through the network of the latter without any human intervention, it cannot be said that Power Grid Corporation of India Ltd. is providing technical services to the assessee-company and the wheeling charges paid to Power Grid Corporation of India Ltd. by the assessee-company cannot be termed as fees for technical services requiring deduction of tax at source under section 194-J opined the Delhi High Court in CIT v. Delhi Transco Ltd. (2015) 280 CTR (Del) 50.



SERVICE TAX DECISIONS

PARTS DIGESTED – STR VOLUME 41: PARTS 1 & 2

CA. A. Saiprasad



Departmental Clarification:

Applicability of Service Tax on services received by apparel exporters relating to fabrication of garments

Clarification has been provided about when services received by apparel exporters would be in the nature of manpower supply service (which is exigible to service tax) and when services received by apparel exporters would be in the nature of job work amounting to manufacture of goods (which would not be exigible to service tax) u/s 66D of FA, 94.

CBEC Circular No.190/9/2015-S.T. dt.15.12.15

Case Laws

Whether ‘Conducting Charges’ would be liable to Business Support Service?

The Assessee entered into contract with a Sugar Mill for manufacture and sale of liquor in the name of a sugar mill. The Plant and Machinery owned by the sugar mill was allowed to be used by the assessee for a consideration of Rs. 30 lakhs payable to the sugar mill by the assessee. Entire business of manufacture, sale and recovery of sale proceeds were conducted by the assessee in the name of sugar mills. Sale proceeds were also credited to the account of the sugar mills. At the end of the financial year, after settlement

of accounts, the ‘balance amount’ in profit and loss account was paid by the sugar mills to the assessee after retaining an amount of Rs. 30 lakhs towards consideration for use of sugar mill infrastructure. The said ‘balance amount’ was termed as ‘Conducting Charges’ in assessee’s books. The High Court held that aforesaid conducting charges was not liable to service tax under business support services and that assessee was not providing any business support to sugar mill.

CCE V. Karan Agencies, 2016 (41) STR 161 (Bom)

Whether hiring of rigs was liable to tax under mining service or supply of tangible goods service?

The assessee was registered under mining service and was discharging service tax. To provide mining service, assessee hired drilling rigs from foreign parties. The tribunal held that hiring of drilling rigs was liable to service tax under ‘supply of tangible goods service’ and not under mining service. Tribunal held that service tax would be leviable on assessee under reverse charge (since service was provided by foreign party) from the date ‘supply of tangible goods service’ was made exigible to tax.

Jindal Drilling and Industries Ltd V. CST, 2016 (41) STR 203 (T)

Also see UOI V. Indian National Ship-owners Association, 2011 (21) STR 3 (SC)

Whether Joint Participation in Training is liable to service tax under franchisee service?

The assessee entered into agreement with computer training centers (CTC), under which computer centers were to provide infrastructure, recruit facility, select trainees, etc. Assessee was to provide course material and question paper for conduct of examination by CTCs. CTCs ran the centers in their own name. Assessee received the entire course fees from the students. After deducting 25% as its share, assessee would forward balance 75% to CTC. Department demanded service tax on the 25% share of fees received by the assessee under ‘franchisee service’. After perusing the agreement between assessee and CTCs, the Tribunal held that course fee was paid by student for training them; therefore 25% share received by assessee was not taxable under franchisee service. The Tribunal further held that agreement was clearly akin to revenue sharing model between assessee and CTCs. Hence the 25% share of fees retained by assessee was not taxable. The Tribunal further ruled that as per the agreement, the assessee and CTCs were jointly participating in the activity of providing training and the relation between them *inter-se* was on principal to principal basis. On this count also, the 25% share of fees retained by assessee

was not liable to tax under franchisee service.

C-DAC V. CCE, 2016 (41) STR 208 (T)

Also see: Board Circular No.109/3/2009 dt.23.2.09.

Whether Amway Distributors are liable to service tax?

Under the direct selling/ multi-level marketing concept of Amway, a distributor earns monthly income in three ways:

1. By directly selling Amway Products purchased from Amway at Distributor Acquisition Price (DAP) and selling at a price not exceeding MRP price printed on the product
2. Commission received from Amway on volume of purchases from Amway intended for further sale/ personal consumption.
3. Commission received from Amway based on volume of sales made by second level distributors appointed by Distributors

The Tribunal held that activity of purchasing goods from Amway at DAP and selling in retail cannot be treated as promotion, marketing or sale of goods belonging to the client under Business Auxiliary Service (point 1 above).

Similarly incentive or commission received for buying certain quantity of goods cannot be treated as consideration received for promotion or marketing or sale of goods belonging to client since aforesaid consideration was linked to purchase and not sale (point 2 above).

However activity of identifying other persons for sale and marketing of products on being sponsored by distributor appointed by Amway as second level distributor is an activity of

marketing or sale of goods belonging to Amway. Commission received linked to performance of sales group is to be treated as consideration for Business Auxiliary Service and would be liable to service tax.

Whether offering integrated programs to prepare for specific entrance exams along with course curriculum by charging different fee structure is liable to service tax under commercial coaching service?

Assessee was offering optional integrated programmes along with course curriculum for specific entrance exams with different fee structures from that charged for only course curriculum. Tribunal noted that since all students were not required to undergo coaching for entrance exams, it was optional and hence separate. Further fees for coaching for these entrance exams was more than that fixed by state government for intermediate course. Hence Tribunal held that these courses could not be integral part of curriculum of intermediate course. Tribunal further held that coaching under the said courses was for appearing in competitive exams. The Tribunal held that the schools/ institutions/ junior colleges run by the assessee was neither excluded by the definition of commercial coaching or training centre nor eligible for exemption under Notification No.10/2003-ST.

Can Bank Account be attached without notice or opportunity of hearing?

The Allahabad High Court warned the departmental officers not to misuse their powers and held that bank account of assessee could not be attached in violation of Rule 3 of

Service Tax Provisional Attachment of Property Rules, 08. The said rule mandates issuing of notice and granting opportunity of hearing before initiation of attachment proceedings.

Kunj Power Projects Pvt Ltd V. UOI, 2016 (41) STR 3 (All)

When can department press recovery provisions into service?

The Bombay High held that crystallization of demand by proper adjudication order and hearing is necessary; without it, the High Court held that mere levy, assessment and valuation alone were not sufficient. The High Court held that charging section and machinery provisions together enable the Revenue to assess tax.

Quality Fabricators & Erectors V. Dy. Dir, DGCEI, Zonal Unit, Mumbai, 2016 (41) STR 11 (Bom)

Can Appeals be filed before Commissioner (Appeals), after exhausting the statutory time limit provided in the Act?

The Andhra Pradesh High Court held that remedy of appeal beyond extended period of limitation is absolutely barred and no Court can entertain the matter.

Star Enterprises V. Joint Commissioner, 2016 (41) STR 20 (AP)

Note: Also see Singh Enterprises V. Commissioner, 2008 (221) ELT 163 (SC)

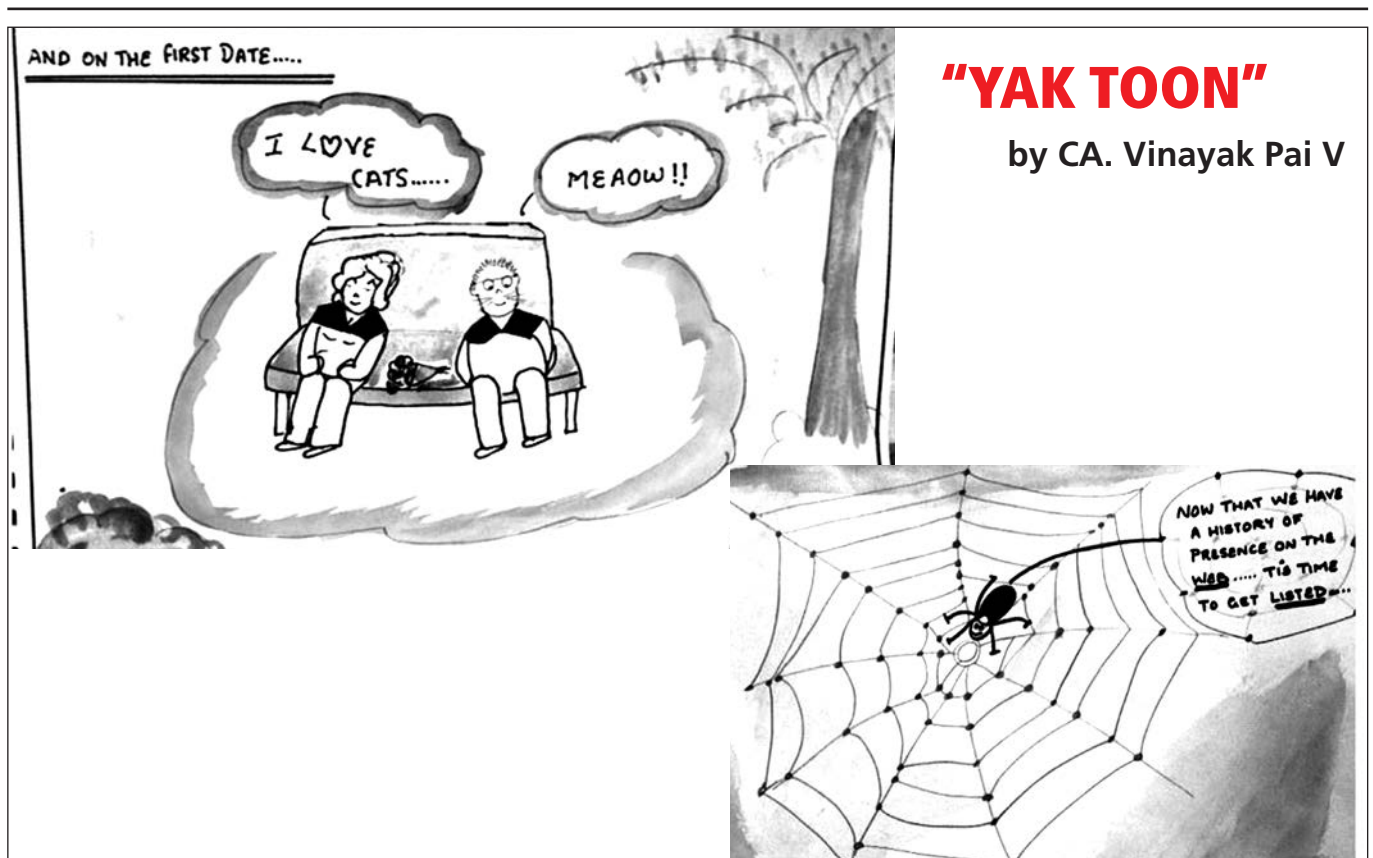
Whether service of Adjudication Order to a family member is a proper service of the Order?

The Allahabad High Court held that if the order is served on a family member, it tantamounts to proper and sufficient service. Court held that making an assertion that the family member was not connected with business is irrelevant.

(Contd. in page 27)



Advt.





THE 401-CONUNDRUM

CA Sachin Kumar B.P.

Introduction

The Indian growth story has become the toast of global investors and the growth train has been chugging along at a steady rate with strong leadership at the helm. Though right now the world economy is in a slump with the global crash of commodity prices, and India too is facing some turbulence, we still remain one of the bright spots in the world economy. As a result of this growth, we have reversed the brain drain which had been a major problem in the not so distant past. Now it is common for one to find entrepreneurs who have returned from the West starting business ventures in India. In some cases we even have Harvard students of Western origin now starting of their entrepreneurial journey here in India, take the example of the successful start-up Zoom Cars in Bangalore.

Being members of this noble profession we are usually the first point of contact for these returnees seeking advice on setting – up their business and managing their tax compliance in India as well as the country in which they were earlier employed. In this article we will be discussing one of the aspects which we as professionals are likely to come across in case of Individuals returning from the United States of America on the front of their personal retirement finances.

Retirement Plans

Usually individuals who have been in

employment in the United States and return to India for various reasons, becoming tax resident in India (R& OR), are usually beneficiaries of a 401-K Plan or an IRA Plan (Individual Retirement Account) which was subscribed to, on account of their earlier employment in United States of America.

In the United States of America, the individual tax payer may contribute to a Retirement Benefit Plan, to avail the benefit of tax deferral, & tax shall only be payable by the individual once the pay-out benefit from the retirement plan is initiated or on premature withdrawal, where a penalty as well is levied (Premature Withdrawal – Withdrawal from the plan before the age of 59.5 Years). The retirement plans are mainly of two types:

1. 401K Plan
2. Individual Retirement Account (IRA) Plan

A 401K Plan is subscribed to when the individual is in employment. The employer makes an equal contribution to match the employee's contribution subject to terms and conditions of employment.

An Individual Retirement Account Plan subscription is made when the taxpayer is generating self-employment income. In case of a taxpayer who is a member of a 401K Plan, when his/her employment services are discontinued, the 401K Plan can be rolled over into an IRA Plan.

The Retirement Plans have two types of schemes, where a subscriber may specify as to the proportion of allocation to each scheme from the total amount paid into the subscription plan. The two schemes are discussed below:

Defined Contribution Plan:

- Limit on Contribution to the plan – As per the IRS regulations
- Contributions are defined
- The subscriber has discretion to choose the assets invested under the plan, through instruction to the fund manager.

Defined Benefit Plan:

- Limit on Contribution to the plan – As per the IRS regulations
- The benefits under the plan are defined
- The subscriber to the plan has no discretion to choose the assets invested under the plan, and the plan is administered by the fund manager.

Most often when dealing with such Individuals who have returned to India and are beneficiaries of a United States of America retirement plan, the plan is in the nature of a Defined Contribution Plan, as Defined Benefit Plans have become rare in the United States of America. The issues involved while advising clients on taxation of retirement plans in India are plenty, such as when the beneficiary makes a contribution to



the plan they are eligible for deduction in the USA from their taxable income whether such deduction is available even in Indian taxation jurisdiction etc.

In this article we will be discussing the issue surrounding taxation of accretions that occur in a defined contribution plan of a USA citizen or green card holder who is also a tax resident in India. While dealing with these set-of clients one will notice that the clients have accumulated substantial balances into their retirement plans/accounts. The return on such account is in the form of capital gains, dividends and interest. These earnings/accretions to the fund are tax deferred in the USA and liable to tax only on withdrawal or on maturity. However, a question arises whether these accretions which are tax deferred in USA are to be offered to tax in India as part of the global income of the Resident & Ordinarily Resident assessee. To tackle this situation let us look at it from the angle of the Income-tax Act, 1961 and the angle of double taxation treaties.

Income-tax Act, 1961

The retirement plan funds are set-up in the form of trust and administered by various financial service providers such as Fidelity, ING etc. By subscribing to the plan the individual becomes a beneficiary of the plan which is in the nature of a determinate trust.

Taxation of income of trusts is prescribed by Sec. 161 to Sec. 164 of the Income-tax Act, 1961. If a trust is a determinate trust Sec. 161 will apply which prescribes that the trustee is assessable to tax at the rates applicable to each beneficiary, by virtue of the trustee being a representative assessee. However, in case of a USA retirement plan the trustee would be located

outside the Indian tax jurisdiction and the Indian revenue authorities would find it challenging to collect taxes at the trustee level. As an alternative the Indian revenue authorities would exercise their powers under Sec. 166 of the Income-tax Act, 1961 where income can be directly assessed in the hands of the beneficiary where it is not possible to assess the income in the hands of the trustee as a representative assessee.

Thus the income arising to the client as a beneficiary of the determinate trust will be taxed in the hands of the beneficiary as per the provisions of Sec. 161 read with Sec. 166 of the Income-tax Act, 1961. Therefore we will have to look at such situation from the angle of double taxation avoidance agreements and if any relief is available to the assessee therein.

Double Taxation Avoidance Agreement (DTAA)

DTAA's are taxing conventions entered into between two countries allocating the taxing rights between the parties to the convention. For taxing income of an international character one will have to look at the provisions of the Act as well as the provisions contained in the DTAA governing the transaction.

On the basis of deductive reasoning as USA shares close cross-cultural ties with other Western nations it is common for citizens to frequently migrate between USA and other Western nations. Therefore, it is possible that the same issue of taxation of 401-K/IRA plans will be commonplace among tax assesseees in these countries. On further research and reading the tax treaties between USA and countries such as Canada, UK, Germany, the same provide specific methodology for taxation of USA

retirement plans of a resident in the aforementioned countries. Many a time the treaties have been recently amended realising the hardship that income-tax assesseees may face due to the risk of double taxation from the operation of tax laws in the respective jurisdictions on the retirement plans. Below is a reproduction of the USA – UK DTAA before and after the amendment:

ARTICLE 18 of the USA – UK Treaty before 2003

Pensions

1. *Subject to the provisions of paragraph 2 of Article 19 (Government Service), any pension in consideration of past employment and an annuity paid to an individual who is resident of a Contracting State shall be taxed only in that State.*
2. *Alimony paid to an individual who is a resident of one of the Contracting States by an individual who is a resident of the other Contracting State shall be exempt from tax in the other Contracting State.*
3. *The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.*

Article 18 of the USA – UK tax treaty w.e.f 06-04-2003 (Extract)

Pension schemes

1. *Where an individual who is a resident of a Contracting State is a member or beneficiary of, or participant in, a pension scheme established in the other Contracting State, income earned by the pension scheme*

may be taxed as income of that individual only when, and, subject to paragraphs 1 and 2 of Article 17 (Pensions, social security, annuities, alimony, and child support) of this Convention, to the extent that, it is paid to, or for the benefit of, that individual from the pensionscheme (and not transferred to another pension scheme).

2. Where an individual who is a member or beneficiary of, or participant in, a pension scheme established in a Contracting State exercises an employment or self-employment in the other Contracting State:

(a) contributions paid by or on behalf of that individual to the pension scheme during the period that he exercises an employment or self-employment in the other State shall be deductible (or excludable) in computing his taxable income in that other State; and

(b) any benefits accrued under the pension scheme, or contributions made to the pension scheme by or on behalf of the individual's employer, during that period

shall not be treated as part of the employee's taxable income and any such contributions shall be allowed as a deduction in computing the business profits of his employer in that other State.....

In reference to the above quoted extracts of the USA – UK tax treaty, the UK tax authorities had come out with further clarification vide HMRC DT 19876A, where the amendment to the treaty is specifically discussed and the clarification mentions how prior to the amendment income of an USA IRA is taxable as it arises.

Conclusion

Now when we look at the India – USA DTAA, Article – 19 & Article – 20 deal with Pension and Annuities. Article – 19 is in reference to pension from government services and Article – 20 is in reference to pensions and annuities other than those referred to in Article – 20. The articles in the India – USA tax treaty are fairly standard articles and unlike the USA – UK tax treaty (supra) do not provide beneficial treatment of tax deferral on income of retirement

funds to the assessee. On reading through these articles, one can conclude that the assessee will not be eligible for any beneficial treatment for income of such retirement plans in the nature of defined contribution plans which are the subject matter of this discussion.

Therefore, a client assessable to tax under the Income-tax Act, 1961, on his global income will have to declare the income accretions to the retirement plans in the USA as taxable income in India, though they may enjoy a tax deferral in the USA. As a double whammy, once the client starts withdrawing the funds later on, s/he may again have to pay tax in the USA subject to availing the foreign tax credit on taxes paid earlier on the IRA income in India as per the tax laws in the USA.

This issue has potential to cause undue hardship for many assessee, the same will have to be addressed at the ministerial level urgently either through a treaty amendment or board circulars. Until then, as professionals we may inform our clients who are beneficiaries of USA retirement plans to the potential exposure to tax under the provisions of the Income-tax Act, 1961. ■

SERVICE TAX DECISIONS

PARTS DIGESTED – STR VOLUME 41: PARTS 1 & 2

(Contd. from Page 23)

Jyoti Enterprises V. CCE & ST, 2016 (41) STR 19 (All)

Whether credit can be availed for services received at un-registered premises. Subsequently can refund be claimed of the said input service when used for export of service?

The Tribunal held that when service was provided for registered office having centralized accounting system and when address of other offices

where input service received were added subsequently in the registration certificate, then the Appellant was entitled to avail the credit of input service and consequently claim refund of unutilized credit.

Exfo Electro-Optical Engineering India Pvt Ltd V. CCE, 2016 (41) STR 65 (T)

Also see Mportal India Wireless Solutions Pvt Ltd V. CST, 2012 (27) STR 134 (Kar)

Whether procurement of orders from Indian Customers for holding

company outside India amounts to export of service?

The Tribunal held that procurement of orders in India for a person outside India would amount to export of service since service is utilised/ benefited by person outside India. Tribunal held that merely because goods is supplied and ultimately used in India, it is no reason to hold that service of procuring orders is not exported since effective use and enjoyment of service is by person outside India.

CST V. Ishida India Pvt Ltd., 2016 (41) STR 87 (T) ■



SERVICE TAX DECISIONS

PARTS DIGESTED – STR VOLUME 40, PARTS 5 & 6

CA. A. Saiprasad



Whether playing cricket for a franchisee in IPL amounts to providing BAS for franchisee?

The Tribunal held that playing cricket match in IPL for franchisee does not amount to providing BAS to franchisee. The dominant intention for amount paid by franchisee to player is for playing cricket, though other things as per requirement of franchisees agreement has to be performed by the player.

Udit Patel V. CST, 2015 (40) STR 919 (T)

Note: Also see Vinay Kumar V. CST, 2014 (34) STR 595 (T), R. Satish V. CCE, 2015 (39) STR 346 (T)

Whether interest and penalty wrongly paid under VCES can be adjusted towards tax?

The Gujarat High Court held that departmental order rejecting VCES application on the ground of non-payment of full admitted liability was not justified, when interest and penalty wrongly paid under VCES was adjusted towards tax liability by Accounts Officer on petitioner's request as recommended by AC. High Court directed designated authority to issue certificate of discharge under VCES.

Ask Me Enterprise V. UOI, 2015 (40) STR 1041 (Guj)

Refund of Input Service

Assessee was exporting BAS and had filed refund claim of various input services. The Tribunal held as follows:

1. Rent a Cab service availed by BPO was for employees of BPO who are required to work in shifts, even during nights. Lower authority's view of no nexus with output service unacceptable. Refund allowed. (Also see Bell Ceramics Ltd

case, 2012 (25) STR 428 (Kar) and Stanzen Toyotetsu India Pvt Ltd., 2011 (23) STR 444 (Kar))

2. Courier Service used to dispatch documents within India, necessary for running day to day business. Absence of nexus with output service not to be assumed merely because services used within country. Refund allowed. (Also see Apar Industries case, 2011 (23) STR J194 (Guj))
3. Management Maintenance and Repair Service were used for painting and mica finishing work for business premises from where output service were provided. Tribunal held that term 'activity relating to business' used in definition of input service has to be given widest import. Tribunal held that it has to be seen whether said service can be considered as activity relating to business rather than testing whether service used to provide output service. Refund allowed.
4. Manpower Recruitment service availed for hiring nurses for employees and also for hiring administrative and support staff required for carrying out day to day business activity. Tribunal held recruitment and quality control service was specifically included in definition of input service. Refund allowed.
5. Security Agency Service – Assessee being BPO, employees required to work and leave office at odd hours and said service used to provide safety to employees. Refund allowed
6. Clearing Services carried out at assessee's guest house. Assessee contending that guest house maintained for use of employees travelling from one

place to another for business purpose. Refund allowed.

7. Renting of Immovable Property Service – Tax paid for stay in hotels claimed under guise of renting of immovable property service. Refund disallowed/ Credit denied.
8. Design Service – Supply of Coffee Mug bearing company logo. Reason for supply of mugs and category of persons to whom supplied not shown by assessee. Service not an input service. Refund rejected.
9. Business Support Service – Used in conducting summits to help improve company's clientele and promote and develop business. Refund allowed.
10. Legal Consultancy Service – Services used for drafting reply and appeal papers. Held that legal services indispensable for any business to satisfy proper compliance of legal requirements. Refund allowed.
11. CA Service utilized for compliance of industrial and labour laws and also for statutory compliance under Income Tax Act and Companies Act and for services of filing refund claims. Definition of input service wide to include all activities relating to business. Refund allowed.
12. Procedural irregularity – Tribunal held that it was settled in catena of decisions that procedural irregularity like non-mentioning of registration number of service provider should not come in the way of refund when substantial entitlement was not disputed. Proviso to Rule 9(2) of CCR, 04 allowing credit in such cases relied by Tribunal.

HCL Technologies Ltd V. CCE, 2015 (40) STR 1124 (T)

DIGEST ON RECENT DECISIONS UNDER VALUE ADDED TAX LAWS

CA Annapurna Kabra



Case 1: Yakult Danone India Pvt Ltd Vs Authority for Clarification & Advance Rulings (TS-566-HC-2015 (KAR)-VAT):

Issue: The assessee has approached Advance Ruling Authority constituted under section 60 of the Act seeking clarification as to rate of tax which would be chargeable. The appellant approached to the High Court on preliminary ground that constitution of Advance Ruling Authority was not in terms of section 60(1) of KVAT Act. The Revenue relied on Rule 165(26-A) of KVAT Rules wherein it is provided that if one of the members of Authority other than chairman was unable to discharge his functions owing to absence, illness or any other cause or in the event of occurrence of any vacancy in the office of members and case cannot be adjourned for any reason, chairman and the remaining member may function as the Authority and therefore a two member authority would be properly constituted under Rule 165(26-A) of KVAT Rules. The High Court stated that Rules framed under an Act cannot override the provisions of the Act. **The High Court observed that Revenue had not placed on record any such condition because of which only two members had constituted the Authority to decide the matter. The Honourable High Court has remanded the matter back for being decided afresh by AAR properly constituted under section 60 of the KVAT Act.**

Case 2: Kar Mobiles Ltd, Peenya Industrial Area, Bangalore V/s State of Karnataka 2015(83) Kar. L. J. 106 (Tri.) (DB)

The appellant is a registered dealer engaged in manufacture and sale of internal combustion engine valves, as tractor parts and motor vehicles parts. The principal place of business and registered office is located

at malleshwaram, Bangalore. It has two manufacturing unit one is located at Peenya Industrial Area, Bangalore and other at Hirehalli Industrial Area Tumkur dealing in manufacture and sale. The inputs are purchased from dealers registered under the Act against payment of tax at 4% and 12.5% .It is permitted by CCT to operate the Industrial units separately in terms of Sec 38(6) of the Act and Rule 47(1) of the Rules vide order no. MSC/CR-29/05-06 dated 23-7-2005. The separate unit located in Tumkur is operating with LVO no 170 and the return for the month of July 2005 is filed on 19th Aug, 2005 in the above LVO. In the said return the excess input of Rs. 2,36,493/- has been claimed. But the said LVO has forwarded the return to the LVO-060, Bangalore on 24th Aust,2006 stating that till Aug 2005, LVO-060 is the authority to receive the returns and the return of July 2005 has been forwarded to the Bangalore LVO on 24th Aust,2006 and by that time, return in Form VAT 100 for previous months had already been filed and only the return relating to Nov 2006 was due for filing. Therefore, the appellant without any other option has claimed excess of input tax relating to July 2005 in the return to be filed for Nov 2006 by including the claim of excess input tax of Rs. 2,36,493/- pertaining to July 2005 and thereby declaring a sum of Rs. 2,32,705/- as net tax payable in the return of Nov 2006 in the office of LVO-060, Bangalore on 19th Dec 2006. The AA reassessed the appellant and issued the order dated 11th Aug 2008, allowing the input tax credit of Rs. 2,36,493/- But the JCCT (Administration), DVO-6, the First Revisional Authority (FRA) revised the reassessment order under Sec 63-A of the

Act. The FRA computed output tax payable, input tax eligible for deduction, cash liability , tax admitted and paid additional cash liability penalty and interest for the **full year 2006-2007** amounting to Rs. 4,89,475/-. Aggrieved by this revision order, the appellant has filed an appeal before the Tribunal. According to sec 2 clause (33) of the Act defines tax period means such periods as prescribed under **Rule 37 which says calendar month is the tax period for all the registered dealers except the composition dealers**. Thus the appellant being a dealer who is filing returns calendar month wise has to be assessed tax period wise only as done by the AA. The FAA has violated Rule 37 of the Act by computing the net tax liability for the whole year.

The input tax credit has to be availed in the staggered manner in 12 installments as per Form VAT 175. This rule 133 is substituted with effect from 1st of April, 2006 by Notification no. FD 124 CSL 2006 dated 27th May, 2006.- which allows the input tax credit on capital goods without any installments. It is due to the fault of the LVO-170, Tumkur who belatedly forwarded the return of July 2005 to the office of LVO 60 on 24th Aug 2006 which resulted in **the denial of input tax credit because of this input credit was claimed beyond 6 months as there is no other way for the appellant except to claim the input tax credit in the month of Nov 2006. Hence the these facts remitted back to the AA to ascertain the factual matrix either to grant input tax rebate if it is the fault of the LVO offices in communicating the returns or to deny the input tax rebate if the factual matrix is contrary to the submission made before the Tribunal.**



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28th KSCAA Annual Conference



on Saturday & Sunday | Inana Jyothi Convention Centre
5th & 6th March 2016 | Central College Campus, Bengaluru

Programme Structure

Saturday 5th March 2016

08.30 AM	Registration
INAUGURAL SESSION	
09.15 AM	Inaugural Address by Chief Guest Release of Publications, Release of Souvenir
10.30 AM	Inauguration of Exhibition & Tea Break
FIRST TECHNICAL SESSION	
11.00 AM	Start-ups – Analysis & Opportunities • Funding Mr. Ganapathy Venugopal Co-founder & CEO, Axilor Ventures • Valuation CA. Anjana Vivek • Statutory & Taxation CA. P.V. Srinivasan
01.30 PM	Lunch Break
SECOND TECHNICAL SESSION	
2.30 PM	Reporting and Compliance requirements-Auditor's perspective • Audit reports & IFC CA. Gururaj Acharya • Ind. AS CA. Vinayak Pai
4.15 PM	Tea Break
THIRD TECHNICAL SESSION	
4.30 PM	Practical Issues in Income Tax • Open House Q & A Session CA. Padamchand Khincha CA. A. Shankar CA. Dr. R.B. Krishna
6.45 PM	Kutumbotsava – Family Entertainment Programme
8.30 PM	Bhoori Bhojana (Family Dinner)

Sunday 6th March 2016

8.00 AM	Break Fast
HEALTH / WELLNESS SESSION	
9.15 AM	Stress Management for Professionals Dr. C.R. Chandrashekar, Psychiatrist & Author
FOURTH TECHNICAL SESSION	
10.15 AM	Practical Issues of Not for Profit Organizations (NPOs) • Formation • Exemption • Assessments CA. S. Krishnaswamy CA. Phalgun Kumar E
11.30 AM	Tea Break
FIFTH TECHNICAL SESSION	
11.45 PM	E-Commerce - Taxation Issues • VAT CA. S. Venkataramani Dr. B.V. Murali Krishna Joint Commissioner of Commercial Taxes • Service Tax CA. A. Jatin Christopher Moderator: CA. Sanjay Dhariwal
1.30 PM	Lunch break
SPECIAL SESSION	
2.30 PM	Unbounded New Professional Opportunities - Am I Future Ready ? CA. Madhukar Hiregange
3.15 PM	Tea Break
SIXTH TECHNICAL SESSION	
3.30 PM	Union Budget Analysis-Panel Discussion • Direct Tax CA. K.K. Chythanya, CA. K.R. Sekar • Indirect Tax CA. V. Raghuraman, CA. Rajesh Kumar T.R. Moderator: CA. S. Ramasubramanian
5.30 PM	Valedictory Session

Practical Issues in Income Tax

Request participants to send their queries for the Third Technical Session in advance before 25-2-2016 to samvit.kscaa@gmail.com

TAX CLINIC

One on One Interaction with Income Tax Experts for Mofussil participants on 5-3-2016. Request participants to send their queries in advance before 25-2-2016 to samvit.kscaa@gmail.com

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Election of the Members of the Managing Committee (2016-2019) for Bangalore Branch of SIRC of ICAI

Date: 13-02-2016 Time: 8.00 am to 6.30 pm Venue: Branch Premises, Vasantnagar
(Number of Candidates to be Elected – Eight)

Sl. No.	Name of the Candidates	Sl. No.	Name of the Candidates
1	BHAT SHIVARAM SHANKAR 	9	RAGHAVENDRA B G 
2	BHOJARAJ T SHETTY 	10	RAVEENDRA SANGAPPA KORE 
3	BISHNU KUMAR AGARWAL 	11	SANJAY KUMAR G S 
4	DIVYA S 	12	SEETHALAKSHMI M 
5	GEETHA A B 	13	SHRAVAN GUDUTHUR 
6	GEORGE VICTOR CRASTA 	14	SRINIVASA T 
7	GURUPRASAD A 	15	SUNIL KUMAR S 
8	PAMPANNA B E 	16	VASUDEV G V 

Please Cast Your Vote without fail

An Update on Companies Act 2013



CA. Shyam Ramadani welcoming
CA. S. Santhanakrishnan



CA. S. Santhanakrishnan,
Chairman, CL&CGC



CA. Tarun Ghia addressing the members



CA. Tarun Ghia

Convocation for the newly qualified CA's



Inauguration



Chairman's address



CA. Cotha S Srinivas



Chief Guest CA. K. Raghu,
Immediate Past President, ICAI



New CA's receiving the Certificates



Thanking the Chief Guest



Oath taking by new CA's



Intensive Workshop on International Taxation



CA. B.P. Sachin Kumar



CA. D.S. Vivek



CA. D. Tarun Kumar Jain



Mr. Divakar K.R. & Mr. Pugal T.

Practice Alert Discussions

Invest Karnataka: Global Investors Meet - Interactive Session



Ms. K. Rathna Prabha, IAS,
Addl. Chief Secretary, Industry & Commerce, Govt. of Karnataka



CA. S. Prakashchand thanking
Ms. K. Rathna Prabha



CA. S.R. Prasad thanking
Sri. S. Rangappa, KAS, Spl. D.C. KIADB

Republic Day Celebration



Flag hoisting by Chief Guest CA. N.C.S. Raghavan



Cross section of participants



Chairman's address



CA. Ashok Raghavan



Chief Guest CA. N.C.S. Raghavan



Felicitation to Chief Guest



Cultural Programme by students

Speakers at Study Circle Meetings



CA Deepak Chopra



CA Vivek Mallya



CA Prashanth.G.S



CA. Vinti Varma

Programme at Tumkur



Felicitation to CA S Venkataramani
at Tumkur Study Circle Meet

Advt.

Advt.

Advt.