



Bangalore Branch of SIRC e-Newsletter

English Monthly

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For Private Circulation only

Jnana Pragathi

- Seek Knowledge, Gain Progress

Two Day Karnataka State Level CAs' Conference



16 & 17 July 2016

Jnana Jyothi Convention Centre
University Campus, Palace Road, Bengaluru



Hosted by

Bangalore Branch of SIRC of ICAI

Jointly organized by

Belgaum, Bellary, Hubli, Kalaburagi, Mangalore, Mysore & Udupi Branches of SIRC of ICAI

Utilize the Great Networking Opportunity !



Ballari



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Mangaluru



Mysuru



Udupi

Chairman's Communique . . .



Dear professional friends,

July is known to keep all of us very busy, irrespective of whether we are in practice or in industry. Members in Practice will be busy with filing of Income Tax returns & members in Industry will be busy in the finalisation of Quarterly Accounts as they need to report to the public and various stake holders.

The month that was - June 2016.

Apart from the regular study circle meets, Tax clinics on DT & IDT and Intensive workshop on International Taxation, we conducted many note-worthy programmes.

An awareness programme on Income Declaration Scheme followed by an interactive session with the Commissioners of Income Tax Department - Mr. Naresh Saka, IRS, Additional Commissioner and his team, along with CA. Naveen Khariwal G, our resource person, was beneficial to the participants. As the topic is a sought after one, there was an overwhelming response.

One day seminar on Companies Act 2013 was also very well received by the participants. We also had a Two days residential refresher seminar at Hampi, where the participants thoroughly enjoyed and had a rich learning experience as well.

International Yoga Day was celebrated on 21st June in association with M/s Isha Foundation which helped the participants in harmonizing inner selves with the world and bringing forth peace.

For the first time, we conducted Study Circle Meet at Central Bangalore in Karnataka State Hockey Association which was also well received by the nearby members.

GST being the hot topic of the season, the Discussion on Draft GST law - 2016 by Dr. B V Muralikrishna & CA. S Venkataramani was a tremendous success attended by over 250 participants.

The Month ahead- July 2016.

The moment we think of July, the first & foremost event comes to our mind is 1st July CA day. We celebrated CA day in a befitting manner. We conducted a few activities to commemorate CA day -

- As a Go-green initiative, we planted 1001 saplings keeping in mind the need of the hour - environmental protection - in Kanakapura Road.
- 11 senior members were felicitated for their outstanding service to the profession.
- Prize distributed to the winners of various sports activities held for members and students on CA day.
- Visited Sri Shatha Shrungha Vidya Samsthe, served food and donated blood pressure checking machine and diabetic checking machine including utility items to the inmates.

State Level Conference -

Jnana Pragathi Seek Knowledge Gain Progress on 16th & 17th July 2016

The journey of the State level conference started in the year 2004 and has reached its 13th glorious year. Shri NR Narayana Murthy, Founder Infosys Ltd and Hon'ble Minister for Industry, Karnataka, Shri R V Deshpande will be inaugurating this mega event on 16th July at 10am. CA. MP Vijay Kumar our central council members will also grace the occasion. This unique annual feature will be a knowledge feast and it will be a remarkable event in the history of Bangalore Branch. On behalf of Bangalore Branch and other branches in Karnataka, I thank the members enrolled for this conference and for showing keen interest in the event.

On the occasion of the Independence Day, the Branch will be giving scholarships to CA Students on Need cum Merit Basis. CA IS Prasad, past regional council member, has voluntarily agreed to donate Rs.1 Lakh for this noble cause. I place on record heartfelt thanks to him for this kind gesture.

We are planning several significant programmes in August including a full day workshop on GST and a 3-hour awareness programme on Start-up India, which will be informed to you in due course of time, expecting your active participation in the ensuing programmes.

With warm regards

CA. Pampanna B E
Chairman



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



Jnana Pragathi

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Two Day Karnataka State Level CAs' Conference

16 & 17 July 2016

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University Campus, Palace Road, Bengaluru

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12 hrs
CPE

We deem it a pleasure to inform you that "Jnana Pragathi – Seek Knowledge, Gain Progress" – 13th State Level Conference is being organised on Saturday, 16th & Sunday, 17th July 2016 by Bangalore, Belgaum, Bellary, Hubli, Kalaburagi, Mangalore, Mysore & Udupi Branches of SIRC of ICAI and is being hosted by Bangalore Branch of SIRC of ICAI.

Objective: The Conference is designed to meet the requirements of Chartered Accountants both in Practice and in Service. This Mega Event will be an ideal platform for the Members to Network and to have Quality Deliberations exchanging their views and ideas for the betterment of our prestigious profession.

Over a period of time, the spectrum of services provided by the CAs has extended beyond Conventional Accounting and Auditing jobs. We have to specialise in multiple diverse areas of our Profession in order to satisfy the ever increasing expectations of our Clients, various Stake Holders especially the Corporate Sector and the Government Institutions in India. Hence this "Jnana Pragathi – Seek Knowledge, Gain Progress".

This conference will also pave way in disseminating updated knowledge to perform better, nurturing a feeling of togetherness and belongingness amongst us with a wide Mission & Vision. This unique event will also justify the following remarkable quote of late Dr. Abdul Kalam "The ICAI - The Indian Accounting Regulator and Partner in Nation Building".

Utilize the Great Networking Opportunity !



Ballari



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Mysuru



Udupi

Jnana Pragathi

- Seek Knowledge, Gain Progress

Two Day Karnataka State Level CAs' Conference

16 & 17 July 2016 | Jnana Jyothi Convention Centre, Bengaluru



Sat, 16th July 2016

08:30 AM Registration

10:00 AM INAUGURAL SESSION

CHIEF GUESTS:

Shri R.V. Deshpande

Hon'ble Minister for
Large & Medium Industries & Tourism
Govt. of Karnataka



Padma Vibhushana

Dr. N.R. Narayana Murthy

Founder - Infosys Limited



11:15 AM Tea Break

11:30 AM I TECHNICAL SESSION

Winds of Change in Accounting Standards

CA. M.P. Vijay Kumar, Chennai
Central Council Member, ICAI



01:00 PM Lunch

02:00 PM II TECHNICAL SESSION

Recent Case Laws on Joint Development Agreements in favour of Assessee

CA. A. Shankar
Advocate, Bengaluru



03:30 PM Tea Break

03:45 PM III TECHNICAL SESSION

Challenges to practicing CA's Under the ever changing Companies Act & other statutes

CA. K. Gururaj Acharya, Bengaluru



05:15 PM Entertainment Programme

Followed by Theme Dinner with family

Sun, 17th July 2016

08:30 AM Breakfast

09:15 AM SPIRITUAL SESSION

"Converting Your Dreams into Reality"

**Pujya Gnanvatsal Swami of
BAPS Swaminarayan Sansthan**
Akshardham, New Delhi



10:15 AM IV TECHNICAL SESSION

Taxation of Charitable Trust - Recent Amendments

CA. H. Padamchand Khincha, Bengaluru



11:45 AM Tea Break

12:00 PM V TECHNICAL SESSION

Recent Trends from the Judiciary (Service Tax Perspective)

CA. Sunil Ghabawalla, Mumbai



01:30 PM Lunch Break

02:30 PM VI TECHNICAL SESSION

Post-carbon Economy and Rise of Social Commons

Mr. Sharad Sharma, Bengaluru
Co-founder & Governing Council Member
ISPIRT Foundation



04:00 PM Tea Break

04:15 PM VII TECHNICAL SESSION - PANEL DISCUSSION

Works Contract - Taxation Aspects

Moderator : **CA. Sanjay M Dhariwal**, Bengaluru

Panelists : **CA. Madhukar N Hiregange**
Central Council Member, ICAI

CA. Ashok Raghavan, Bengaluru

CA. S. Vishnumurthy, Bengaluru

Mr. Suresh Kris

Chief Financial Officer & Executive Director,
Brigade Enterprises Ltd, Bengaluru



Delegate Fee: For Members - Rs.2200/-

Early Bird Registrations - Rs.2000/-
(on or before 15th June 2016)

Non Members - Rs.5000/- + Service Tax

Mode of Payment: Cash or Cheque / DD
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payable at Bengaluru

For Registration, Please contact:

Tel: 080 - 3056 3513 / 3500

Email: blrregistrations@icai.org

Website: www.bangaloreicai.org

CA - Alphabets of Trust



CALENDAR OF EVENTS - JULY 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
01.07.2016 Friday 9.30am	CA Day, Flag Hoisting & Celebration Chief Guest: CA. D L Suresh Babu VENUE: Branch Premises	—
02.07.2016 Saturday 6.00pm to 8.00pm	Intensive Workshop on International Taxation Article 25,26 & 27: Mutual Agreement Procedure, Exchange of Information & Assistance in the Collection of Taxes CA. Rishi Harlalka VENUE: Branch Premises	2 hrs
06.07.2016 Wednesday	Holiday on account of Ramzan	—
08.07.2016 Friday 6.00pm to 8.00pm	Tax Clinic - Direct Taxes - Equalisation levy & Direct Tax Dispute Resolution Scheme - 2016 - IDS CA. Sudheendra B R VENUE: Branch Premises	2 hrs
13.07.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Business Intelligence and Analytics CA. D R Krishna Prasad & CA. Raghavendra S VENUE: Branch Premises	2 hrs
16.07.2016 Saturday & 17.07.2016 Sunday	Jnana Pragathi <i>- Seek Knowledge, Gain Progress</i> Two Day Karnataka State Level CAs' Conference VENUE: Jnana Jyothi Convention Centre, Palace Road, Bengaluru <i>Details in page No: 3 & 4</i>	12 hrs
20.07.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Critical Issues in Income from Business/Profession and Capital Gains CA. Ganpatlal Kawad.H VENUE: Branch Premises	2 hrs
21.07.2016 Thursday 6.00pm to 8.00pm	Study Circle Meet at South Bangalore Latest Updates in Transfer Pricing including Domestic Transfer pricing CA. Narendra J Jain Delegate Fee: Rs.200/- VENUE: Jain University Auditorium, J C Road, Bangalore (Next to Bangalore Stock Exchange)	2 hrs
22.07.2016 Friday 6.00pm to 8.00pm	Tax Clinic - Indirect Taxes Service Tax - Implication on Construction Sector CA Ramakrishna Sangu VENUE: Branch Premises	2 hrs
23.07.2016 Saturday 5.00pm to 8.00pm	Study Circle Meet Clause by Clause Discussion on Form 3CD/3CA /3CB CA. Naveen Khariwal G Delegate Fees: Rs.250/- VENUE: Karnataka State Hockey Association, Rhenius Street, Langford Town, Bangalore-560025	3 hrs



CALENDAR OF EVENTS - JULY & AUGUST 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
23.07.2016 Saturday 6.00pm to 8.00pm	Intensive Workshop on International Taxation Article 28, 29 & 30: Members of Diplomatic Missions and Consular Posts, Entry into Force & Termination CA Shashi Shekar Chaugule VENUE: Branch Premises	 2 hrs
27.07.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Latest amendments in Labour laws VENUE: Branch Premises	2 hrs
03.08.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Patents and Trade Mark Mr. H L Narendra Bhatta VENUE: Branch Premises	 2 hrs
05.08.2016 Friday 5.00pm to 8.00pm	Investor Awareness Programme Startup India, Make in India, Skill India & Digital India - Role of Professionals CA Gopal Krishna Raju, Chennai, Regional Council Member CA E Narasimhan VENUE: Branch Premises	  3 hrs
06.08.2016 Saturday 9.30am to 5.30pm	One Day Workshop on GST Delegate Fee: Rs.750/- VENUE: Branch Premises <i>Details in Page No: 8</i>	6 hrs
06.08.2016 Saturday 6.00pm to 8.00pm	Intensive Workshop on International Taxation Limitation of Benefits & Protocol CA Vijay Jayaram & CA Ramya S Nayak VENUE: Branch Premises	  2 hrs
10.08.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet HUF - Latest Tax Issues CA K L Prashanth VENUE: Branch Premises	 2 hrs
12.08.2016 Friday 6.00pm to 8.00pm	Tax Clinic - Direct Taxes Foreign Tax Credit CA D S Vivek VENUE: Branch Premises	 2 hrs
15.08.2016 Monday 9.30am onwards	Independence Day Celebration Chief Guest: CA I S Prasad VENUE: Branch Premises	 2 hrs

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

EDITOR :

CA. PAMPANNA B.E.

SUB EDITOR :

CA. SHRAVAN GUDUTHUR

IMPORTANT DATES TO REMEMBER DURING THE MONTH OF JULY 2016

Due Date	Statute	Compliance
5 th July 2016	Excise	Monthly Payment of Excise duty for the month of June 2016
	Service Tax	Monthly/Quarterly Payment of Service tax for the month for June 2016
6 th July 2016	Excise	Monthly E- Payment of Excise duty for the month of June 2016
	Service Tax	Monthly/Quarterly E- Payment of Service Tax for the month of June 2016
7 th July 2016	Income Tax	Deposit of Tax deducted / collected during June 2016
10 th July 2016	Excise	Monthly Performance Reports by Units in EOU,STP,SEZ for June 2016
15 th July 2016	VAT	Payment and filing of VAT 120 under KVAT Laws for month ended June 2016 (for Composition Dealers)
		Quarterly Payment and filing of VAT 100 under KVAT Laws for quarter ended June 2016
	Provident Fund	Payment of EPF Contribution for June 2016 (No grace days)
		Return of Employees Qualifying to EPF during June 2016
		Consolidated Statement of Dues and Remittances under EPF and EDLI For June 2016
		Monthly Returns of Employees Joined the Organisation for June 2016
20 th July 2016	VAT	Monthly Returns (VAT 100) and Payment of CST and VAT Collected/payable During June 2016
	Professional Tax	Monthly Returns and Payment of PT Deducted During June 2016
21 st July 2016	ESI	Deposit of ESI Contribution and Collections of June 2016 to the credit of ESI Corporation
31 st July 2016	Income Tax	Quarterly filing of E-TDS Returns for the quarter ended 30th June 2016
		Income Tax Returns for the F.Y 2015-16 (A.Y 2016-17) For Non-Corporate assesseees who are not liable for tax audit

Study Circle Meetings for CA Students - July 2016

organized by SICASA of Bangalore Branch at Bangalore Branch Premises

Date	Topic	Speakers	Timings
23-07-2016 Saturday	Guide to Income from Salary	CA Pramod S	6.00 pm to 8.00 pm
30-07-2016 Saturday	Basic Concepts on Goods & Service Tax (GST)	CA Kalyan Kumar K	6.00 pm to 8.00 pm

Note: No fee for the study circle meetings.

Special Programmes - August 2016

Date	Event	Registration fee	Timings
06-08-2016 Saturday	Elocution & Quiz competition	Rs.50 per head per event	Details will be furnished in due course
27-08-2016 & 28.08.2016	Two Days Educational & Recreational Outdoor Tour	Rs.2000 per head	Details will be furnished in due course

For registration send E-mail to blrsicasa@icai.org /
please contact: **Ms. Divya Manoj**, Tel: **080 – 30563511 / 3500**

CA Raveendra S Kore
SICASA, Chairman

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One Day Seminar on GST

Organised by **Indirect Tax Committee, ICAI**
Hosted by **Bangalore Branch of SIRC of ICAI**

On **Saturday, 6th August 2016**

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

Timings: **9.45am to 5.30pm**

6 hrs
CPE

Timings	Topics	Speakers
09.45am to 10.45am	INAUGURAL SESSION Dr. Nagendra Kumar <i>Hon'ble Principal Addl. Director General of Central Excise Intelligence, Bangalore</i>	
10.45am to 11.00am	Tea Break	
11.00am to 12.30pm	Overview of Model GST Law including Concept of CGST, SGST & IGST Levy & Composition , Exemption from Tax	CA. Jatin A Christopher
12.30pm to 1.30pm	Meaning and Scope of Supply, Time of Supply of Goods & Services	CA. Dayananda K
01.30pm to 02.30pm	Lunch Break	
02.30pm to 03.30pm	Valuation of taxable Supply & Valuation Rules	CA. Deepak Kumar Jain
03.30pm to 03.45pm	Tea Break	
03.45pm to 05.15pm	Input Tax Credit Transitional Provision	CA. Vishnumurthy S
05.15pm to 05.30pm	OPEN HOUSE	
<i>Programme Chairman:</i> CA. Madhukar N. Hiregange , <i>Chairman, Indirect Tax Committee</i> Ph: +91 0120-3045954, e-mail: idtc@icai.in		

CA. Pampanna B. E

Chairman

Bangalore Branch of SIRC of ICAI

CA. Shravan Guduthur

Secretary

Bangalore Branch of SIRC of ICAI

DELEGATE FEES FOR MEMBERS: ₹ 750/-

Mode of Payment: Cash or Cheque/DD in favour of

"Bangalore Branch of SIRC of ICAI", payable at Bengaluru

For Registration, Please contact: **Ms. Geetanjali D.**, Tel: **080 - 3056 3513 / 3500**

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

International Financial Reporting Standards (IFRS) Indian Accounting Standards (IND AS) – An Impact Seminar

Organised by **Bangalore Branch of SIRC of ICAI**
Jointly with **St. Joseph's College of Commerce (Autonomous)**
on **Wednesday, 31st August 2016**, Timings: **9.30am to 5.00pm**

Timings	Topics	Speakers
09.30am	INAUGURAL SESSION <i>Presided by: Rev. Fr. Anthony Joseph, SJ., Vice President, BJES</i> <i>Welcome address: Dr. Daniel Fernandes, SJ, Principal & CA. Pampanna, Chairman, Bangalore Branch of SIRC of ICAI</i> <i>Chief Guest: CA. Gururaj Acharya, Practicing Chartered Accountant & Specialist in Corporate law</i>	
10.00am	Impact of IFRS/Ind AS on Presentation and Disclosure	<i>Key Note Address: CA. Gururaj Acharya</i>
11.30am	Tea Break	
11.45am	Impact of IFRS/Ind AS on Income and Expenditure	CA Vinayak Pai V <i>Consultant and Trainer - IFRS & US GAAP</i>
01.15pm	Lunch Break	
02.00pm	Impact of IFRS/Ind AS on Assets and Liabilities	CA Mohan R Lavi <i>Executive Director at Financial Reporting Data Analytics & Research Centre</i>
03.30pm	Impact of IFRS/Ind AS on Group Financial Reporting	CA Asha M <i>Manager (Accounting Advisory Services) at KPMG</i>
4.30pm	VALEDICTORY	

CA. Pampanna B. E
Chairman, Bangalore Branch

CA. Shraavan Guduthur
Secretary, Bangalore Branch

Fees
₹ 300/-

**Only Limited Seats Available, Register yourself by contacting the below -
St. Joseph's College of Commerce (Autonomous),**

Post Graduate Department, 163, Brigade Road, Bangalore - 560 025

E-mail: pgdept@sjcc.edu.in / ifrsnationalseminar@gmail.com, Ph: 080-25360644 /46 ext. 272.

No
CPE

CLAUSE BY CLAUSE DISCUSSION ON FORM 3CD/3CA/3CB

VENUE: **Karnataka State Hockey Association**, Rhenius Street, Langford Town, Bangalore-560025

Date	Time	Topic	Speaker
23/07/2016 Saturday	5.00pm to 8.00pm	Recent Changes in TDS & TCS	CA. Naveen Khariwal G

DELEGATE FEES FOR MEMBERS: ₹ 250/-

For Registration, Please contact: **Ms. Geetanjali D.**, Tel: **080 - 3056 3513 / 3500**

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

3 hrs
CPE



IMPLEMENTATION OF IND AS – FURTHER RELAXATIONS



CA Mohan R Lavi

As per the roadmap issued by the Ministry of Corporate Affairs(MCA), the first set of entities to transition to Ind AS in India were to present their financial statements for the quarter ended 30th June 2016 in Ind AS with comparatives for the year ended 30th June 2015. Through its Circular No CIR/CFD/FAC/62/2016 dated July 5th, 2016, the Securities and Exchange Board of India(SEBI) has relaxed the formats and the implementation guidelines.

1. Formats

The existing formats prescribed in SEBI Circular dated November 30, 2015 for Unaudited/Audited quarterly financial results i.e. Statement of Profit and Loss and the Unaudited/Audited Half-Yearly Balance Sheet to be submitted by the listed entities, with the stock exchanges, shall continue till the period ending December 31, 2016.

For the period ending on or after March 31, 2017, the formats for Unaudited/ Audited quarterly financial results i.e. Statement of Profit and Loss and the Unaudited/Audited Half-Yearly Balance Sheet to be submitted by the Listed Entities, with the stock exchanges, shall be as per the formats for Balance Sheet and Statement of Profit and Loss (excluding notes and detailed sub-classification) as prescribed in Schedule III to the Companies Act, 2013. However, Banking Companies

and Insurance Companies shall follow the formats as prescribed under the respective Acts/Regulations as specified by their Regulators.

Until Companies (Indian Accounting Standards) Rules, 2015 ('Ind-AS Rules') become applicable, the listed entities shall adopt Companies (Accounting Standards) Rules, 2006 ('AS Rules') as prescribed by the MCA.

The Quarterly / Annual Segment Information published in compliance with the requirements as prescribed under Accounting Standard ('AS') 17/ Indian Accounting Standard ('Ind AS') 108 of the AS Rules/ Ind-AS Rules, as applicable, shall contain the following minimum information: -

- (a) Segment Revenue (including inter-segment revenue);
- (b) Segment Results;
- (c) Segment Assets;
- (d) Segment Liabilities.

Unallocated items, wherever applicable, shall be shown separately in respect of the above information. Aggregate inter-segment revenue shall be shown as a deduction from the segment revenue.

While publishing the aforementioned financial results, the listed entities shall disclose the figures relating to the periods as mentioned in the respective annexures to the circular dated November 30, 2015.

2. Implementation of Ind-AS during the first year:

As mentioned in para 5 of the circular dated November 30, 2015, the comparatives filed along with the quarterly / annual financial results are required to be Ind-AS compliant. However, in order to facilitate smooth transition during the first year of Ind-AS implementation, the following relaxations are being given to the listed entities to which Ind-AS Rules are applicable from the accounting period beginning on or after April, 1, 2016:

For the quarter ending June 30, 2016 and September 30, 2016:

- (i) The timeline for submitting the financial results in compliance with the provisions of this Circular is extended by one month. The results for the quarter ending June 30, 2016 and September 30, 2016 may be submitted by September 14, 2016 and December 14, 2016 respectively.
- (ii) For the quarter ending June 30, 2016, Ind-AS compliant financial results for the corresponding quarter ended June 30, 2015 shall be provided. For the quarter ending September 30, 2016, Ind-AS compliant financial results for the corresponding year to date / quarter ended September 30, 2015 shall be provided. However, in such cases,

limited review or audit of the same is not mandatory.

- (iii) For the quarter ending June 30, 2016, submission of Ind-AS compliant financial results for the preceding quarter and previous year ended March 31, 2016 is not mandatory. For the quarter ending September 30, 2016, submission of Ind-AS compliant financial results and Balance Sheet for the previous year ended March 31, 2016 is not mandatory. However, in case the entities intend to submit these results, the same may be without limited review or audit.
- (iv) In such cases, the listed entities shall disclose with due prominence that the Ind-AS compliant financial results, pertaining to the relevant periods of the previous year as mentioned in (ii) and (iii) above, as applicable, have not been subjected to limited review or audit. However, the management has exercised necessary due diligence to ensure that the financial results provide a true and fair view of its affairs.
- (v) The format of Balance Sheet for the Half-Yearly ended September 30, 2016 shall be as per the format for Balance Sheet (excluding notes and detailed sub-classifications) as prescribed in Schedule III to the Companies Act, 2013.

For the quarter ending December 31, 2016:

- (i) The submission of Ind-AS compliant financial results for the previous year ended March 31, 2016 is not mandatory.
- (ii) In case a listed entity chooses to

provide Ind-AS comparatives for the period mentioned above to facilitate comparison, the same shall be subjected to limited review or audit.

For all the aforementioned three quarters, disclosure of the line item - Reserves(excluding Revaluation Reserves), as per Balance sheet of the previous accounting year ended March 31, 2016, as prescribed in the existing formats for quarterly financial results is not mandatory.

In case the listed entity has subsidiaries / Joint Ventures / Associates, the entity may exercise the option under Regulation 33(3)(b)(i) of the Listing Regulations to submit quarterly/year-to-date consolidated financial results in the second quarter instead of the first quarter of the financial year and this option shall not be changed during the remaining part of the financial year.

For listed entities to which Ind AS Rules are applicable in subsequent phases (beginning from the Financial Year 2017-18, 2018-19 and 2019-20), the relaxations as mentioned in para 2.6 above shall *mutatis-mutandis* apply during their corresponding first year of Ind-AS implementation.

3. Clarifications on issues with regard to Ind-AS implementation:

The listed entities in order to comply with the requirements of paragraph 32 of Ind AS 101 – First time Adoption of Ind AS, shall provide a reconciliation of its equity and net profit / loss, in the following manner, for enabling the investors to understand the material adjustments to the Balance Sheet and Statement of Profit and Loss on account

of transition from the previous Indian GAAP to Ind-AS:

- (i) Reconciliation of its equity for the previous year ended March 31, 2016, shall be provided while submitting the Audited Yearly Balance Sheet for the period ended March 31, 2017.

Reconciliation of its equity for the previous year ended March 31, 2016, shall be provided in case the listed entity intends to provide the same while submitting the Unaudited/Audited Ind-AS compliant Half-Yearly Balance Sheet for the period ended September 30, 2016.

- (ii) Reconciliation of its net profit / loss as mentioned in the Unaudited/Audited quarterly financial results shall be provided only for the corresponding quarter of the previous year.

A listed entity may historically have a year-end other than 31st day of March, and may now be required to prepare financial statements for a period longer or shorter than the normal 12 month period for coinciding with 31st day of March as prescribed under Section 2 (41) of the Companies Act, 2013. In such cases, the Ind-AS financial statements for various periods beginning from April 01, 2016, shall have comparative information for a shorter or longer period i.e. beginning from a date other than 1st of April 2015. The listed entity, in such cases, shall disclose a suitable note, with due prominence, that comparative amounts presented in the Quarterly / Half-yearly / Year to date / Annual financial results are not entirely comparable. **(Contd. in page 12)**



LEVY OF SERVICE TAX ON REAL ESTATE DEVELOPMENT

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



The Honorable High Court of Delhi in its verdict on 03.06.2016 has upheld the legislative competence of the Parliament to levy service tax on the set of activities carried on by the builder on behalf of the buyer. However, it has observed that in the absence of statutory provisions in the Act and the rules thereunder to ascertain the value of services involved in construction of a complex **where the contract for construction and sale of residential unit is a 'single composite agreement'**, the levy fails and therefore no Service tax can be imposed.

Facts:

- The Petitioners had entered into composite agreements (land and building) with the Builder to buy flats in a multi-storey group Housing project.
- The Builder in addition to the consideration for the flats also recovered service tax from the Petitioners, which is payable by him for services in relation:
 - to construction of complex; and
 - on preferential location charges.
- The Petitioner contended that the agreement with the Builder was a **composite contract for purchase of immovable property** and in the absence of specific provisions for ascertaining the service component of the said agreement, the levy

would be beyond the Legislative competence of the Parliament and preferred writ petition before the Honorable High Court of Delhi.

Decision:

The Honorable High Court of Delhi in its verdict upheld the legislative competence of the Parliament to levy service tax on the set of activities carried on by the builder on behalf of the buyer. However, the Honorable Court clarified that in case of a composite contract which involves not only the element of service but also goods and immovable property, the levy itself would fail, if the **statutory provisions in the Act and the Rules thereunder do not provide the machinery to ascertain the value of services involved in construction of a complex and therefore, no Service tax can be imposed.**

The object of the Legislature to impose service tax in relation to a construction of a complex is essentially to tax the aspect of services involved in construction of complex the benefit of which is available to a prospective buyer who enters into an arrangement – for acquiring a unit in a project prior to its completion / development. However, service tax cannot be levied on the value of undivided share of land acquired by the buyer of a dwelling unit or on the value of goods which are incorporated in the project by the builder.

It has acknowledged the partial exemption provided by the Central Government – viz., that the exemption of 70% / 75% (*as may be applicable*) of the total contract value (*including the value of land*) is towards the value of land and the goods involved therein and that the balance of 30% / 25% (*as applicable*) represents the element of services in the contract. However, the High Court has been critical on the aspect that such provisions should essentially come out of the law and not through notifications or circulars.

Apropos the judgement, the following are important to note:

1. The judgement is in respect to the provisions as it stood prior to 01.07.2012, viz., before the shift to negative list based taxation. The judgement has not examined the taxability or valuation of works contract service.
2. Specifically in respect of cases **where the contract for construction and sale of residential unit is a 'single composite agreement'** comprising of UDI in land and construction portion.

From a developer's perspective **where contract for construction and sale of residential unit is a 'single composite agreement'**, the following aspects may be considered in the decision making process.

- 1. High Court ruling applicable only to single consolidated contracts:** In the present case, the contract is a composite contract for sale of residential unit as a whole, viz., a single consolidated contract for sale of UDI in land together with construction.
- 2. Taxability of construction contract is already upheld:** Various High Courts including the Delhi High Court have already upheld the validity of levy of Service tax on such contracts. Once the levy is established and upheld, the computation becomes a mere machinery or an administrative provision.
- 3. CENVAT credits will not be eligible if such contracts are considered as non-taxable:** From a CENVAT credit perspective, it must be noted that where the output is not considered as taxable, no CENVAT credits can be claimed. Applying this to the instant case, it follows that if the judgement of the Delhi High Court is considered, the developers will not be eligible to claim any CENVAT credits.
- 4. Refund would be subject to unjust enrichment:** In most cases, the developers would have collected taxes from the customers and would have remitted the same after utilizing CENVAT credits. Even in

cases where the taxes have not been collected from the customers, the tax office would allege that sale price is inclusive of the tax component.

In this backdrop, it is just that no refund would be granted since it would tantamount to 'unjust enrichment'. Procedurally, such amounts would be forfeited and would be transferred to the 'consumer welfare fund' of the Central Government – no refund would be granted to the developers.

However, the customers may make an application for refund of such taxes, to the extent it relates to their respective units. ■

IMPLEMENTATION OF IND AS – FURTHER RELAXATIONS

(Contd. from page 9)

In case of any technical difficulty in the interpretation of any specific item in the formats or implementation of this circular while publishing the financial results, the listed entities shall be guided by the relevant provisions of the Ind-AS

Rules / AS Rules and Schedule III to the Companies Act, 2013 and may make suitable modifications, as applicable. The listed entities shall also provide suitable explanations and clarifications, wherever felt necessary.

Critique

Though entities would welcome the relaxation provided, the relaxations are needless. Companies had enough and more time to implement Ind AS and companies in the first set have the Balance Sheet strength and resources to transition to Ind AS. Providing such relaxations in the last minute gives room to interpret that we can expect many more such relaxations in the future. ■

Bangalore Branch of SIRC of ICAI

is looking for immediate outright purchase of commercially converted land measuring between 20,000 to 40,000 sq. feet in Bengaluru- preferably in Basavanagudi, Jayanagar, Banashankari, JP Nagar, BTM Layout, Rajajinagar, Malleshwaram, Vijayanagar, and surrounding areas with proper and good approach road with 40 feet width, preferably a Prime Location having connectivity to Metro / Bus Station with clear title and / or Commercial Building between 40,000 to 60,000 Sq. Ft. built up area, constructed strictly as per BBMP approved plan without any deviation, OC Certificate is a must. Ready to move.

Interested parties can send mail

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COMPANY LAW - UPDATES - JUNE 2016

CA K. Gururaj Acharya

1. MCA Updates

1.1 Co's (Acceptance of Deposits) Rules, 2014 Amended [Amended Rules dtd 29.06.2016]

a. "DEPOSITS" include any receipt of Money by way of deposit or loan or in any other form by a co., but **does not include** any amount received from – **(Rule 2(1) (c) of Co's Acceptance of Deposit Rules)**

1. CG / SG / Local - Stat. Authority

2. Foreign Persons s.t. FEMA

3. Loan / Facility from Banks

4. Loan / Facility from PFI's

5. Commercial Paper

6. **Any Other Co.**

7. Securities Application Money (< 60 days)

8. Directors (s.t declaration)

9. Issue of Secured compulsorily convertible Bonds / Debentures (s.t conditions) **(conditions amended – 29.06.2016)**

9A. Issue of Unsecured Listed Non-convertible debentures s.t SEBI regulations

10. Employee (< Annual Salary)

11. **Non-Interest bearing Amt Or AND held in Trust (Amended – 29.06.2016)**

12. a. Adv. From Customers **(upto 365 days)**

b. Adv. for Immovable Property

c. Security Deposit under Contract

d. Adv. for Long-Term Projects (Cap Goods)

e. Adv. for future Services (towards warranty / maintenance contract as per written agreement or arrangement) as per **normal business terms or upto 5 yrs WIL.**

f. Adv Received & allowed by any Sectoral Regulator or with directions of CG/SG

g. Adv for subscription towards publication, to be adjusted against receipt of such publication

13. USL from Promoters iff stipulated by Banks

14. Accepted by Nidhi Co.

15. Amt received by way of subscription in respect of a **Chit** as per Chit Fund Act, 1982.

16. Amt received under collective investment scheme s.t SEBI compliance

17. Rs. 25 Lakh or more received by **Start-up Co.** by way of an Optionally Convertible Debt.

18. Amt received from Alternate Investment Funds, Domestic VCF & MF registered with SEBI

b. Max. deposits that can be accepted from members s.t compliance of certain conditions has been increased from 25% to **35%** of **(PUC + FR + Sec. Premium Account)**.

However, Pvt. Ltd. Co's can accept deposits from its members upto **100%** of **(PUC + FR + Sec. Premium Account)** s.t filing details with ROC in DPT-3 & Disclosure in the Financial Statements **(see c below)**

Author's Note – Exemption to Pvt. Co's reg. acceptance of Deposits from Members upto 100% of (PUC+FR+SPA) was already permitted vide Pvt. Co's Exemption Notification [ROD dtd 5-06-2015], which is now introduced in the rules vide proviso to Rule 3(3).

c. Disclosure (by way of notes) in Financial Statements: Money received

▪ From Directors & their relatives, in case of Private Companies; *[Was already required vide Pvt. Co's Exemption Notification [ROD dtd 5-6-2015], which is now introduced in the rules vide proviso to Rule 16A]*

▪ From Directors in case of other Companies. *[Existing provision continued]*

d. Time Limit for Deposit Insurance extended – **31.03.2017** (or till availability of deposit insurance product, WIE)

e. DPT- 1 **(Newspaper advt.)** amended to include

disclaimer that ROC is not responsible for Co's financial soundness.

1.2 Disclosure Requirements reg. Managerial Remuneration & Employee Salaries in Board Report amended [Co's (Appointment & Remuneration of Managerial Personnel) Amendment Rules, 2016 dtd 30.06.2016]

- a. Filing of MR-1 not required for appointment of CEO, CS & CFO (Form MR-1 amended accordingly).

So, MR-1 needs to be filed only for appointment of MD, WTD & Manager within 60 days of their appointment.

- b. The following Disclosures reg. Managerial Remuneration in Board's Report of Listed Co's dropped:
 - i. Explanation on Relationship between avg. increase in remuneration & Co's performance.
 - ii. Comparison of KMP's remuneration against Co's performance.
 - iii. Variations in Co's Market cap., PE Ratio as at close of Current FY & Previous FY & %age increase over decrease in mkt quotations of Co's shares in comparison to rate at which the Co. came out with the last public offer and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year.
 - iv. Comparison of remuneration of each KMPs against Co's performance.
 - v. Key parameters for any variable component of remuneration availed by directors;
 - vi. Ratio of Remuneration of highest paid Director to that of other employees who receive remuneration in excess of highest paid director during the year.

c. Co's to disclose names of top ten employee in terms of remuneration in its Board Report

[Authors' view: This was uncalled for. However it may be noted that the remuneration of such employees need not be disclosed and it need not be in order of the remuneration, thereby ensuring confidentiality. It is to be noted that this information must now be provided for all companies in its director's report issued on or after 30th June 2016.]

- d. Co's to also disclose names of employees receiving remuneration \geq Rs. 60 Lacs **Rs. 1.02 Crores p.a** (if employed for full year) or \geq Rs. 5 lacs **Rs. 8.50 Lacs p.m** (if employed for part of a year).

1.3 Clarification reg. Auditors Rotation in Class Co's issued - [Co's (Removal of Difficulties) Third Order, 2016 passed on 30th June 2016 WREF 01.04.2016]

Existing Provision

- a. Rotation of Auditors Compulsory for following Class Co's

1. All Listed Cos.		
2. Unlisted Public Cos	Paid up Capital	\geq Rs. 10 Cr having
3. Private Co's having	Paid up Capital	\geq Rs. 20 Cr
4. All Co's having	Borrowings from Banks / PFI / Public Deposits	\geq Rs. 50 Cr

- b. Term

Auditor	Max term
Proprietor / Individual Auditor	1 term – 5 years
Firm	2 terms – 5*2 = 10 years

- c. Cooling Period of 5 years compulsory, for individuals / firms / firms with common partner, [Firms in same network incl. firms operating / functioning under same brand name, trade name or common control as per Rule 10.6(3)] on completion of term.
- d. Co's may specify additional conditions as regards:
 - o Rotation between Audit partners & his team
 - o Audit by more than one Auditor [i.e. Joint Audit]

e. Transition Period of 3 Yrs To Existing Co's

Firm (For proprietorship, replace 10 with 5 & other appropriate changes)				
Completed as on 1/4/14 #	+	Max.	=	Aggregate period served as A'r
10 or more	+	3	=	13
9	+	3	=	12
8	+	3	=	11
7	+	3	=	10
6	+	4	=	10
5	+	5	=	10
4	+	6	=	10

Consecutive Yrs i.e Sum of all FY's served as Auditor except break of more than 5 Yrs.



Present clarification

The "Removal of Difficulty" dtd 30.06.2016 clarifies that companies are allowed to retain Auditors appointed during the transition phase upto the AGM due after 3 years (in 2017).

With the present clarification, the Auditors of Class Co's referred to above as on 01.04.2014, who were to have the maximum extension of 3 years can continue to serve as auditors upto the AGM date pursuant to FY 2016-17 and need not retire on completion of 3 years from 01.04.2014 i.e 31.03.2017 or during the AGM for 2015-16.

1.4 Constitution of NCLT & NCLAT WEF 01.06.2016

- a. **National Company Law Tribunal** and **National Company Law Appellate Tribunal** constituted WEF 01.06.2016 [*vide Notfn. S.O. 1932(E) & 1933(E)*] and all sections containing reference to NCLT/NCLAT notified [*S.O. 1934(E)*] most important being –
- o S. 130 - Re-opening of accounts on court's or Tribunal's orders
 - o S. 131 – Voluntary revision of financial statements or Board's report (with Tribunals Approval)
 - o S.466 – Dissolution of Company Law Board and consequential provision.
- b. Benches of NCLT constituted in New Delhi, Ahmadabad, Allahabad, **Bengaluru**, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai [*S.O. 1935(E)*]

Author's Note: Earlier, Karnataka was under the jurisdiction of Chennai CLB. The constitution of NCLT Bench at Bengaluru, is a welcome relief for professionals & Directors of Karnataka.

- c. All Cases pending before CLB as on 01.06.2016 transferred to NCLT

[Pending cases of Karnataka before Chennai CLB will also now be transferred to Bangalore Bench of NCLT]

2. ICAI Updates

- 2.1** Following are the clarifications for FAQ's on preparation of Consolidated Financial Statements:

- a. *S. 129 (3) of the Act provides that where a Co. has one or more subsidiaries, it shall prepare a consolidated financial statement of the Co. and of all the subsidiaries. Further, an Explanation to this sub-section provides that "subsidiary" shall include associate company and joint venture.*

Therefore, Co's having Associates & Joint Ventures are required to prepare consolidated financial statements for its associate and joint venture in accordance with applicable Accounting Standards (i.e., AS 23 and AS 27) even if it does not have any subsidiary.

- b. **Co's are required to Consolidate its Financial Statements even if its subsidiary is a non Company i.e., partnership firms & LLPs.**

- 2.2** FAQ on deemed cost of Property, Plant & Equipment under **Ind AS 101 - First-time Adoption of Indian Accounting Standards** issued –

From the date of transition, deemed cost, i.e., carrying values of PPE as per the previous GAAP will be considered as the cost and any accumulated depreciation and provision for impairment under previous GAAP have no relevance. Further, provision for impairment provided before the date of transition as per previous GAAP cannot be reversed in later years.

Attention: Chartered Accountancy Students

Bangalore Branch of SIRC of ICAI is happy to announce **Scholarship to CA Students** on Merit cum Need basis. Interested students are required to submit the prescribed application duly filled, to Bangalore Branch (Forms can be downloaded from branch website: www.bangaloreicai.org) **on or before 31st July 2016**. Branch intends to distribute scholarship to the selected students on *15th August 2016 on the occasion of Independence Day celebrations.*



TAX UPDATES - JUNE 2016

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

VAT, CST, ENTRY TAX, PROFESSIONAL TAX

PARTS DIGESTED:

- a) 90 VST – Part 2 to 4
- b) 91 VST – Part 1 & 4
- c) 84 KLJ - Part 4

Reference/ Description

[2016] 91 VST 18 (P&H – HC): State of Punjab and Olam Agro India Ltd.

- In the instant case the Commercial Tax Department had put the list of assessment cases in which the time-limit to be extended on the website of the Department for inviting the objections from the dealers/taxable persons to be effected by such extension.

The Honourable Punjab & Haryana High Court observing Rule 86 of the Punjab Value Added Tax Rules, 2005 held the said Rule 86 does not envisage service of general notice or by publication on the website of the Department.

Thus, the Court held that failure of the Department to serve individual notices in an incurable defect, which renders assessment orders null and void.

[2016] 91 VST 385 (Bom. – HC): Johnson Matthey Chemicals India Pvt. Ltd. v. State of Maharashtra & Others

- In the instant case the Honourable Bombay High Court relying on the decision of the Honourable Supreme Court in the case of Ambica Steels Ltd. [2009] 24 VST 356 (SC), held

that if some States are not issuing F Form, then, that approach of a particular State should be brought to the notice of the assessing office in a dealer's State. The Assessing Officer should be convinced that the dealer made all efforts, but for no fault of his, he could not obtain the F form.

Thereupon and pursuant to the liberty given by the Honourable Supreme Court and the dealer raising the plea, the Assessing Officer, while taking note of it, would consider the peculiar facts and circumstances and may pass requisite orders. Even that is not the rule but an exception.

2016 (85) KLJ 1 (Karn. – HC): Sonal Apparel Pvt. Ltd. and others v. State of Karnataka and another

- In the instant case the Honourable Karnataka High Court held that newly substituted provision to Section 10(3) of the Karvat Act is clarificatory and hence retrospective in nature.

2016 (85) KLJ 53 (Karn. – HC) (DB): Hicure Pharmaceuticals Pvt. Ltd. v. Dy. CIT

- In the instant case the Honourable Karnataka High Court held that 'water for injection' (WFI)/ Demineralized Water" (DM) does not fall under Entry 54 of the Third Schedule and hence liable to tax.

Thus, the Court held that contract executed by the Assessee to supply WFI/DM water which is an input for the

manufacture of injection, is a composite works contract involving transfer of property in goods as well as labour and service.

While holding so the court held that 'Sale' and 'Service', though different aspects may be involved in the single transaction, under different legislative powers, levy of tax on both aspects is legally permissible. State is empowered to levy tax on the sale or purchase of goods bifurcating the contract and Central is empowered to levy tax on the service.

2016 (85) KLJ (Karn. – Tri)(DB): SAP India Private Ltd. v. State of Karnataka

- In the instant case the Honourable Karnataka Appellate Tribunal held that software patches and upgrades directly dispatched from SAP AG, Germany to customers in India is a sale in the course of import falling under Section 5(2) of the CST Act and thus exempt from tax.

INCOME TAX

PARTS DIGESTED:

- a) 383 ITR – Part 4 & 5
- b) 384 ITR – Part 1 to 5
- c) 238 Taxman – Part 4 to 6
- d) 239 Taxman – Part 1, 2, 4 & 6
- e) 41 ITR (Trib.) – Part 3 & 4
- f) 48 ITR (Trib.) – Part 2 & 6
- g) 157 ITD – Part 9
- h) 158 ITD – Part 1 to 8
- i) 49 CAPJ – Part 5 & 6



[2016] 68 taxmann.com 93 (Mad. – HC); [2016] 238 Taxman Part 5 (Weekly Browser): Regen Infrastructure & Services (P.) Ltd. v. CBDT - In the instant case the Honourable Madras High Court has held that where delay of a day in filing return was only due to technical snags of website of department on last date of filing return, such delay was to be condoned and hence claim of carry forward of losses could not be denied.

[2016] 68 taxmann.com 131 (Delhi – HC); [2016] 238 Taxman Part 5 (Weekly Browser): Vijay Gupta v. CIT - In the instant the Honourable Delhi High Court held that intimation under Section 143(1) of the IT Act is regarded as an order for purposes of Section 264 and therefore, application under Section 264 is maintainable against intimation order passed under Section 143(1).

[2016] 68 taxmann.com 177 (Cal. – HC); [2016] 238 Taxman Part 6 (Weekly Browser): Shrimati Roma Sengupta v. CIT - In the instant case the Honourable Calcutta High Court held that amount realised by assessee from sale of property received as alimony from her husband in terms of decree of divorce, was to be regarded as capital receipt not liable to tax.

[2016] 239 Taxman 428 (Bom. – HC); [2016] 69 taxmann.com 187 (Bom. – HC): CIT v. Reuters India (P.) Ltd. - In the instant case the Honourable Bombay High Court held that entire purpose of determining the ALP is to ensure that there is no Base Erosion and Profit Shifting. The tax proceedings are not adversarial in nature and there can be no estoppels in pointing out the correct facts before the Appellate Authority particularly when all facts are on record.

Therefore, assessee is permitted to raise issues in appeal even if he had acquiesced with the same during inferior proceedings.

[2016] 239 Taxman 257 (SC); [2016] 69 taxmann.com 188 (SC): P.G. & W. Sawoo (P.) Ltd. v. Asst. CIT - In the instant case Assessee let out its premises to Government of India. Rent for said premises was enhanced in year 1994 retrospectively from previous year in question i.e. AY 1989-1990.

The Assessing Officer issued notice for reassessment to impose tax on said retrospective receipt of rent.

On appeal before the Honourable Supreme Court, the Court held that on facts, it is clear that no right to receive rent accrued to assessee at any point of time during previous year in question, inasmuch as such enhancement though with retrospective effect, was made only in year 1994 and, therefore, notice seeking to reopen assessment was not justified.

While holding so the Court held that income chargeable to tax must accrue or arise at any point of time during previous year; income can be said to have accrued or arisen only when a right to receive amount is vested in assessee.

[2016] 383 ITR 165 (Mad. – HC): K.R. Ganesh Kumar - In the instant case the Honourable Madras High Court held that Section 40A(3) of the IT Act applies to cash purchases found as a result of search even when the undisclosed income is offered on peak credit basis

[2016] 384 ITR 37 (SC): Visvesvaraya Technological University v. Asst. CIT - In the instant case, during a short period of a decade, i.e., from the years 1999 to 2010 the assessee-University had generated a surplus of about Rs.

500 crores by realizing fees under different heads in consonance with the powers vested in the University under Section 23 of the VTU Act

The Honourable Supreme Court observed that during six assessment years in question grants/direct financing by Government had never exceeded 1 per cent of total receipts of assessee-University.

Therefore, the Court held that, assessee could not be considered as directly or even substantially financed by Government so as to be entitled to exemption from payment of tax under section 10(23C)(iiiab).

[2016] 384 ITR 276 (Delhi); [2016] 69 taxmann.com 205 (Delhi): CIT v. Herbalife International India (P.) Ltd - In the instant case, Assessee paid administrative fee to its US-AE for availing various services like data processing, accounting etc. The Assessing Officer disallowed said payment for want of deduction of TDS invoking Section 40(ai) of the IT Act.

On appeal before the Honourable Delhi High Court, the Court observed that under section 40(a)(i), payment made to non-resident without deducting TDS was not allowed as deduction however, such disallowance was not envisaged for payment made to a resident. Further, it observed that under Article 26(3) of the Indo-US DTAA (Non-discrimination), kinds of payments specified in Article 26(3), requires treatment in the same manner vis-a-vis a resident and a non-resident, which includes interest, royalty and other disbursements.

Therefore, the Court held that in view of Article 26(3) of the Indo-US DTAA, Section 40(a)(i) would not be applicable as it created discrimination between

payment made to a non-resident and a resident. Thus, the Court held that the action of Assessing Officer was not justified.

TS-85-SC-2016: CIT v. Society for the Promotion of Education, Adventure Sport & Conservation of Environment - In the instant case the Honourable Supreme Court held that non-disposal of registration application within 6 months timeline as stipulated u/s 12AA(2) shall result in "deemed grant of registration".

Thus, the Court held in the instant case as the application was made on 24.02.2003, the deemed grant of registration shall take effect from 24.08.2003.

[2016] 68 taxmann.com 113 (Mum. – Trib.); [2016] 238 Taxman Part 4 (Weekly Browser): Siemens Nixdorf Informations Systeme GmbH v. Dy. DIT (International Taxation) - In the instant case the Honourable Mumbai Tribunal held that an advance/debt or recoverable amount given by Assessee, a non-resident company to its wholly owned subsidiary in India is a property in the sense it is an interest which a person can hold and enjoy, and since it is a property and it is not covered by the exclusion clauses set out in Section 2(14) of the IT Act, it is required to be treated as a 'capital asset'. Further where assessee sold its debt and claimed short term capital loss on this transaction of sale of book debt, since it was sold for an amount lesser than cost at which it was acquired, the loss to be allowed would be short term capital loss.

[2016] 68 taxmann.com 322 (Delhi – Trib.); [2016] 238 Taxman Part 6 (Weekly Browser): Ranbaxy

Laboratories Ltd. v. Asst. CIT - In the instant case the Honourable Delhi Tribunal held that provisions for comparability analysis in Advance Pricing Agreement (APA) have immense persuasive value and can be 'rolled back' i.e. retrospectively applied for past years also even though when the APA signed by the assessee there were no 'rollback provisions'. This can be done provided the international transaction in both the years (i.e. the year of APA and the past year) are the same and availability of data for the past year is also on similar lines as suggested in the APA.

[2016] 69 taxmann.com 31 (Chennai – Trib.); [2016] 239 Taxman Part 2 (Weekly Browser): Vijayshanthi Builders Ltd. v. Jt. CIT - In the instant case the Honourable Chennai Tribunal held that where assessee-builder incurred interest on funds borrowed for a new project, same was to be allowed as revenue expenditure even though said new project was not commenced as there were no restrictions for assessee to use borrowed funds for other projects.

[2016] 68 taxmann.com 338 (Vishakapatnam – Trib.); [2016] 239 Taxman Part 2 (Weekly Browser): Asst. CIT v. Andhra University - In the instant case the Honourable Vishakapatnam Tribunal held that where assessee paid pension without deducting TDS, interest liability for said default would arise from first day of April of subsequent year as TDS could have been deducted till end of relevant financial year.

[2016] 69 taxmann.com 419 (Mum. – Trib.); [2016] 239 Taxman Part 6 (Weekly Browser): L'Oreal India (P.) Ltd. v. Dy. CIT - In the instant case the

Honourable Mumbai Tribunal held that where Indian subsidiary incurred AMP expenses promoting bran owned by French holding company, in absence of an agreement between assessee and said AE to share/reimburse AMP expenditure incurred by the assessee in India, transaction in question would not be an international transaction.

[2016] 70 taxmann.com 69 (Mum. – Trib.); [2016] 239 Taxman Part 7 (Weekly Browser): Asst. CIT v. BSR & Co. - In the instant case the Honourable Mumbai Tribunal held that taxability of sum in hands of recipient on account of a subsequent retrospective amendment cannot expose assessee-payer to an impossible situation of requiring deduction of tax at source on date of payment.

Therefore, the Tribunal held assessee cannot be held to be in default for not deducting tax at source so as to trigger disallowance under Section 40(a)(i) of the IT Act.

[2016] 70 taxmann.com 27 (Chennai – Trib.); [2016] 239 Taxman Part 7 (Weekly Browser): Soundarajan Parthasarathy v. Dy. CIT - In the instant case the Honourable Chennai Tribunal held that where an incentive plan was promoted by holding company of Indian employer company and assessee-employees were residents in India at time of exercise of Stock Appreciation Rights, they were liable to tax in India on same irrespective of fact that they were non-residents during vesting period.

[2016] 69 taxmann.com 400 (Mum. – Trib.); [2016] 239 Taxman Part 7 (Weekly Browser): Manugraph India Ltd. v. Dy. CIT - In the instant case the Honourable Mumbai Tribunal



held that where issuance of corporate guarantee by assessee was a tripartite agreement between assessee, its AE and assessee's banker and agreement referred to services which were in nature of shareholder services, said transaction was to be excluded from scope of 'international transaction' under Section 92B of the IT Act.

[2015] 41 ITR (Trib.) 397 (Bang.): Dy. CIT v. WS Atkins India P. Ltd. - In the instant case the Honourable Bengaluru Tribunal held that where assessee simply purchased software delivered along with computer hardware for utilisation in the day-to-day business, assessee was not required to deduct tax at source for the reason that Explanation 2 to Section 9(1)(vi) of the IT Act cannot be applied to purchase of a copyrighted software, which would not involve commercial exploitation.

Thus, the Court held that 40(a)(ia) does not apply and depreciation is allowable under Section 32.

[2016] 157 ITD 1160 (Hyd. – Trib.); [2016] 67 taxmann.com 65 (Hyd. – Trib.): Virtusa (India) (P.) Ltd. v. Dy. CIT - In the instant case the Honourable Hyderabad Tribunal held that where assessee relied on ITR-6 format to arrive at total liability as well as MAT credit calculations, Assessing Officer could not overlook said format and proceed to calculate MAT credit to complete assessment under section 143(1) by applying different methods when the correct method is proposed by CBDT in ITR-6.

[2016] 157 ITD 1177 (Mum. – Trib.); [2016] 67 taxmann.com 368 (Mum. – Trib.): Pramerica ASPF II Cyprus Holding Ltd. v. Dy. CIT (International

Taxation) - In the instant case the Honourable Mumbai Tribunal held that in terms of Article 11(1) of India-Cyprus DTAA, interest income in question was liable to be taxed on payment/receipt basis and not on accrual basis.

[2016] 158 ITD 1 (Mum. – Trib.); [2016] 68 taxmann.com 36 (Mum. – Trib.): Capgemini Business Services (India) Ltd. - In the instant case the Honourable Mumbai Tribunal held that branch profits tax paid in USA under Section 884 of the Internal Revenue Code of USA is not specifically excluded from DTAA, tax credit is to be allowed to assessee under the treaty.

[2016] 158 ITD 194 (Lucknow – Trib.); [2016] taxmann.com 81 (Lucknow – Trib.): State Bank of India v. Dy. CIT (TDS) - In the instant case the Honourable Lucknow Tribunal held that as per provisions of Section 10(5) of the IT Act, only that reimbursement of travel concession or assistance to an employee is exempted which was incurred for travel of individual employee or his family members to any place in India; this clause nowhere provided that even if employee travels to foreign countries, exemption would be allowed to extent of expenditure incurred to last destination in India.

Therefore, the Tribunal held that Leave Travel Concession paid by assessee to

employees involving foreign travels as well would not qualify for exemption under Section 10(5) and, accordingly, assessee was liable to deduct TDS on such payment of LTC. In other words, travel cost relating to domestic sector in a foreign trip is also not eligible.

[2016] 158 ITD 230 (Kol. – Trib.); [2016] 68 taxmann.com 146 (Kol. – Trib.): Trans Global PLC v. DIT (International Taxation) - In the instant case the Honourable Kolkata Tribunal held that non-compete premium received by assessee is a business receipt assessable under Section 28(va) of the IT Act, but in terms of Article 7 of Indo-UK DTAA, it is taxable in UK only, as the assessee is a non-resident company and does not have a permanent establishment in India.

[2016] 158 ITD 521 (Delhi – Trib.); [2016] 68 taxmann.com 376 (Delhi – Trib.): Mridu Hari Dalmia Parivar Trust v. Assessing Officer - In the instant case the Honourable Delhi Tribunal held that any sum exceeding Rs. 50,000/- can fall within ambit of section 56(2)(vi) only if it is received by an individual or HUF; where assessee was an AOP sum of Rs. 1.60 Crores received by it without consideration could not be included in its total income within framework of Section 56(2)(vi) of the IT Act. ■

Congratulations

CA K. Ravi has been elected as the Senior Vice President of Federation of Karnataka Chamber of Commerce & Industry (FKCCI) for the year 2016-17 at the elections on 30th June, 2016. He is the first practising Chartered Accountant to have been elected to this prestigious position in the 100 year history of the apex trade, commerce and Industry body in the state of Karnataka.





DIGEST ON RECENT DECISIONS UNDER COMMERCIAL TAX LAWS

CA Annapurna D Kabra

Case 1: S.B. Audio and Video, Gulbarga v. Additional Commissioner of Commercial Taxes, Zone –I, Bangalore and Others 2016(85) Kar.L.J. 181(HC)(DB).

The appellant deals in electronic goods and on receipt of notice for production of books of accounts, he had submitted the monthly VAT returns and other required information. On inspection of Monthly Returns by the Assessing Authority, it was concluded that the appellant had claimed exemption towards discounts granted to its customers after the issuance of tax invoice which was against the provisions of Rule 3(2)(c) of the KVAT Act, 2003 and had passed an order disallowing such discount and levied tax and penalty amounting to Rs. 45,128. Being aggrieved, the appellant had filed an appeal before the First Appellate Authority.

The appellate authority has contended that the appellant is allowed to give further he discounts after the issuance of a tax invoice, only if such discounts are either trade discounts or pertain to the terms and conditions of any contract entered into with their customers. Such discounts are therefore, permissible by way of issuing a credit or a debit note. The onus of proving that the discount was allowed as per the provisions of the Rules and Act, is on the appellant. As per the proceeding carried out, it

did not reveal whether the assessee had produced the relevant tax invoices, and debit and credit notes before the authority for the purpose of assessment, in order to prove the said fact.

Also, it has been contended by the appellant that the appellate authority must have a detailed discussion on all the factual and material aspects of the case, before arriving at any conclusion. The records do not reveal as to what documents were submitted before the appellate authority and what documents were inspected by the authority for the purpose of assessment. The Honorable court decided to remand the case back to the assessing authority and directed the appellant to furnish all the required details, using which, the entire matter was to be reconsidered by the Assessing authority.

Case 2: Rodeo Drive Luxury Products Private Limited, Bangalore v. State of Karnataka. 2016(85) Kar. L.J. 124(Tri.)(DB)

The appellant deals in high end wrist watches and pens. He had dispatched some wrist watches for an exhibition to be held in Bellary. On inspection, the inspection authority had found that there was a stock difference amounting to Rs. 5,62,892/-, and apart from that, he had realized that at the exhibition, the appellant had made a sale of Rs. 26,80,000/- which had been arrived at

by taking the difference between the stock that was sent for the exhibition less the goods that returned. Hence, the First Appellate authority had treated such stock difference and untallied turnovers relating to the exhibition and accordingly levied tax and penalty. Having failed before the First appellate authority, the appellant pleaded before the tribunal.

The appellant has contended that the First Appellate Authority had considered the matters only on the basis of the report as submitted by the Commercial tax officer, without making any independent analysis.

It was also stated by the appellant that he had transported the goods to Bellary for the purpose of the exhibition, amounting to Rs. 3,42,04,775/- and though some of the goods were intended for sale but due to their delicate nature,, they could not be transported to Bellary, as the business premises had been burgled on 18th June, 2010. While the burglary issue has been answered by the First Appellate Authority, he has ignored to stock difference of Rs. 5,62,892/-, when there were untallied sales of Rs. 26,80,000/- on account of the exhibition sales.

The appellant has submitted the stock inventory attached to the e-Sugam of the goods transported to Bellary and also when they were returned. However,



only the quantity and the brand name of the goods were mentioned, without disclosing the model reference numbers and the value of each item. The matter has been remanded back to the Assessing authority for fresh consideration, once the appellant submits all the required facts.

Case 3: Rama Kamath and Company, GHS Road, Mangalore v. State of Karnataka 2016(85) Kar. L.J. 190 (Tri.) (DB).

The appellant is engaged in the execution of civil works contract. In the years 2010-2011 & 2011-2012, the appellant has effected interstate purchases against C Form declaration, mentioning that the said goods were purchased for the purpose of resale, but in fact, were used in the construction purpose, therefore, there were liable to a penalty u/s 10—A of the Act. Against this, the appellant had replied, stating that the goods were machinery purchased against C form declarations which were for use and were in fact used for construction purpose. Against this, the authority has issued another notice stating that the goods purchased were tippers, tipper chassis and truck chassis, used mainly for the purpose of transporting goods and cannot be used as machinery. Hence, the goods do not fall under Section 8(3) of the Central Act and proposed to levy penalty under both Section 8(3) and 10-A.

The appellant contends that as per the CST Registration Certificate issued by the LVO, it is authorized to purchase of machinery and parts required for use in the execution of the works contract. Accordingly, the appellant purchased

machinery connected to RMC, which were in fact, authorized goods. Though the above goods do not have a registration under the Motor Vehicles Act, 1988, they are essentially required for execution of construction of roads, in which the appellant deals in.

He has also stated that while issuance of C forms, it mentioned at the bottom of the form as against the purpose of use as 'resale' instead of 'use in execution of works contract' since such option was not available and since it was of the view that execution of works contract amounts to a deemed sale, hence, the option of 'resale' was found most relevant amongst the others. Solely for this mere irregularity, penalty u/S 10-A cannot be levied.

The appellate authority had stated that while the above goods were purchased, such type of goods were not mentioned in the CST Registration certificate of the dealer and hence, the appellant is not authorized to purchase such goods.

On the above grounds, the appeals of the appellant was completely allowed and the matter was remanded back to the assessing authority for fresh consideration to issue a fresh notice indicating the goods covered and not covered in the certificate of registration at the time of purchase.

Case 4: Jones Lan Lasalle Property Consultant India (Private) Limited, Bangalore vs. State Of Karnataka – 2016(84) Kar. L.J. 489 (HC) (DB).

The appellant has filed monthly returns under the Karnataka Value Added Tax Act, 2003, beyond the period of 6 months showing an additional tax liability of Rs. 5,02,09,566/-. The

Deputy commissioner passed a re-assessment order under section 39(2) of the Act, which was later taken to the Additional Commissioner for revision. The additional commissioner issued a notice pertaining to the circular dated 7-7-2008 vide No. VAT/CR-31/2008-09. According to the interpretation of the circular made by the revisional authority, it claimed that credit of input tax credit cannot be taken to settle the additional tax liability. The question was whether the additional tax liability could be settled after considering the credit of input tax.

The appellant contends that whenever the matter pertains to payment of additional tax liability, it would always mean the credit or set off to be made of the tax already paid and the consequential amount of tax needs to be paid by way of additional tax liability. If the credit or adjustment is to be given to the amount of tax already paid, there is no reason why the credit of input tax should not be adjusted against the additional tax liability and thereafter to arrive at the additional net tax liability.

It was held that the Revisional authority had not properly interpreted the circular. Hence, the order of Revisional authority was quashed and the appellant was allowed the credit of input tax while estimating the amount of additional net tax liability.

Case 5: Kennametal India Limited, Bengaluru vs. The Additional Commissioner of Commercial Taxes, Zone -3, Bengaluru 2016(84) Kar. L.J. 507 (HC) (DB).

The appellant is engaged in manufacturing and trading of cutting

tools. On the discount claimed on the total turnover by the appellant, the Assessing Authority has issued a notice and later, reassessment orders, denying such claim of discount and levy of penalty and interest and had issued a demand notice in Form 180, against which he went for an appeal before the First Appellate Authority. After having received further orders from the Additional Commissioner (Revisional Authority), the appellant appealed before the Tribunal.

The appellant has contended that the Revisional authority has relied only on the judgment in the case of Southern Motors, Bangalore vs. State of Karnataka and has passed orders without considering the contentions raised by the Assessee.

The assessee states that the case of Southern Motors deals with the Karnataka VAT Act and rules and not with the provisions of the Central Sales Tax rules and therefore, the judgment taken by the Revisional authority is not applicable while deciding on the issues under the provisions of the Central Sales Tax Act. The contentions of the appellant

have been allowed and the orders of the Assessing Authority have been remanded back for fresh consideration, taking into regard, the provisions of the Central Sales Tax Act.

Case 6: Shri Balaji Trading v. State of Karnataka 2016(85) Kar. L.J. 155(Tri.) (DB)

The appellant is engaged in the activity of Iron and steel. On inspection, the inspecting authority had revealed that the appellant has been purchasing goods from outside the state and sold them in Karnataka but he has disclosed the same as a local purchase, thereby, claiming input tax credit. It has been further ascertained that most of the dealers from whom the appellant has been purchasing goods, are either non-existent or are involved in bill trading. Hence, the assessing authority has passed protective assessments, levying penalty and interest.

The appellant has contended that without the prior permission of the Additional Commissioner or Joint Commissioner, the inspection authority has passed protective assessments, without following the statutory

provisions. Against this, the inspection authority stated Section 38(5) of the Act which states that 'the prescribed authority on any evidence obtained showing a liability of tax coming to its notice may with the previous permission of his Joint Commissioner or Additional Commissioner issue protective assessment....'. The appellant further contends that the Inspection authority failed to cause cross-verification of the transactions with the selling dealers, before passing the orders of protective assessments.

It has been stated by the First Appellate Authority that the dealers from whom, the appellant has purchased goods, have failed to deposit the tax on the sales made to the appellant, or failed to deliver the goods to the extent, the tax invoice was issued to the appellant, thereby, causing large amounts of tax evasion.

Considering the facts as stated by the First Appellate Authority and Inspection authority, the appeals filed by the appellant were completely dismissed and the orders of the Authorities were upheld. ■

Congratulations



CA N. Nityananda



CA I.S. Prasad



CA S. Prabhudev Aradhya

For being elected as Managing Committee Member of FKCCI



SERVICE TAX DECISIONS

PARTS DIGESTED – STR VOLUME 42: PARTS 5 & 6

CA. A. Saiprasad



Notifications

Notification No.32/16 ST dt.6.6.16

Legal Services provided by senior advocate (SA) to (a) any person other than business entity or (b) a business entity with a turnover up to Rs. 10 Lakhs in the preceding financial year has been exempted.

Note: Notification No.9/16 ST dt.1.3.16 had earlier withdrawn the aforesaid exemption of legal services provided by senior advocate. Exemption is now back in place.

Notification No.33/16 & 34/16 ST dt.6.6.16

Legal Services provided by SA and Representational Services provided by SA to business entity, including where contract has been entered through another advocate, the business entity which is the litigant has been made the person liable to pay tax u/r 2(1)(d)(i) (D)&(DD) of STR, 94.

Note: Notification 33/16 & 34/16 seeks to specify that in case of representational service, though the brief/case is provided by another advocate, the recipient of service is business entity (i.e. litigant – who consequently become person liable to pay service tax under RCM) and not the other advocate providing brief/case to SA.

N.No.33/16 amends STR, 94 while N.No.34/16 amends N.No.30/12 ST (RCM Notification)

Notification No. 35/16 ST dt.23.6.16

Taxable services with respect to which invoice for the service has been issued on or before 31.5.16 has been exempted, subject to the condition that provision of service has been completed on or before 31.5.16.

Note: Has circumstance to issue exemption notification arisen when services are completed prior to 31.5.16 and hence not amenable to KKC in the first instance since KKC is applicable only from 1.6.16?

Note: The aforesaid exemption has been issued to overcome provisions of R.5 of POTR, 11, especially Budget Amendment, 2016 to R.5. Explanation I was inserted to R.5, which states that R.5 shall apply to new levy (in this case KKC).

As per R.5, receipt of payment before the service became taxable is one of the criteria for a service to be not exigible to a new levy, which is sought to be overcome by the exemption notification.

Note: In the opinion of the author, Notwithstanding R.5 and insertion of S.67A(2), KKC cannot be levied on services completed prior to 1.6.16, even

if invoice is not issued prior to 31.5.16 due to S.67A(1) and decision in Vistar Construction (P) Ltd V. UOI, 2013 (31) STR 129 (Del).

Notification No.36/16 ST dt.23.6.16

Exempts taxable service of transportation goods by a vessel from outside India upto customs station in India for which invoice has been issued prior to 31.5.16, subject to condition that import manifest or import report has been delivered before 31.5.16.

Note: Aforesaid exemption is consequential to budget amendments, withdrawing transportation of goods by aircraft or a vessel from place outside India upto customs station in India u/s 66D(p)(ii) and amendment to definition of exempted service u/r 2(k) of CCR, 04.

Circulars

Circular No.195/5/2016 - Service Tax dt.15.6.16 has been issued clarifying issues relating to speedy disbursement of pending refund claims, by exporter of services filed on or before 31.3.15, under R.5 of CCR, 04.

This circular in addition to Circular No.187/6/2015 - Service Tax dt.10.11.15, issued on the self-same issue.

The Circular is available on CBEC website.

Case Laws

Whether Service Tax is payable on Operating Lease?

Delhi HC has granted stay of service tax on operating lease of vehicles. The petitioner had challenged the levy of service tax on the ground that aforesaid activity was amenable to VAT under Delhi VAT Act, 04.

ALD Automotive Pvt Ltd V. UOI, 2016 (42) STR 952 (Del)

Note: Aforesaid decision refers to only admission of writ petition before the HC and is not the final decision.

Right to use goods is a deemed sale and liable to VAT.

A per S. 66E(f), transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use has been declared as a service. Prior to declared service, aforesaid activity was taxable under tangible supply of goods service.

Are Service Tax provisions declared as ultra vires, ultra vires only with respect to the appellant or for all the service tax assesseees?

The Gujarat HC in Sports Club of Gujarat Ltd V. UOI, 2013 (31) STR 645 (Guj) had declared S. 65(25a) r/w 65(105)(zzze) i.e. services rendered by a club to its members as *ultra vires* and beyond legislative competence of the parliament on the ground of mutuality.

The revenue contended that aforesaid decision was applicable only *qua petitioner* (i.e. Sport Club of Gujarat Ltd). The HC summarily rejected the revenue's contention and held that there was no concept of provisions declared as *ultra vires* becoming applicable in

personam (i.e. appellant) only. HC held aforesaid provisions were made *ultra vires* to the Act i.e. levy of service tax in respect of club to its members.

CCE V. Surat Tennis Club., 2016 (42) STR 821 (Guj)

Whether sale of SIM cards is leviable to sales tax or service tax? Can VAT be adjusted towards ST demand?

The HC held that sale of SIM Card is for activation of telecom services and hence leviable to service tax and not VAT. HC relied on BSNL V. UOI, 2006 (2) STR 161 (SC), in support of its decision.

HC further held that VAT department had collected tax without authority of law. That though VAT provisions did not provide for refund of VAT collected from customers, when VAT was not leviable, collection thereof was unconstitutional. That Courts could not perpetuate unconstitutional levy, collection and retention of taxes.

The HC directed the State Government (SG) to transfer the VAT amount to the Central Government (CG) for adjustment towards Service Tax demand by CG, when the SG contended that refund of VAT would amount to unjust enrichment, since taxes were collected from customers.

Idea Cellular Ltd V. UOI, 2016 (42) STR 823 (P&H)

Whether value of rubber is includable in the gross amount in case of retreading of tyres?

The Tribunal relied on Safety Retreading Company Pvt Ltd V. CCE, 2012 (26) STR 225 (T) and held that benefit of deduction of cost of raw materials consumed in providing the service was

not available.

Tribunal held that concept of deemed sale of goods applicable only under works contract and not in the aforesaid case, liable under maintenance and repair service.

Tribunal however held that extended period of limitation was not invocable on account of difference in opinion between the two members on the bench.

CCE V. Tyresoles India Pvt Ltd., 2016 (42) STR 861 (T)

Note: In Safety Retreading Company Pvt Ltd case, the Tribunal had held that mere fact of voluntary payment of VAT @ 1% on apportioned value of goods cannot be considered as evidencing sale of goods.

Note: Rule 3(2)(m) of KVAT Rules, 05 specifically states Tyre re-treading as works contract and mentions the labour component to be 40%.

In the opinion of the author, when VAT law treats retreading of tyre as works contract, payment of tax at whatever rate, would evidence the fact that the transaction is in the nature of a deemed sale – works contract.

Once sales tax law treats a transaction as works contract, it is not open for the service tax law to treat the same as pure service.

Consequently the goods have to be treated as sold during the course of provision of service and cannot be treated as consumed for providing the output service.

What is the period for computing interest in case of delay in payment of refund?



The petitioner company had filed a refund claim on 24.1.05. While the refund was rejected by Adjudicating Authority, it was allowed by Commissioner (Appeals) on 3.6.08, but with a direction that refund amount be credit to Consumer Welfare Fund (CWF) (and not granted to petitioner) on the ground of unjust enrichment. On appeal, the Tribunal on 6.11.09 held that refund was to be granted to petitioner and not transferred to CWF.

The department granted refund vide order dt.10.3.10 and after another round of litigation granted interest from 24.4.05 (3m from application date) to 3.6.08 but refused interest from 3.6.08 till 10.3.10 on the ground that refund had been transferred to CWF due Commissioner (Appeal)'s order.

The HC held that refund was payable from 3.6.08 till 10.3.10. HC held that there was no statutory provision u/s 11BB of CEA, 44 made applicable to FA, 94, which held that interest would not be payable if refund amount credited to CWF, which was subsequently ordered to be refunded to assessee.

Purnima Advertising Agency V. UOI, 2016 (42) STR 785 (Guj)

Whether desilting of river is liable to service tax? Can suppression be attributed in the aforesaid case?

The Tribunal held that desilting of river would be liable to tax under Dredging Service. Tribunal relied on Reliance Michigan (JV) V. CCE, 2014 (35) STR 620 (T) in support of its decision.

Tribunal held that penalty cannot be invoked on the basis of suppression, mis-representation, since the work of

desilting of river was in public domain as contract awarded by Maharashtra Government.

The Tribunal held this was a case of *mis-interpretation* of and set aside penalty u/s 76 and 78 by invoking section 80.

R.P. Shah V. CCE, 2016 (42) STR 839 (T)

Note: S. 80 has been rescinded from FA, 94 wef 14.5.15.

Whether services provided for marketing information can be treated as 'sales promotion' and claimed as input service?

The assessee had availed input service on commission paid to overseas agents for Nov 05 to March 08. Agent's activity related to providing market information, explore market, providing feedback, developing clients.

The department contended that services were utilised for sale of goods and not in relation to manufacture and clearance of goods and hence not an input service.

Tribunal held that definition of input service was amended wef 3.2.16 by way of inserting an explanation holding sales promotion to include service by way of sale of goods on commission basis.

Credit availed was held as valid by holding that explanation though inserted on 3.2.16 was *declaratory and hence effective retrospectively* (from 10.9.04).

Essar Steel India Ltd V. CCE, 2016 (42) STR 869 (T)

Whether levy of service tax on senior advocates is ultra vires?

Calcutta HC prima facie held that Senior Advocates unreasonably prejudiced.

Writ Petition was admitted for further deliberations.

Bar Association, Calcutta HC V. UOI, 2016 (42) STR 955 (Cal)

Whether providing buses on hire to APSRC, to be run on stage carriage basis liable to service tax?

Appellant had supplied his buses on hire to APSRTC, for which consideration was paid on per/km basis. The Appellant had to operate the busses on the allotted routes. APSRTC had the right to collect fare charges from the passengers.

Tribunal held that providing bus on hire liable to service tax under Rent a cab service wef 1.6.07. Tribunal held that rent a cab under FA, 94 had to be read independent of rent-a-cab scheme under Motor Vehicles Act, 1988 (*since scheme under MVA, 88 applicable only to motor cab and motor cycles and not busses*).

Tribunal held amended provision of rent a cab under FA, 94 clearly indicated that legislature had no intention to apply provision of MVA, 88 to FA, 94 and that chargeability of service tax was independent of the provision of MVA, 98.

Tribunal held that service tax was payable for the extended period of limitation since CBEC had issued clarificatory circular immediately after amendment in 2007. Hence there was no bonafide belief for non-payment of service tax.

Tribunal however completely waived penalty (though upholding invocation of extended period to collect tax) on the ground or reasonable cause u/s 80.

S.K. Kareemun V. CCE, 2016 (42) STR 988 (T)

UNDERSTANDING - PRINCIPAL PURPOSE TEST IN THE LIGHT OF BEPS ACTION PLAN - 6

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



Introduction

Double Taxation Avoidance Agreements (DTAA's) are entered into, to promote cross-border investment and facilitate free flow of trade in goods and services. However, with a vast network of treaties available, treaty shopping by Multi-National Enterprises (MNE's) has become a prevalent theme. One of the controls incorporated in a tax treaty to check treaty shopping is the principle purpose test. In case of tax treaties entered into by India, the principle purpose test is incorporated in the Limitation-of-Benefits Article. The recently amended India – Mauritius Treaty includes a newly inserted Limitation-of-Benefits Article which contains a restricted principle purpose test clause. The General Anti-Avoidance Rules (GAAR) contained in Chapter X – A of the Income-tax Act, 1961, effective from assessment year 2018-19 also contain the principle purpose test to check unethical tax avoidance schemes.

To check the growing menace of unethical tax avoidance owing to gaps in tax treaties, the OECD along with the G-20 nations has undertaken the Base Erosion and Profit Shifting (BEPS) project. The BEPS project is designed on three key pillars being coherence, substance and transparency. The Final BEPS Project Report released on October 2015 contains 15 Action Plans on the basis of the three pillars which has been endorsed by India as well. Action Plan – 6 of the BEPS Project on *Preventing*

the Granting of Treaty Benefits in Inappropriate Cases focuses on the Principle Purpose Test in a comprehensive manner. In this Article the author will be discussing the Principle Purpose Test in light of the BEPS Action – 6.

Principle Purpose Test & Action -6 of the BEPS Project

The Action – 6 of the BEPS Project contains an overhauled set of anti-abuse rules to prevent treaty shopping and as part of these overhauled rules, the principle purpose test has been discussed comprehensively. Action – 6 of the BEPS Project has recommended a new *Limitation of Benefits* (LOB) Article containing 8 Clauses and this article includes the Principle Purpose Test in paragraph 7 of the recommended LOB Article. The Principle Purpose Test clause contained in Action Plan – 6 is as follows:

Notwithstanding the other provisions of this Convention, **a benefit under this Convention shall not be granted** in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, **that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit**, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

The provisions of the Principle Purpose Test paragraph above have the effect of denying a benefit under a tax convention where one of the principal purposes of an arrangement or transaction that has been entered into is to obtain a benefit under the convention. Where this is the case, however, the last part of the paragraph allows the person to whom the benefit would otherwise be denied the possibility of establishing that obtaining the benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

The overhauled L-o-B Article contained in Action Plan – 6 contains specific anti-abuse rules in addition to the principle purpose test. The Principle Purpose Test paragraph (Paragraph -7) in Action Plan - 6 supplements and does not restrict in any way the scope or application of the provisions of paragraphs 1 to 6 (the limitation-on-benefits rule/specific anti-abuse rules): and as per the commentary in Action Plan – 6, a benefit that is denied in accordance with paragraphs 1-6 is not a “benefit under the Convention” that paragraph 7 would also deny.

The provisions of Principle Purpose Test paragraph establish that a Contracting State may deny the benefits of a tax convention **where it is reasonable to conclude**, having considered all the relevant facts and circumstances, **that one of the principal purposes of an arrangement or transaction was for a benefit under a tax treaty to**



be obtained. The provision is intended to ensure that tax conventions apply in accordance with the purpose for which they were entered into, i.e. to provide benefits in respect of bona fide exchanges of goods and services, and movements of capital and persons as opposed to arrangements whose principal objective is to secure a more favourable tax treatment.

As per Action Plan -6, the term “benefit” used in the Principle Purpose Test clause includes all limitations (e.g. a tax reduction, exemption, deferral or refund) on taxation imposed on the State of source under Articles 6 through 22 of the Convention, the relief from double taxation provided by Article 23, and the protection afforded to residents and nationals of a Contracting State under Article 24 or any other similar limitations. This includes, for example, limitations on the taxing rights of a Contracting State in respect of dividends, interest or royalties arising in that State, and paid to a resident of the other State (who is the beneficial owner) under Article 10, 11 or 12. It also includes limitations on the taxing rights of a Contracting State over a capital gain derived from the alienation of movable property located in that State by a resident of the other State under Article 13. When a tax convention includes other limitations (such as a tax sparing provision), the provisions of this Article also apply to that benefit.

The phrase “that resulted directly or indirectly in that benefit” is deliberately broad and is intended to include situations where the person who claims the application of the benefits under a tax treaty may do so with respect to a transaction that is not the one that was undertaken for one of the principal purposes of obtaining that treaty benefit.

As per Action Plan -6, the terms “arrangement or transaction” used in the Principle Purpose Test clause should be interpreted broadly and include any agreement, understanding, scheme, transaction or series of transactions, whether or not they are legally enforceable. In particular, they include the creation, assignment, acquisition or transfer of the income itself, or of the property or right in respect of which the income accrues. These terms also encompass arrangements concerning the establishment, acquisition or maintenance of a person who derives the income, including the qualification of that person as a resident of one of the Contracting States, and include steps that persons may take themselves in order to establish residence. An example of an “arrangement” would be where steps are taken to ensure that meetings of the board of directors of a company are held in a different country in order to claim that the company has changed its residence. One transaction alone may result in a benefit, or it may operate in conjunction with a more elaborate series of transactions that together result in the benefit. In both cases the provisions of Principle Purpose Test paragraph may apply.

According to the commentary contained in Action Pan – 6, to determine whether or not one of the principal purposes of any person concerned with an arrangement or transaction is to obtain benefits under the Convention, it is important to undertake an objective analysis of the aims and objects of all persons involved in putting that arrangement or transaction in place or being a party to it. What are the purposes of an arrangement or transaction is a question of fact which can only be answered by considering

all circumstances surrounding the arrangement or event on a case by case basis. **It is not necessary to find conclusive proof of the intent of a person concerned with an arrangement or transaction, but it must be reasonable to conclude, after an objective analysis of the relevant facts and circumstances, that one of the principal purposes of the arrangement or transaction was to obtain the benefits of the tax convention.** It should not be lightly assumed, however, that obtaining a benefit under a tax treaty was one of the principal purposes of an arrangement or transaction and merely reviewing the effects of an arrangement will not usually enable a conclusion to be drawn about its purposes. Where, however, an arrangement can only be reasonably explained by a benefit that arises under a treaty, it may be concluded that one of the principal purposes of that arrangement was to obtain the benefit.

Another key factor to be noted is the reference to “one of the principal purposes” in paragraph 7 means that obtaining the benefit under a tax convention need not be the sole or dominant purpose of a particular arrangement or transaction. It is sufficient that at least one of the principal purposes was to obtain the benefit. For example, a person may sell a property for various reasons, but if before the sale, that person becomes a resident of one of the Contracting States and one of the principal purposes for doing so is to obtain a benefit under a tax convention, paragraph 7 could apply notwithstanding the fact that there may also be other principal purposes for changing the residence, such as facilitating the sale of the property or the re-investment of the proceeds of the alienation.

Essentially as per Action Plan – 6 a purpose will not be a principal purpose when it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining the benefit was not a principal consideration and would not have justified entering into any arrangement or transaction that has, alone or together with other transactions, resulted in the benefit. In particular, where an arrangement is inextricably linked to a core commercial activity, and its form has not been driven by considerations of obtaining a benefit, it is unlikely that its principal purpose will be considered to be to obtain that benefit. Where, however, an arrangement is entered into for the purpose of obtaining similar benefits under a number of treaties, it should not be considered that obtaining benefits under other treaties will prevent obtaining one benefit under one treaty from being considered a principal purpose for that arrangement.

The following examples provide an illustration as to how the Principle Purpose Test contained in Action Plan – 6 would operate in different scenarios:

Example A: X Co, a company resident of State X, owns shares of Y Co, a company listed on the stock exchange of State Y. State X does not have a tax convention with State Y and, therefore, any dividend paid by YCo to XCo is subject to a withholding tax on dividends of 25 per cent in accordance with the domestic law of State Y. Under the State Z-State Y tax convention, however, there is no withholding tax on dividends paid by a company resident of a Contracting State and beneficially owned by a company resident of the other State. YCo enters into an agreement with ZCo, an independent

financial institution resident of State Z, pursuant to which YCo assigns to ZCo the right to the payment of dividends that have been declared but have not yet been paid by XCo.

In this example, in the absence of other facts and circumstances showing otherwise, it would be reasonable to conclude that one of the principal purposes for the arrangement under which YCo assigned the right to the payment of dividends to ZCo was for ZCo to obtain the benefit of the exemption from source taxation of dividends provided for by the State Z - State Y tax convention and it would be contrary to the object and purpose of the tax convention to grant the benefit of that exemption under this treaty-shopping arrangement.

Example B: XCo, a company resident of State X, is in the business of producing electronic devices and its business is expanding rapidly. It is now considering establishing a manufacturing plant in a developing country in order to benefit from lower manufacturing costs. After a preliminary review, possible locations in three different countries are identified. All three countries provide similar economic and political environments. After considering the fact that State Y is the only one of these countries with which State X has a tax convention, the decision is made to build the plant in that State.

In this example, whilst the decision to invest in State Y is taken in the light of the benefits provided by the State X-State Y tax convention, it is clear that the principal purposes for making that investment and building the plant are related to the expansion of XCo's business and the lower manufacturing costs of that country. In this example,

it cannot reasonably be considered that one of the principal purposes for building the plant is to obtain treaty benefits. In addition, given that a general objective of tax conventions is to encourage cross-border investment, obtaining the benefits of the State X-State Y convention for the investment in the plant built in State Y is in accordance with the object and purpose of the provisions of that convention.

Conclusion

As a tax professional one can clearly note that, tax policy is increasingly laying emphasis on substance rather than form, the Principle Purpose Test contained in Action Plan – 6 of the BEPS Project is also a step in the same direction of emphasis over substance. Finance Act – 2015 postponed the application of the GAAR provisions contained in Chapter X-A of the Income-tax Act, 1961, to AY 2018-19 onwards owing to the then ongoing BEPS Project. Now that the Final Reports of the BEPS project have been released, we can see there is greater clarity with regard to the Principle Purpose Test in case of tax treaties. Action Plan – 15 of the BEPS Project is seeking for a multi-lateral instrument which will amend all the treaties of the member countries of the BEPS Project and India is on the panel trying to achieve the same. One of the Action points contained in Action Plan – 15 is amending the treaties as per Action Plan – 6. Overall, the Principle Purpose Test gives the revenue authorities wide discretion and authority which could cast an excessive tax and compliance burden on assesses. As tax professionals it has become all the more pertinent to review the substance of international arrangements while advising clients.

67th CA Day Celebrations



Flag Hoisting by Chief Guest



Celebrating CA Day in the presence of Senior CA Members



Chief Guest
CA. D. L. Suresh Babu



Senior CA Members felicitated



SICASA Sports Day Prize distribution



Serving food to Students & Donation at Orphanage - Sri Shatha Shruna Vidya Samsthe



Go Green - Initiative - "Planting of 1001 Saplings"



Participants at the Go Green - Initiative event, inaugurated by the Chief Guest CA. Vishnu Bharath



Yoga Day



Inauguration



Sri. Rushidhar & Ms. Neetha N



Participants performing Yoga

Speakers at Study Circle Meetings



CA. Cotha S Srinivas



CA. Annapurna D Kabra



CA. K K Chythanya



CA. H. Shivakumar



CA. Vishnu Moorthi. H



CA. Krishna N

SICASA Study Circle Meetings



CA Sandeep Jhunjhunwala



CA. Deepak Rao



CA. D R Venkatesh



CA. Mohan R Lavi



CA. Nulvi C R



CA Rakshith Kothari



CA Nitin Kumar P

SICASA Sports 2016



Members Cricket Winners Team



Members Cricket Runners Team



SICASA Sports 2016



Students Cricket Winners Team



Students Cricket Runners Team



SICASA Chairman CA Raveendra S. Kore welcoming Chief Guest Mr. Ganesh Satish



Chairman CA Pampanna B.E. welcoming Guest of Honour CA Maddana Swamy B.V.



CA Geetha A.B., Vice Chairperson, welcoming Guest CA. Niranjn Prabhu



Chief Guest: Mr. Ganesh Satish, Ranaji Cricket Player



Demystifying Income Disclosure Scheme (IDS) 2016



Mr. Naresh Saka, IRS
Addl. Commissioner



Ms. Sowmya V, IRS,
Dy. Commissioner



Mr. Suresh Babu, ITO & Mr. Ramachandran A, ITO



CA Naveen Khariwal G

Impact Seminar on Discussion on Draft GST Law-2016



Dr. B V Murali Krishna,
Joint Commissioner of Commercial Taxes,
DVO -1 & CA. S Venkataramani

Intensive Workshop on International Taxation



CA. Ishita Bhaumik &
CA. Ramya S Nayak



CA Omar Abdullah SM

MDP Programme



Participants of Training Programme on Investor Awareness for the Officers of Hindustan Petroleum Corporation Limited

One Day Seminar on Companies Act 2013



Inauguration



CS. J Sundharesan



CA. Sripriya K



Co-ordinator
CA K. Gururaj Acharya



CA. Asha M

19th Batch of FNFE Course



Inauguration



Co-ordinator
CA K. Gururaj Acharya



Dr. V. Rajesh Kumar



Participants

Two Day Residential Refresher Seminar at Hampi



CA. Phalguna Kumar, Chairman, SIRC addressing the gathering



CA K. Gururaj Acharya



Inauguration - Watering the plant



Valedictory Session



Group photo of participants