



# Bangalore Branch of SIRC e-Newsletter

*English Monthly*

Volume 05 | Issue 4 | November, 2016 | Pages : 49

For Private Circulation only

## National Convention for Chartered Accountant Students



# UTKARSH

*An Elevation to Excellence....*

on **10th & 11th December 2016**  
Saturday & Sunday

at **Sophia School Auditorium**  
Palace Road, Basaveshwara Circle, Near Chalukya Hotel, Bengaluru

- Discussion on  
**GST - Basic Law & Procedures**  
on 19<sup>th</sup> November 2016

- Financial Accounting in Excel:  
**Subsidiary Books, General Ledger  
and Trial Balance**  
on 22<sup>nd</sup> November 2016



# Chairman's Communique . . .



## Dear Professional Friends,

We are all aware that the State of Mysore was formed on 1<sup>st</sup> Nov 1956 and was renamed as State of Karnataka in 1973. Hence 1<sup>st</sup> Nov of every year is celebrated as Kannada Rajyotsava day. The tremendous growth and development of the State of Karnataka and especially of Bengaluru is because of Kannadigas as they welcomed others to settle down in Bangalore, the technology hub enabling them to have their career growth and a peaceful atmosphere compared to many other states. This is a typical example of generosity of we Kannadigas. In fact, we can be proud and happy about our culture.

## The month ahead- Nov 2016

### CAExams:

The students pursuing IPCC & Final appearing for exams from 1<sup>st</sup> Nov to 17<sup>th</sup> Nov 2016. On behalf of Bangalore Branch, I wish all the students to come out with flying colours in these Examinations & wish them to join our CA Fraternity very soon and to be a proud Member of our esteemed profession.

Apart from regular Study Circle Meetings and Tax Clinics a One Day **Seminar on "Direct Taxes – Search, Seizure, Settlement & Penalty Provisions"** organised by Branch on 5<sup>th</sup> Nov, inviting Stalwarts – Our Senior Resource persons, was of immense value to all the delegates attend the programme. Giving due importance to the implementation of GST Law, we are frequently organising many programmes on GST and its various aspects to educate our Members to render quality services to the clients as per their expectations.

On behalf of Bangalore Branch, we would like to inform you that 48<sup>th</sup> Regional Conference of SIRC of ICAI – "**Abhignya-Knowledgeable**" is being hosted by Tirupathi Branch of SIRC of ICAI at Srivenkateswara Veterinary University Grounds **Tirupati on 6<sup>th</sup> & 7<sup>th</sup> Dec 2016**, under the dynamic leadership of CA Phalgun Kumar, SIRC Chairman & his team. Members are requested to participate in large numbers and enhance our knowledge by attending the sessions by an array eminent Resource Persons of ICAI.

I would like to remind you that **1<sup>st</sup> interactive meeting** with MC Members of Bangalore Branch including Regional Council Members, Central Council Members representing Bangalore is

being organised on Wednesday, **16<sup>th</sup> Nov 2016 at 5.45pm at the Branch**. The objective of the **meeting is to share the various issues pertaining to our profession** and to share our valuable inputs and suggestions to bring to the notice of ICAI. I once again appreciate the initiative shown by CA Madhukar N Hiregange our Central Council Member for the said meeting.

"All work & no play make Jack a dull boy". Hence we have organised **Sports & Talent meet on 13<sup>th</sup> & 20<sup>th</sup> Nov 2016** in association with KSCAA, the details of which are given in Branch website - [www.bangaloreicai.org](http://www.bangaloreicai.org). Members are requested to utilize this rare opportunity enabling us to enjoy and strengthen our professional bond and revitalise to discharge our duties most diligently.

## Commencement of weekends GMCS Course:

We deem it a pleasure to inform you that **First Batch of weekends GMCS Course** will be launched by Bangalore branch of SIRC of ICAI **from Dec 2016 to Feb 2017**. Members are requested to disseminate the information to the students. Interested students are requested to visit website [www.bangaloreicai.org](http://www.bangaloreicai.org) for further details.

## The month that was – Oct 2016

The seminar on Sector wise Impact of GST held on 15<sup>th</sup> Oct 2016 was a resounding success. We are indebted to our past SIRC Chairman, CA P Rajendra Kumar, Chennai and all other speakers who have put in all efforts to make our members understand the impact of GST on Manufacturing, Service & Trading Sectors.

One of the remarkable programmes we had during October was Interactive Session with CPC Officers. Sri R K Mishra, IRS, Director of Income Tax & his team members could address few of the issues which we face in our day to day practice with CPC of Income Tax Dept. On behalf of our Bangalore Branch, while thanking the said team, we also express our gratitude to the members who attended the session and actively participated.

The International Conference – "Jnana Yajna- The Quest for Excellence" at Hyderabad on 22<sup>nd</sup> & 23<sup>rd</sup> Oct was also a grand success. We thank CA M Devaraja Reddy, President, CA Nilesh Vikamsey, Vice-President their team and eminent speakers for having strived so hard to make this mega event a red letter day in the history of ICAI.

On behalf of BOS, ICAI, Bangalore Branch & SICASA of Bangalore Branch, I appeal all Members to encourage our students to join the forthcoming 2day National Convention – "**UTKARSH- Elevation to Excellence**" on 10<sup>th</sup> & 11<sup>th</sup> Dec 2016 and get benefited – the details of which we have printed elsewhere in this Newsletter. Let us all support to make this students' Convention a fruitful event.

May I request all my professional friends to work hard towards excellence- striving for perfection in everything we undertake. Hence participate in all the activities pertaining to our Noble Profession, marching towards excellence.

With warm regards

**CA. Pampanna B E**  
Chairman



# National Convention for Chartered Accountant Students



**UTKARSH**  
An Elevation to Excellence....

Date

**10<sup>th</sup> & 11<sup>th</sup> December 2016**

Saturday & Sunday

Venue

**Sophia School Auditorium**

Palace Road, Basaveshwara Circle,

Near Chalukya Hotel, Bengaluru

Organized by **Board of Studies, ICAI, New Delhi**

Hosted by **Bangalore Branch of SIRC of ICAI & Bangalore Branch of SICASA**

## Organizing Committee

**CA. Babu Abraham Kallivayalil**  
Convention Chairman &  
Chairman, Board of Studies, ICAI

**CA. Dhiraj Kumar Khandelwal**  
Convention Co-Chairman &  
Vice-Chairman, Board of Studies, ICAI

**CA. Pampanna B E**  
Convention Coordinator &  
Chairman, Bangalore Branch of SIRC of ICAI

**CA. Raveendra S.Kore**  
Convention Coordinator &  
Chairman, SICASA, Bangalore Branch of SIRC of ICAI

**CA. B T Shetty**  
MC Member & Program Coordinator,  
Bangalore Branch of SIRC of ICAI

## SICASA - Managing Committee Members, Bangalore

**CA. Srinivasa T.**  
Co-opted Members  
SICASA, Bangalore Branch of SIRC of ICAI

**CA. Divya S.**

**Mr. Sheelavanthaiah**  
Vice-Chairman, Blr SICASA  
+91 8884 441485

**Mr. Charan Kumar S S**  
Secretary, Blr SICASA  
+91 88847 53529

**Mr. Aditya B. Pujar**  
PRO, Blr SICASA  
+91 99001 84059

## National Convention Student Co-ordinators

**Mr. Ranjith K**  
**Mr. Swamy M. R**  
**Mr. Yagya Gaire**

**Ms. Sindu N**  
**Ms. Apoorva S**  
**Ms. Shamita C Halli**

**Mr. Jaydev K S**  
**Mr. Pavan Deep B**  
**Mr. Somanath Metagudda**

**Ms. Shashikala L**  
**Ms. Yashica J.**  
**Ms. Sahita C Halli**





# National Convention for Chartered Accountant Students

Time	Particulars	Topics
<b>Day 1 - 10th December 2016, Saturday</b>		
08.00am to 09.30am	REGISTRATIONS	
09.30am to 11.00am	<b>INAUGURAL SESSION</b> CHIEF GUEST : An eminent personality* GUESTS OF HONOUR : <b>Shri A.S. Kiran Kumar</b> , <i>Chairman, ISRO</i> <b>CA M. Devaraja Reddy</b> , <i>President, ICAI*</i> , <b>CA Nilesh Shivji Vikamsey</b> , <i>Vice-President ICAI*</i>	
11.00am to 12.00pm	Interaction and Open House with BOS : <b>CA Babu Abhraham Kallivayalil</b> , <i>Chairman, BOS, ICAI</i> , <b>CA Dhiraj Kumar Khandelwal</b> , <i>Vice-Chairman, BOS, ICAI</i> , <b>CA Babu K Thevar</b> , <i>Chairman SICASA, SIRC of ICAI</i>	
12.00pm to 12.15pm	TEA BREAK	
12.15pm to 01.30pm	<b>TECHNICAL SESSION I</b> Session Chairman: <b>CA M P Vijaykumar</b> , <i>CCM, Chennai</i> <b>with 2 Student Speakers</b>	Ind AS – IFRS – How is India meeting Global Reporting Standards?
01.30pm to 02.30pm	LUNCH BREAK	
02.30pm to 03.30pm	<b>TECHNICAL SESSION II</b> Session Chairman: <b>CA Madhukar N. Hiregange</b> , <i>CCM, Bengaluru</i> <b>with 2 Student Speakers</b>	GST-A radical revolution of Indian Indirect Taxes–Turn these challenges into opportunities
03.30pm to 03.45pm	TEA BREAK	
03.45pm to 04.45pm	<b>TECHNICAL SESSION III</b> Session Chairman: <b>CA S. Ganapathy</b> , <i>Chennai</i> <b>with 2 Student Speakers</b>	Risk Based Auditing in Information Technologies Environment
04.45pm to 06.00pm	<b>SPECIAL SESSION</b> Quiz Master: <b>CA Cotha S Srinivas</b> , <i>Vice Chairman, SIRC of ICAI</i>	QUIZ
06.30pm to 08.00pm	<b>CULTURAL PROGRAMME</b>	
08.00pm onwards	DINNER	
<b>Day 2 - 11th December 2016, Sunday</b>		
08.00am to 08.45am	<b>Walkathon – SWACHH BHARAT</b> "Be the change you want to see in the world"	
08.45am to 09.30am	BREAKFAST	
09.30am to 10.30am	<b>SPIRITUAL / MOTIVATIONAL SESSION</b>	
10.30am to 11.45am	<b>TECHNICAL SESSION IV</b> Session Chairman: <b>CA K. K. Chythanya</b> , <i>Bengaluru</i> <b>with 2 Student Speakers</b>	International Taxation in the present Global Business Scenario & Domestic Transfer pricing
11.45am to 12.00pm	TEA BREAK	
12.00pm to 01.15pm	<b>TECHNICAL SESSION V</b> Session Chairman: <b>CA Gururaj Acharya K</b> , <i>Bengaluru</i> <b>with 2 Student Speakers</b>	Companies Act 2013–16 What a Drastic Change! Role of CAs
01.15pm to 02.15pm	LUNCH BREAK	
02.15pm to 03.30pm	<b>TECHNICAL SESSION VI</b> Session Chairman: <b>CA Mohandas Pai</b> , <i>Bengaluru*</i> <b>with 2 Student Speakers</b>	"DEBATE"-CA Student's responsibility in technology actually a boon or a bane?
03.30pm to 03.45pm	TEA BREAK	
03.45pm to 05.00pm	<b>MOTIVATIONAL SESSION: CA T N. Manoharan</b> , <i>Past President of ICAI</i>	"Dream, Design and Decode the Alchemist within"
05.00pm to 05.30pm	<b>VALEDICTORY SESSION</b>	

\*Invited & awaiting for confirmation

This National Convention provides an excellent platform to promote your products & services to a larger number of people & is a golden opportunity for Brand promotion. We expect around 1500 CA Students from all over the country. This significant event offers a great opportunity to showcase your products & services to this niche audience, assembling under one roof in this Silicon City. Hence, make use of this golden opportunity.

## Download Registration Form from website.

Registration fees	: ₹ 600/- per Student
Payment mode	: Online Payment / Cash / DD / Cheque
To be drawn in favour of	: "Bangalore Branch of SICASA" - Payable at Bengaluru.
Accommodation (if Required)	: ₹ 500/- per Student extra, (Limited to first 200 students)

for Online Registration :

<http://bangaloreicai.org/index.php/our-events>

Registration on First Come, First Served basis only








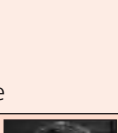


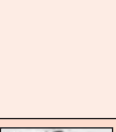
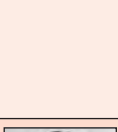

## For registration queries contact:

Ms. Geethanjali D / Mrs. Manjula G.M.  
**SICASA, Bangalore Branch of SIRC of ICAI**  
 ICAI Bhawan, #16/0, Millers Tank Bed Area, Vasanth Nagar,  
 Behind Mahaveer Jain Hospital, Bengaluru - 560052  
 Karnataka State, India | Ph: 080-30563511 / 513  
 Email: [blrsicasa@icai.org](mailto:blrsicasa@icai.org) | [www.bangaloreicai.org](http://www.bangaloreicai.org)  
 Follow us on [www.facebook.com/BANGALORE\\_SICASA](https://www.facebook.com/BANGALORE_SICASA)

## An appeal to Member

We request you to encourage / sponsor articled assistants to participate in this National Convention.

## CALENDAR OF EVENTS - NOVEMBER & DECEMBER 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
02.11.2016 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Impact on GST on Real Estate Sector <b>CA. Badrinath N R</b> VENUE: Branch Premises	 2 hrs
05.11.2016 Saturday 09.45am to 5.45pm	<b>Seminar on "Direct Taxes - Search, Seizure, Settlement &amp; Penalty Provisions"</b> Co-ordinator: <b>CA Prashanth G S</b> Delegate Fees: <b>Rs. 1750/-</b> VENUE: <b>The Chancery Pavilion Hotel Bangalore</b> #135, Residency Road, Bangalore - 560 025	 6 hrs
09.11.2016 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Direct Taxes -Latest Case Laws- An analysis <b>CA. Prashanth G S</b> VENUE: Branch Premises	 2 hrs
11.11.2016 Friday 6.00pm to 8.00pm	<b>Tax Clinic - Direct Taxes</b> Trusts & Taxation <b>CA P V Srinivasan</b> VENUE: Branch Premises	 2 hrs
16.11.2016 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Decoding IFC for SME Businesses <b>CA. Dayaniwas</b> VENUE: Branch Premises	 2 hrs
19.11.2016 Saturday 5.00pm to 8.00pm	<b>Study Circle Meet</b> Discussion on GST - Basic Law & Procedures <b>CA. Kalyan Kumar</b> Delegate Fees: <b>Rs. 250/-</b> VENUE: <b>Karnataka State Hockey Association, Rhenius Street, Langford Town, Bangalore - 560025</b>	 3 hrs
22.11.2016 Tuesday 5.30pm to 8.30pm	<b>Financial Accounting in Excel:</b> Subsidiary Books, General Ledger and Trial Balance <b>CA. H. Shivakumar</b> Delegate Fees: <b>Rs 500/-</b> (Computers will be provided by the Branch) VENUE: <b>ICAI Bhawan , No. 29/1, Race Course Road, Next to SBI, Bangalore</b>	 3 hrs
23.11.2016 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Practical approach to Data Analytics <b>CA A Rafeq &amp; CA E Narasimhan</b> VENUE: Branch Premises	  2 hrs
25.11.2016 Friday 6.00pm to 8.00pm	<b>Tax Clinic - Indirect Taxes</b> Current Issues in Indirect Taxes <b>Mr. K S Naveen Kumar</b> , Advocate VENUE: Branch Premises	 2 hrs
26.11.2016 Saturday 6.00pm to 8.00pm	Self Defence and Safety by Parihar - Bangalore Commissioner of Police <b>Mrs. Rani Shetty</b> , PARIHAR - Incharge <b>Ms. Saraswathi Bai .B.S</b> , Sr. Counsellor <b>Mrs. Aparna Purnesh</b> , Sr. Counsellor Co-ordinator: <b>CA. Divya S</b> VENUE: Branch Premises	   —



## CALENDAR OF EVENTS - NOVEMBER & DECEMBER 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
30.11.2016 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Amendments in Finance Act-2016 Direct Taxes including Dispute Tax Resolution Scheme <b>CA. Naveen Khariwal G</b> <b>VENUE:</b> Branch Premises	 <b>2 hrs</b>
07.12.2016 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Issues & concerns under KVAT Audit <b>CA. Annapurna D Kabra</b> <b>VENUE:</b> Branch Premises	 <b>2 hrs</b>
09.12.2016 Friday 6.00pm to 8.00pm	<b>Tax Clinic - Direct Taxes</b> Update on recent Direct Taxes decisions <b>CA. Sagar Nagaraj</b> <b>VENUE:</b> Branch Premises	 <b>2 hrs</b>
14.12.2016 Wednesday 6.00pm to 8.00pm	<b>Study Circle Meet</b> Impact of newly enacted legislations - 1. The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act 2. Benami Transactions Prohibition Act and Related Rules 3. Indian Trusts (Amendment) Act, 2016 <b>CA. Sandeep Jhunjhunwala</b> <b>VENUE:</b> Branch Premises	 <b>2 hrs</b>

### Kind Attention Members

In order to hear the members queries and suggestions about various matters affecting our profession, including administrative issues and member grievances, if any, that are faced by the members at the Branches, Regional offices and head office, an interactive meeting with Managing Committee Members of Bangalore Branch, including Regional Council Members and Central Council Members representing Bangalore, will be convened on 3rd Wednesday of every month at 5.45 PM at the Bangalore Branch premises starting from 16th Nov 2016. Members are requested to attend the meeting and share their inputs and suggestions.

#### Advertisement

Tariff for the  
Branch  
e-Newsletter

#### COLOUR FULL PAGE

Outside back	₹ 40,000/-
Inside front	₹ 35,000/-
Inside back	₹ 30,000/-

#### INSIDE BLACK & WHITE

Full page	₹ 20,000/-
Half page	₹ 10,000/-
Quarter page	₹ 5,000/-

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

EDITOR :

**CA. PAMPANNA B.E.**

SUB EDITOR :

**CA. SHRAVAN GUDUTHUR**

Disclaimer: The Bangalore Branch of ICAI is not in anyway responsible for the result of any action taken on the basis of the articles and advertisements published in the e-Newsletter. The views and opinions expressed or implied in the Branch e-Newsletter are those of the authors/guest editors and do not necessarily reflect that of Bangalore Branch of ICAI.

## IMPORTANT DATES TO REMEMBER DURING THE MONTH OF NOVEMBER 2016

Due Date	Statute	Compliance
5 <sup>th</sup> November 2016	Excise	Monthly Payment of Excise duty for the month of October 2016
	Service Tax	Monthly/Quarterly Payment of Service tax for the month for October 2016
6 <sup>th</sup> November 2016	Excise	Monthly E- Payment of Excise duty for the month of October 2016
	Service Tax	Monthly/Quarterly E- Payment of Service Tax for the month of October 2016
7 <sup>th</sup> November 2016	Income Tax	Deposit of Tax deducted / collected during October 2016.
10 <sup>th</sup> November 2016	Excise	Monthly Performance Reports by Units in EOU, STP, SEZ for October 2016.
15 <sup>th</sup> November 2016	VAT	Payment and filing of VAT 120 under KVAT Laws for month ended October 2016 (for Composition Dealers).
		Quarterly Payment and filing of VAT 100 under KVAT Laws for quarter ended October 2016.
	Provident Fund	Payment of EPF Contribution for October 2016 (No grace days).
		Return of Employees Qualifying to EPF during October 2016.
		Consolidated Statement of Dues and Remittances under EPF and EDLI For October 2016.
		Monthly Returns of Employees Joined the Organisation for October 2016.
		Monthly Returns of Employees left the Organisation for October 2016.
	Income Tax	Furnishing of Quarterly TDS certificate (Form 16A) in respect of tax deducted by any person for the quarter ending September 30, 2016.
20 <sup>th</sup> November 2016	VAT	Monthly Returns (VAT 100) and Payment of CST and VAT Collected/payable During October 2016.
	Professional Tax	Monthly Returns and Payment of PT Deducted During October 2016.
21 <sup>st</sup> November 2016	ESI	Deposit of ESI Contribution and Collections of October 2016 to the credit of ESI Corporation.
30 <sup>th</sup> November 2016	Income Tax	Annual return of income for the assessment year 2016-17 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s).
		Audit report under section 44AB for the assessment year 2016-17 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E.
		Report to be furnished in Form 3CEB in respect of international transaction and specified domestic transaction.
		Statement of income distribution by Venture Capital Company (Form 64) or venture capital fund in respect of income distributed during 2015-16.



# REFRESHER COURSE FOR ACCOUNTANTS

## A Management Development Programme (MDP)

### Sixth Batch of Refresher Course for Accountants

In the present business scenario, Accountants are involved in a wide range of commercial activities covering functions relating to Accounting, Finance, Costing, Tax laws and Labour laws. The objectives of the Course are to acquaint the participants about the basics of these essential functions which are present in any organization. This is a **Fast Forward Refresher Course** for those who are interested to learn the practical exposure to basic accounting & finance practices and to learn the most important and fundamental tax laws, in order to perform their accounting and finance works more effectively and competently.

#### For whom:

**Accountants, Accounts Executives & Accounts Assistants working** in a manufacturing, service or trading organization.

#### Course Contents:

- Accounting
- Labour Laws & Business Laws
- Income Tax
- Central Excise, Service Tax, GST and VAT
- Cost Accounting
- Banking

#### Duration:

The VI batch of the course will be conducted on the following days:

**17<sup>th</sup>, 18<sup>th</sup>, 24<sup>th</sup>, 25<sup>th</sup> & 26<sup>th</sup> November 2016**

**Timings:** 10.00am to 05.30pm\_

**Fees:** Rs. 6,500/- per participant

Cheque/DD should be drawn in favour of **"Bangalore Branch of SIRC of ICAI"** – payable at Bangalore.

### **Registrations Open on First Come First Served basis**

#### Registration

*For Registration, please contact:*

#### **Bangalore Branch of SIRC of ICAI**

'ICAI Bhawan', #16/O, Millers Tank Bed Area,

Vasanthnagar, Bangalore – 560052

Tel: 080- 30563500 / 512 / 513 /555

Email: blrprogrammes@icai.org

Website: www.bangaloreicai.org

**Online Registrations Available**

#### Venue

Sub Branch office

ICAI Bhawan, 29/1, Race Course Road,

Keonics Building, Adjacent to Voltas Showroom

Bangalore- 560001

Tel 080-40929860

**CA Pampanna B. E**  
Chairman

**CA Gururaj Acharya**  
Co-ordinadator

**CA Shravan Guduthur**  
Secretary

# REFRESHER COURSE FOR ACCOUNTANTS

## A Management Development Programme (MDP)

### APPLICATION FORM

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

**Name & Address of organization where serving at present:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tel.No.: \_\_\_\_\_

**Permanent Address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tel.No.: \_\_\_\_\_ Mob.No.: \_\_\_\_\_

Email ID: \_\_\_\_\_

**Self Sponsored / Nomination:**

We hereby nominate Mr./Ms. \_\_\_\_\_

for the **REFRESHER COURSE FOR ACCOUNTANTS.**

Name of the Sponsoring Authority: \_\_\_\_\_

Company Seal:

Signature of the Authority:

**Payment Details:**

We are enclosing herewith a Cheque / DD drawn on "Bangalore Branch of SIRC of ICAI" payable at Bangalore for Rs. \_\_\_\_\_.

Cheque/DD No: \_\_\_\_\_ Date: \_\_\_\_\_ Bank & Branch Name: \_\_\_\_\_

**FEES ONCE PAID, WILL NOT BE REFUNDED.**

**Bangalore Branch of SIRC of ICAI**  
**'ICAI Bhawan', #16/O, Millers Tank Bed Area,**  
**Vasanthnagar, Bangalore – 560052**  
**Tel: 080- 30563500 / 511 / 512 / 513**  
**Email: [bangalore@icai.org](mailto:bangalore@icai.org) / [blrprogrammes@icai.org](mailto:blrprogrammes@icai.org)**  
**Website: [www.bangaloreicai.org](http://www.bangaloreicai.org)**

Affix  
Passport size  
photograph



## BANGALORE BRANCH OF SIRC OF ICAI

### Announcement

## Admissions open for weekends GMCS Course

**We deem it a pleasure to inform you that I batch of weekends GMCS Course will be launched by Bangalore branch of SIRC of ICAI from Dec 2016 to Feb 2017**

#### Objective of the course:

As you are aware that a student on passing the final CA Examination can apply for admission as member of the institute for **which completing the 15 day course on GMCS is mandatory**. As many of these qualified CAs are employed, they are unable to avail leave for continuous 15 days. Few of the CA Final year articulated trainees also may not be able to attend this course for 15 days because of their busy office work.

Hence 15 day week end course only on Saturdays and Sundays approximately 7-8 weekends from December 2016 to Feb 2017 is being organized by Bangalore Branch.

Interested students are requested to submit the following with the duly filled in application- which is available at the branch and website [www.bangaloreicai.org](http://www.bangaloreicai.org)

#### Please read the following instructions and enroll yourself for the GMCS Course

- **Fee for GMCS Course is Rs.5,500/- only by demand draft in favour of "BANGALORE BRANCH OF SIRC OF ICAI" payable at Bangalore.**
- Students are requested to enclose photocopy of the marks sheet, article registration letter / completion certificate, GMCS – I Completion Certificate (Those students who have attended). Those who have not completed article training should give self-declaration mentioning the firm's details.
- Students are requested to affix one passport size photograph in the space provided.
- Fee once paid will not be refunded nor be adjusted to other batches.
- Copy of Article registration letter
- 100% attendance is mandatory.
- Copy of identity card issued by the Institute, OR Copy of identity card issued by the Govt. Agency (Voter ID, Driving License, Passport, UID).
- Timing of the Course: 10.00 am to 05.15 pm

For further details please contact Bangalore branch on Tel: 080 30563555 or e mail [blrstudentevents@icai.org](mailto:blrstudentevents@icai.org) and visit branch website [www.bangaloreicai.org](http://www.bangaloreicai.org) please **note that the said weekend course will be conducted only after the enrollment of 30 – 35 students. This is the 1st time happening in our branch for the benefit of students. Hence make use of this opportunity and get registered soon.**

**CA. Pampanna B. E.**  
Chairman

**CA. Shravan Guduthur**  
Secretary

## THE IND AS TRANSITION FACILITATION GROUP (ITFG) OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA HAS ISSUED ITS FIFTH BULLETIN ON IND AS. THE BULLETIN PROVIDES RESPONSES TO EIGHT QUESTIONS.

CA Mohan R Lavi



### Bulletin 5

#### Issue 1

#### Applicability of Ind AS to a subsidiary company

ABC Ltd. is a listed company. The net worth of ABC Ltd. as on 31st March 2014 was Rs. 200 crores. ABC Ltd. had a subsidiary, namely, XYZ Ltd. as at 31st March, 2015 whose net worth, consisting only of share capital as at that date, was Rs. 600 crores. XYZ Ltd. was incorporated in January, 2015. It was incorporated only for the purposes of its divestment. The financial statements of XYZ Ltd. were not consolidated with that of ABC Ltd. as at 31st March, 2015 in view of requirements of paragraph 11 of Accounting Standard (AS) 21, Consolidated Financial Statements. ABC Ltd. entered into agreement with a proposed acquirer of the subsidiary, i.e., PQR Ltd., in September, 2015. The entire ownership of XYZ Ltd. was finally transferred to the said acquirer in the first fortnight of April, 2016. In the given case, whether the ABC Ltd. is required to comply with Ind AS from the financial year 2016-17?

#### Response

Rule 4(1)(ii) of the Companies (Indian Accounting Standards) Rules, 2015, states as under:

(ii) the following companies shall comply with the Indian Accounting

Standards (Ind AS) for the accounting periods beginning on or after 1st April, 2016, with the comparatives for the periods ending on 31st March, 2016, or thereafter, namely:-

- (a) companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of rupees five hundred crore or more;
- (b) companies other than those covered by sub-clause (a) of clause (ii) of sub-rule (1) and having net worth of rupees five hundred crore or more;
- (c) holding, subsidiary, joint venture or associate companies of companies covered by subclause (a) of clause (ii) of sub-rule (1) and sub-clause (b) of clause (ii) of sub-rule (1) as the case may be; and".

In accordance with the above, it may be noted that holding, subsidiary, joint venture, associate companies of companies falling under any of threshold specified Rule 4(1)(ii) are required to comply with Ind AS from financial year 2016-17. Further, Rule 4(2)(b) of the Companies (Indian Accounting Standards) Rules, 2015, states as under:

(2) For the purposes of calculation of net worth of companies under sub-

rule (1), the following principles shall apply, namely:-

- (b) for companies which are not in existence on 31st March, 2014 or an existing company falling under any of thresholds specified in sub-rule (1) for the first time after 31<sup>st</sup> March, 2014, the net worth shall be calculated on the basis of the first audited financial statements ending after that date in respect of which it meets the thresholds specified in sub-rule (1).

Explanation - For the purposes of sub-clause (b), the companies meeting the specified thresholds given in sub-rule (1) for the first time at the end of an accounting year shall apply Indian Accounting Standards (Ind AS) from the immediate next accounting year in the manner specified in sub-rule (1).

Illustration -

- (i) The companies meeting threshold for the first time as on 31st March, 2017 shall apply Ind AS for the financial year 2017-18 onwards.
- (ii) The companies meeting threshold for the first time as on 31st March, 2018 shall apply Ind AS for the financial year 2018-19 onwards and so on.

On a combined reading of Rule 4(1) and (2) of the Companies (Indian Accounting



Standards) Rules, 2015, if an existing company meets the net worth criteria before mandatory applicability dates laid down in the roadmap, the company would be required to follow Ind AS as per the dates for implementation of Ind AS prescribed in the roadmap, i.e., 2016-17 or 2017-18, as the case may be.

In the given case, Ind AS will be mandatorily applicable to XYZ Ltd. from financial year, 2016- 17 since it's net worth as on 31st March, 2015 is more than Rs. 500 crores. As already clarified in Issue No. 5 of ITFG Clarification Bulletin 3, consistent approach would be followed to consider the definitions given in Ind AS both for the purpose of preparing financial statements and determining the relationship with another entity (i.e. subsidiary, associate, joint venture etc.) for the purpose of applicability of Ind AS. Therefore, the relationship between ABC Ltd. and XYZ Ltd. should be determined in accordance with Indian Accounting Standards (Ind AS). Hence, it is irrelevant to consider the fact that XYZ Ltd. was not a subsidiary company of ABC Ltd. as per the previous GAAP.

In view of the above ITFG clarification, whether ABC Ltd. is a holding company of XYZ Ltd. or not shall be determined as per Ind AS 110, Consolidated Financial Statements, i.e., evaluating whether ABC Ltd. controls XYZ Ltd. or not. If ABC Ltd. was a holding company of XYZ Ltd. in accordance with Ind AS 110 as at 31<sup>st</sup> March, 2015, then ABC Ltd. should comply with Ind AS from the financial year 2016-17, since Ind AS are applicable to XYZ Ltd. from financial year 2016 17.

## Issue 2

### Classification of security deposits as current or non-current

An electricity distribution company collects security deposit at the time of issue of electricity connection, which is refundable when the connection is surrendered. The entity expects that most of the customers will not surrender their connection. Whether such a security deposit shall be classified as a 'current liability' or a 'non-current liability' in the books of the electricity company?

#### Response

Paragraph 69 of Ind AS 1, Presentation of Financial Statement, states as under:

"An entity shall classify a liability as current when:

- (a) it expects to settle the liability in its normal operating cycle;
- (b) it holds the liability primarily for the purpose of trading;
- (c) the liability is due to be settled within twelve months after the reporting period; or
- (d) it does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting period (see paragraph 73). Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification.

An entity shall classify all other liabilities as non-current."

In accordance with the above, it may be noted that if an entity does not have

an unconditional right to defer the settlement of a liability then, the same shall be classified as current liability. In the given case, although it is expected that most of the customers will not surrender their connection and the deposit need not be refunded, but surrendering of the connection is a condition that is not within the control of the entity. Hence, the electricity company does not have a right to defer the refund of deposit. The expectation of the company that it will not be settled within 12 months is not relevant to classify the liability as a non-current liability. Accordingly, the said security deposits should be classified as a current liability in the books of the electricity company.

## Issue 3

### Deemed cost for Property, Plant and Equipment

Ind AS has given the option to consider previous GAAP carrying value of property, plant and equipment (PPE) as deemed cost for assets acquired before the transition date. Whether an entity has the option of fair valuing few items of PPE and take carrying amounts of the remaining items of PPE as the deemed cost on the date of transition?

#### Response

No. In accordance with paragraph D7AA of Ind AS 101, The First-time Adoption of Indian Accounting Standards, where there is no change in its functional currency on the date of transition to Ind AS, a first-time adopter of Ind AS has the option to elect to continue with the carrying value of all of its property, plant and equipment as at the date of transition measured as per the previous

GAAP and use that as its deemed cost at the date of transition after making necessary adjustments in accordance with paragraph D21 and D21A of Ind AS 101. If a first time adopter chooses this option, then the option of applying this on selective basis to some of the items of property, plant and equipment and using fair value for others is not available.

#### **Issue 4**

##### **Adjustment of carrying value in case of deemed cost option**

PQR Ltd. had obtained a loan prior to April 1, 2015. The processing fees on the loan were capitalised as part of the relevant fixed assets as per the previous GAAP. PQR Ltd. is required to adopt Ind AS from financial year 2016-17. It has chosen to avail deemed cost exemption provided in paragraph D7AA of Ind AS 101, i.e., to continue with carrying value of property, plant and equipment as per the previous GAAP. The loan needs to be accounted for as per amortised cost method in accordance with Ind AS 109, Financial Instruments. Whether PQR Ltd. is required to adjust the carrying amount of fixed assets as per the previous GAAP to reflect accounting treatment of processing fees as per Ind AS 109?

#### **Response**

Paragraph D7AA of Ind AS 101, First-time Adoption of Indian Accounting Standards, states as under:

“Where there is no change in its functional currency on the date of transition to Ind ASs, a first-time adopter to Ind ASs may elect to continue with the carrying value for all of its property, plant and equipment as recognised in

the financial statements as at the date of transition to Ind ASs, measured as per the previous GAAP and use that as its deemed cost as at the date of transition after making necessary adjustments in accordance with paragraph D21 and D21A, of this Ind AS. For this purpose, if the financial statements are consolidated financial statements, the previous GAAP amount of the subsidiary shall be that amount used in preparing and presenting consolidated financial statements. Where a subsidiary was not consolidated under previous GAAP, the amount required to be reported by the subsidiary as per previous GAAP in its individual financial statements shall be the previous GAAP amount. If an entity avails the option under this paragraph, no further adjustments to the deemed cost of the property, plant and equipment so determined in the opening balance sheet shall be made for transition adjustments that might arise from the application of other Ind ASs. This option can also be availed for intangible assets covered by Ind AS 38, Intangible Assets and investment property covered by Ind AS 40, Investment Property.”

In accordance with the above, when the option of deemed cost exemption is availed for property, plant and equipment under paragraph D7AA of Ind AS 101, no further adjustments to the deemed cost of the property, plant and equipment shall be made for transition adjustments that might arise from the application of other Ind AS. Thus, once the entity avails the exemption provided in paragraph D7AA, it will be carrying forward the previous GAAP carrying amount. Paragraph 10 of Ind AS 101, inter alia, provides that

Ind AS will be applied in measuring all recognised assets and liabilities except for mandatory exceptions and voluntary exemptions other Ind AS. Processing fees is required to be deducted from loan amount to arrive at the amortised cost as per the requirements of Ind AS 109. In view of the above, with respect to property, plant and equipment, PQR Ltd. shall continue the carrying amount of PPE as per previous GAAP on the date of transition to Ind AS since it has availed the deemed cost option provided in paragraph D7AA of Ind AS 101 for PPE. In the given case, PQR Ltd. need to apply the requirements of Ind AS 109, Financial Instruments, retrospectively for loans outstanding on the date of transition to Ind AS at amortised cost. The adjustments related to the outstanding loans to bring these in conformity with Ind AS 109 shall be recognised in the retained earnings on the date of transition. Therefore, the carrying value of PPE as per previous GAAP cannot be adjusted to reflect accounting treatment of processing fees.

#### **Issue 5**

##### **Adjusting carrying amount of Property, Plant and Equipment funded through a Government Grant**

ABC Ltd. is a first-time adopter of Ind AS from the financial year 2016-17. It had received government grant from the Central Government during the financial year 2012-13 to purchase a fixed asset. The grant received from the Government was deducted from the carrying amount of fixed asset as permitted under previous GAAP, i.e. AS



12, Accounting for Government Grants. ABC Ltd. has chosen to continue with carrying value of property, plant and equipment as per the previous GAAP as provided in paragraph D7AA of Ind AS 101. As per Ind AS 20, Accounting for Government Grants and Disclosure of Government Assistance, such a grant is required to be accounted by setting up the grant as deferred income on the date of transition and deducting the grant in arriving at the carrying amount of the asset is not allowed. In this situation, whether ABC Ltd. is required to adjust the carrying amount of fixed assets as per previous GAAP to reflect accounting treatment of the government grant as per Ind AS 20?

#### Response

As already clarified in Issue 4 above, when the option of deemed cost exemption under paragraph D7AA is availed for property, plant and equipment, no further adjustments to the deemed cost of the property, plant and equipment shall be made for transition adjustments that might arise from the application of other Ind AS. Accordingly, once an entity avails the exemption provided in paragraph D7AA, it will have to carry forward the previous GAAP carrying amounts of PPE.

Paragraph 10 of Ind AS 101, inter alia, provides that Ind AS will be applied in measuring all recognised assets and liabilities except mandatory exceptions and voluntary exemptions from other Ind AS.

Ind AS 101, First-time Adoption of Indian Accounting Standards, does not provide any exemption with regard to the retrospective application of provisions of

Ind AS 20, Accounting for Government Grants and Disclosures of Government Assistance in relation to government grants. Accordingly, an entity shall recognise the asset related government grants outstanding on the transition date as deferred income in accordance with the requirements of Ind AS 20, Accounting for Government Grants and Disclosure of Government Assistance, with corresponding adjustment to retained earnings. In the given case, with respect to property, plant and equipment, ABC Ltd. shall continue the carrying amount of PPE as per previous GAAP on the date of transition to Ind AS since it has availed the deemed cost option provided in paragraph D7AA of Ind AS 101 for PPE. ABC Ltd. needs to apply the requirements of Ind AS 20, Accounting for Government Grants and Disclosure of Government Assistance, retrospectively on the date of transition to Ind AS, i.e. on 1st April, 2015. The adjustments related to the government grants should be recognised retrospectively as deferred income with corresponding adjustments in the retained earnings on the date of transition. Therefore, it is not required to adjust the carrying value of PPE due to the application of other Ind AS.

#### Issue 6

##### Capitalisation of Spare Parts

XYZ Ltd. is covered under Ind AS roadmap and needs to comply with Ind AS from financial year 2016-17. It has recorded certain spare parts in its previous GAAP financial statements as a part of inventory. As per paragraph 8 of Ind AS 16, these items meet the definition of 'property, plant and equipment' and

required to be capitalised as PPE on the date of transition to Ind AS. In this regard, clarify the issues given below:

- (i) At what amount such spare parts should be recognised in the first Ind AS financial statements? Whether depreciation should be charged from the date when the same became available for use or date of actual use?
- (ii) Explain the words 'more than one period' used in definition of property, plant and equipment.

#### Response

- (i) As per Ind AS 16, Property, Plant and Equipment, 'property, plant and equipment', are tangible items that:
  - (a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and
  - (b) are expected to be used during more than one period.

Further paragraph 7 of Ind AS 16, states as under:

"The cost of an item of property, plant and equipment shall be recognised as an asset if, and only if:

- (a) it is probable that future economic benefits associated with the item will flow to the entity; and
- (b) the cost of the item can be measured reliably."

As per paragraph 8 of Ind AS 16, Property, Plant and Equipment, items such as spare parts are to be recognised as property, plant and equipment in accordance with Ind AS 16, when they

meet the definition of 'property, plant and equipment'. Otherwise such items are classified as inventory.

Therefore, if an item of spare part meets the definition of 'property, plant and equipment' as mentioned above and satisfies the recognition criteria as per paragraph 7 of Ind AS 16, such an item of spare has to be recognised as property, plant and equipment. If that spare part does not meet the definition and recognition criteria as cited above that spare is to be recognised as inventory [Refer - Issue 9 of ITFG Clarification Bulletin 3].

As per paragraph 10 of Ind AS 101, except for the mandatory exceptions and voluntary exemptions provided in Ind AS 101, an entity shall, in its opening Ind AS Balance Sheet:

- (a) recognise all assets and liabilities whose recognition is required by Ind ASs;
- (b) not recognise items as assets or liabilities if Ind ASs do not permit such recognition;
- (c) reclassify items that it recognised in accordance with previous GAAP as one type of asset, liability or component of equity, but are a different type of asset, liability or component of equity in accordance with Ind ASs; and
- (d) apply Ind ASs in measuring all recognised assets and liabilities.

Paragraphs D5 to D8B provide various deemed cost exemptions that an entity may elect to use on the date of transition. In this regard, it is pertinent to note that paragraph D7AA of Ind AS 101 provides an option to continue the

carrying values for all of its property, plant and equipment as recognised in the financial statements as at the date of transition to Ind ASs, measured as per the previous GAAP and use that as its deemed cost as at the date of transition if there is no change in its functional currency. However, the above exemption cannot be used for such spare parts in the given case since the same were not recognised as fixed assets, i.e., PPE, in the previous GAAP.

Moreover, paragraph D7AA does not prevent a company to recognise an asset as PPE whose recognition is required by Ind AS on the date of transition [Refer Issue 9 of ITFG Clarification Bulletin 3].

In view of the above, the entity should apply applicable Ind AS i.e. Ind AS 16 retrospectively to measure the amount that will be recognised for such spare parts on the date of transition to Ind AS.

With regard to depreciation, paragraph 50 of Ind AS 16 provides that the depreciable amount of an asset shall be allocated on a systematic basis over its useful life. As per paragraph 6 of Ind AS 16, Useful life is:

- (a) the period over which an asset is expected to be available for use by an entity; or
- (b) the number of production or similar units expected to be obtained from the asset by an entity.

Paragraph 55 of Ind AS 16, inter alia, provides that depreciation of an asset begins when it is available for use, i.e., when it is in the location and condition necessary for it to be capable of operating in the manner intended by management. Spare parts

are generally available for use from the date of its purchase. Accordingly, spare parts recognised as property, plant and equipment shall be depreciated when the same are available for use.

- (ii) As per Ind AS 16, 'property, plant and equipment', are tangible items that:
  - (a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and
  - (b) are expected to be used during more than one period.

Accounting policies are the specific principles, bases, conventions, rules and practices applied by an entity in preparing and presenting financial statements. The term 'more than one period' is not defined in Ind AS. Ordinarily, the accounting policies are determined for preparing and presenting financial statements on annual basis. Accordingly, the term 'period', should ordinarily be construed to be the annual period.

## **Issue 7**

### **Straight lining of Lease Rentals**

ABC Ltd. has entered into an operating lease agreement for taking a building on lease. The rent agreement is for 5 years with escalation of lease rent at the rate of 15% p.a. The general inflation in the country expected for the aforesaid period is around 6%. Shall the lease payments be straight-lined or not as per Ind AS 17? If yes, should the entire 15% p.a. escalation in lease rent be straight-lined over a period of 5 years or only the difference which exceeds the expected inflation rate will be straight-lined?



## Response

Paragraph 33 of Ind AS 17, Leases, states as follows:

"Lease payments under an operating lease shall be recognised as an expense on a straight-line basis over the lease term unless either:

- (a) another systematic basis is more representative of the time pattern of the user's benefit even if the payments to the lessors are not on that basis; or
- (b) the payments to the lessor are structured to increase in line with expected general inflation to compensate for the lessor's expected inflationary cost increases. If payments to the lessor vary because of factors other than general inflation, then this condition is not met."

As per paragraph 33 of Ind AS 17, lease payments shall be straight-lined over the period of lease unless, inter alia, the payments to the lessor are structured to increase in line with expected general inflation to compensate for the lessor's expected inflationary cost increases. If payments to the lessor vary because of factors other than general inflation, then lease payments shall be straight-lined.

Judgement would be required to be made as per the facts and circumstances of each case to determine whether the payments to the lessor are structured to increase in line with expected general inflation. Therefore, it is required to evaluate the lease agreement to ascertain the real intention and attributes of escalation in lease payments, i.e.,

whether the intention of such escalation is to compensate for expected general inflation or any other factors.

It is not necessary that the rate of the escalation of lease payments should exactly be equal to the expected general inflation. If the actual increase or decrease in the rate of inflation is not materially different as compared to the expected rate of inflation under the lease agreement, it is not required to straight-line the lease payments. However, the purpose of such escalation should only be to compensate the expected general inflation rate.

In the given case, the increase of 15% p.a. in lease rentals does not appear to have any link with general inflation which is expected to be 6%. Accordingly, the entire lease payments should be straight-lined since the increase is not a compensation for inflation.

## Issue 8

### Accounting for Investments in a joint venture LLP

Company A Ltd. has equity investment in a Limited Liability Partnership (LLP). Company A Ltd. has joint control over the LLP and assessed that investment in LLP is a joint venture. How investment in LLP be accounted for in the separate financial statements of Company A Ltd? Whether profit share from LLP will be adjusted to the carrying amount of the investment in LLP in the separate financial statements of Company A Ltd.?

## Response

Paragraph 26 of Ind AS 111, Joint Arrangements, prescribes the accounting treatment for investment in

joint arrangements in separate financial statement of joint operator or joint venture as follows:

"26 In its separate financial statements, a joint operator or joint venturer shall account for its interest in:

- (a) a joint operation in accordance with paragraph 20-22;
- (b) a joint venture in accordance with paragraph 10 of Ind AS 27, Separate Financial Statements."

Paragraph 10 of Ind AS 27, Separate Financial Statements, inter alia, provides that when an entity prepares separate financial statements, it shall account for investments in subsidiaries, joint ventures and associates either:

- (a) at cost, or
- (b) in accordance with Ind AS 109.

In the given case, Company A Ltd. has joint control over the LLP and has assessed that investment in LLP is a joint venture. Accordingly, the entity shall account for its investment in the joint venture in its separate financial statements as per paragraph 10 of Ind AS 27, i.e. at cost or in accordance with Ind AS 109. Therefore, adjustment of profit share from LLP to the carrying amount of the investment in LLP in its separate financial statements is not permitted. The accounting of return on investment (i.e. profit share from LLP) will depend on the terms of contract between Company A Ltd. and LLP. The share in profit in LLP shall be recognised as income in the statement of profit and loss as and when the right to receive its profit share is established.

# COMPANY LAW-UPDATES – SEPTEMBER & OCTOBER 2016

CA K. Gururaj Acharya



## 1. MCA Updates

### 1.1 Due date for filing AOC – 4, AOC – 4 (CFS), AOC – 4 (XBRL) & MGT – 7 without additional fee extended to 29<sup>th</sup> November 2016 [General Circular 12/2016 dtd 27.10.2016]

Financial Statements (FS), incl. Consolidated Financial Statements (CFS), are required to be filed with ROC in Form “AOC-4” and “AOC-4 (CFS)” respectively within 30 days from the date of AGM of the Company. *(in case the AGM is not held, AOC-4 & AOC-4 CFS are to be filed within 30 days of the due date of AGM)*

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

Forms AOC-4, AOC- 4 (CFS), AOC-4 (XBRL) were under revision and were deployed by MCA in the last week of August 2016 in light of which the due date for filing the said forms without additional fees was extended to 29/10/2016 vide Gen. Circular No. 08/2016 dtd. 29/07/2016.

In continuation of the above circular, the last date for filing of **AOC-4, AOC-4 CFS, AOC-4 XBRL and MGT-7 without additional fees** has been extended to **29<sup>th</sup> November 2016**.

#### Notes:

- The benefit of extended due date is available only for filing of Annual Forms by Companies and does not apply to filing of forms ADT-1 (Auditor Appointment in AGM), DIR-12 (Regularization of Directors Appointment in AGM) by Companies and Form 8 (Annual Accounts) by LLP's
- For calculation of additional fees on filing of Forms, Number of Days must be reckoned from the date of the Event and not from the succeeding day.

Example – if AGM is held on 30<sup>th</sup> September 2016, form ADT-1 (Auditors Appointment) must be filed within 15 days starting from the AGM date, i.e within 14<sup>th</sup> October 2016.

### 1.2 All integrated Incorporation Form SPICE (Simplified Proforma for Incorporating Company Electronically) in INC-32 introduced (R. 38 inserted vide Co's (Incorporation) Fourth Amendment Rules, 2016 [dtd 01.10.2016])

MCA has taken another bold initiative in Government Process Re-engineering & launched Simplified Proforma for Incorporating Company Electronically (SPICE) e-Form on the occasion of Gandhi Jayanthi 2016 with the specific objective of providing speedy incorporation related services within stipulated timeframes which are in line with international best practices.

Existing provisions of Sub Rule (2) to (13) of Rule 36 to apply *mutatis-mutandis* – all references to INC-29 (Integrated form), INC-30 (MOA Template) and INC-31 (AOA Template) to be substituted by INC-32, INC-33 and INC-34 respectively.

SPICE's USP are as under -

- Simplified and completely Digital form for Company Incorporation
- Provision to apply for Company Incorporation with a pre-approved Company Name.

*(Author's Note - This benefit wasn't available in the erstwhile Form INC-29. The entire process of Incorporation i.e starting from Name approval to actual Incorporation of the Co. was to be made in one go – major drawback being re-drafting all the Incorporation papers with a New Name if the Name first applied wasn't available. This issue has been addressed in the SPICE Form which is a welcome change)*



- Standard format of e-Memorandum of Association (INC-33) and e-Articles of Association (INC-34) as per Companies Act, 2013
- Memorandum and Articles will now be filed as linked e-forms (except for S. 8 Co's)
- Mandatory DSCs of Subscribers and Witnesses (max 7+1) in SPICe MOA and SPICe AOA

In light of introduction of SPICe form, Form INC-29 is withdrawn WEF 01-11-2016, INC-7 will be phased out & SPICe will be the Sole, Simplified & Versatile form for Co. incorporation in India (Source: MCA Press Release)

### 1.3 Co's (Incorporation) Fourth Amendment Rules, 2016 [dtd 01.10.2016]

#### a. Reg. Conversion of Public Company into Private Company (Rule 33)

A copy of Order of the competent authority (~~Central Government~~) **Tribunal** approving the alteration of Articles shall be filed with ROC in Form No. INC.27 with fee together with the printed copy of Altered Articles within 15 days of the receipt of the order from the ~~Central Government~~ **Tribunal**.

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

#### b. Rules for Conversion of a company limited by guarantee into a company limited by shares notified (insertion of Rule 39)

### 1.4 Constitution of National Advisory Committee on Accounting Standards

(Notification S.O. 3118(E) dated 03.10.2016)

- Constitution of National Advisory Committee on Accounting Standards to advise Cent. Govt. on formulation and laying down of Accounting Policies & Accounting Standards for adoption by Co's / Class Co's under Co's Act 2013
- Committee presently constituted with 13 Members, names include –
  - Amarjit Chopra (Past President, ICAI) – Chairman
  - M. Devaraja Reddy (President, ICAI) – Member
  - Mamta Binani (President, ICSI) – Member
  - Manas Kumar Thakur (President, ICMAI) – Member

- Chairman & members to hold office for 1 year from Constitution of NACAS or till the constitution of NFRA (National Financial Reporting Authority u/s. 132), whichever is earlier.

### 1.5 Reg. Investor Education and Protection Fund

- a. Provisions of S. 124(1) to (4)&(6) [w.r.t manner of administration of IEPF] and S. 125 (8) to (11) [w.r.t Accounts maintenance of IEPF] notified WEF 07.09.2016

**[vide Notification No. S.O. 2866(E) dated 05.09.2016]**

Note: S.124 (6) requires all **Shares** in respect of which dividend is unpaid / unclaimed for seven years **also to be transferred in the name of IEPF** along with such unpaid / unclaimed Dividend.

- b. IEPF Authority shall be a body corporate by the name "**Investor Education and Protection Fund Authority**" having perpetual succession and common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

**[vide IEPF (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Amendment Rules, 2016 dated 05.09.2016]**

- c. IEPF Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 notified WEF 07.09.2016 **[vide Notification G.S.R. \_ (E) dated 05.09.2016]**

- d. One-time relief from payment of Additional Fees on form IEPF-1

IEPF – 1 can be filed without additional fees on or before 06.10.2016 in place of Form 1- INV which were due for filing between 25.03.2016 to 06.09.2016.

**(Vide General Circular No. 10/2016 dtd 07.09.2016)**

### 1.6 Commencement of following sections of companies Act, 2013 WEF 09.09.2016

(vide Notification No. S.O. 2912 (E) dated 09.09.2016)

i. <b>S.227</b>	Legal advisers and bankers not to disclose certain information.
ii. <b>S. 242 (1)(b)</b>	Powers of Tribunal reg. Winding-up

iii. <b>S. 242 (2) (c) &amp; (g)</b>	Powers of Tribunal reg. Orders on – (c) <i>Reduction of Share capital as a consequence of purchase of its shares by Co.</i>  (g) <i>setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against a Co. within 3 months before application date, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;</i>
iv. <b>S. 246</b>	Application of S. 337 to S. 341 to proceedings u/s. 241 or 245.
v. <b>S. 337</b>	Penalty for <b>frauds</b> by officers
vi. <b>S.338</b>	Liability where proper <b>accounts not kept</b>
vii. <b>S.339</b>	Liability for <b>fraudulent conduct</b> of business
viii. <b>S.340</b>	Power of Tribunal to assess damages against <b>delinquent directors</b> , etc.
ix. <b>S.341</b>	Liability under <b>sections 339 &amp; 340</b> to extend to partners or directors in firms or Co's

### 1.7 Companies (Mediation and Conciliation) Rules, 2016.

[notified vide G.S.R 877(E) on 09.09.2016 WEF date of publication in Official Gazette]

- a. These Rules contains definitions of relevant terms, process of formation of panel of mediators/conciliators, requisite qualifications and experience of mediators and conciliators, disqualifications, application and appointment, scope of work, procedure for disposal of matters and duties of mediators/conciliators, etc.
- Following points to be specifically noted:
- CA's with continuous practice for at least 15 years are qualified for being empanelled. **(Last date for receipt of application is 08.10.2016)**
  - Max time limit for completion of mediation is 3 months from the date of appointment of expert. (can be extended by additional 3 months by Tribunal/Appellate Tribunal on Application).

Regional Director to prepare a willing and eligible panel of experts to be appointed as mediators and such panel shall be placed on the MCA website.

- b. Form MDC 1 and MDC 2 notified.

### 1.8 Amendment to Sch. V of the Companies Act, 2013 [vide Notification S.O. 2922(E) dated 12.09.2016]

#### A. Remuneration payable by companies having no profit or inadequate profit without Central Government approval

Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rs.)	
	Existing	Amended
(i) Negative or less than 5 crores	30 lakhs	60 lakhs
(ii) 5 crores to 100 crores	42 lakhs	84 lakhs
(iii) 100 crores to 250Crores	60 lakhs	120 lakhs
(iv) $\geq 250$ Crores	60 lakhs plus 0.01% of the effective capital in excess of 250 crores	120 lakhs plus 0.01% of the effective capital in excess of 250 crores

- The limits shall be doubled by passing Special Resolution.
- For a period less than one year, the limits shall be pro-rated.

- B. In case of Managerial Person who is functioning in professional capacity, no CG approval isrequired, if –
- he not having any interest in Capital of Co. / Holding Co. / Subsidiaries directly or indirectly, and
  - he not related to directors / promoters of the Co. / Holding Co. / Subsidiaries at any time during last 2 years before or on or after the date of appointment, and
  - He possesses graduate level qualification with expertise and specialized knowledge in the field in which Co. operates

In case of Co's which have Defaulted in payments of any of its debts (incl. public deposits) or debentures or interest payable thereon for a continuous period of thirty days in thepreceding FY before the date of appointment of such managerial person, the limits specified in (A) or (B) will apply if –



- the Co. obtains prior approval from Secured creditors for the proposed remuneration and
- the fact of such prior approval having been obtained is mentioned in the explanatory statement to the notice convening the general meeting

### 1.9 Co's (Management and Administration) Amendment Rules, 2016 [Amended Rules dtd 23.09.2016]

- a. **Reg. Register of Members for Existing Companies**  
Existing Co's (registered under 1956 Act) to transfer the existing particulars in the register of members to the new Register of Members in MGT-1 ~~within 6 months from 01.04.2014 (i.e within 30.09.2014)~~ and **in case additional information (as required by 2013 Act) is provided by the members such information may also be added in the register as and when provided.**

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

- b. Declaration in respect of **beneficial interest** in shares is to be filed to the Company by **Registered Owner** in **Form No. MGT-4** and by **Beneficial Owner** in **Form No. MGT-5 "IN-DUPLICATE"** within a period of 30 days.

- c. All Listed Co's to file Form MGT 10 with respect to changes in the shareholding position of promoters and top ten shareholders of the company in each case, within 15 days of such change relating to either increase or decrease by 2% or more in **paid up share capital.**

**Clarity now provided to mean that 2% change in paid up share capital is to be considered for reporting.**

- d. Calling of EGM by Requisitionists should be convened on ~~working day~~ **any day except on national holidays** [Rule 17]

- e. R. 22 (7) and (14) omitted  
*(7) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at a general meeting convened in that behalf*

*(14) The resolution shall be deemed to be passed on the date of at a meeting convened in that behalf.*

***i.e wherever in the Act it requires a resolution to be passed in a duly convened General Meeting, such resolution henceforth cannot be passed by way of a postal ballot.***

- f. Every Co. with equity shares listed on a recognized SE and every Co. with > 1000 members shall provide to its members facility to exercise their right to vote on resolutions at AGM by Electronic means.

This provision was not applicable to Companies referred in chapter XB & XC of SEBI (ICDR), Regulations, 2009.

It is now provided that this provision is not applicable to 'Nidhi' Companies also.

- g. The Minute books of General Meetings, shall be kept at the Registered Office of the Co. and shall be preserved permanently and kept in the custody of the CS or any director duly authorized by the board **~~or at such other place as may be approved by the Board~~**

***i.e Minutes Books must now be kept at the Registered Office only.***

- h. Form MGT-6 substituted  
*(Filing of Declarations regarding Beneficial Ownership of Shares received by Co's with ROC)*

### 1.10 Others -

- a. 8 Courts designated as **Special Courts** for the purposes of providing Speedy Trial of offences punishable under Co's Act 2013 with imprisonment of  $\geq 2$  years  
*States - 1. Chhattisgarh, 2. Rajasthan, 3. Punjab, 4. Haryana & 5. Manipur*  
*Union Territories - 6. Chandigarh & 7. Puducherry*  
*8. Districts - Coimbatore, Dharmapuri, Dindigul, Erode, Krishnagiri, Namakkal, Nilgiris, Salem & Tiruppur*  
**(Notification No. S.O. 2843(E) dated 01.09.2016)**

**b. The Following forms were revised by MCA [wef:22-09-2016]**

<b>eForm CRA-2</b>	Form of intimation of appointment of cost auditor by the company to Central Government.
<b>eForm CRA-4</b>	Form for filing Cost Audit Report with the Central Government.
<b>eForm SH-8</b>	Letter of offer
<b>eForm CHG-4</b>	Particulars for satisfaction of charge thereof
<b>eForm MR-2</b>	Form of application to the CG for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors.

**1.11 Constitution of Expert Group to look into issues related to Audit firms [vide Order dated 30.09.2016]**

- a. **MCA has constituted an Expert group** to examine the representations made by several audit firms about adverse impacts on Indian audit firms due to the structuring of certain audit firms leading to circumvention of various regulations, manner in which auditor rotation requirements is being implemented by companies, and imposition of restrictive conditions by foreign investors with regard to auditor appointment by companies.
- b. The Expert Group shall complete its work and submit its report within two months of this Order.

## 2. ICAI Updates

- 2.1 Guidance Note on **Audit of Consolidated Financial Statements -CFS** (Revised 2016) issued by the Auditing and Assurance Standards Board (17.10.2016)  
*This GN supersedes the earlier GN issued in 2003 and the revised edition incorporates the impact of developments that have happened, incl. those in Co's Act, 2013, Co's (Accounting Standards) Rules, 2006 and the Co's (Ind AS) Rules, 2015. This GN covers aspects such as introduction, definitions, responsibilities of the parent and the Auditor of CFS, audit considerations, auditing the consolidation, special considerations, management representations and reporting. The Appendices to the GN includes the illustrative formats of auditor's report on CFS.*

- 2.2 Request for **improving of annual filing compliance** by pursuing companies so as to help the Ministry of Corporate Affairs in achieving the targeted compliance. (10.10.2016)

- 2.3 **Application Guide** on the Provisions of Schedule II (**Depreciation**) to Co's Act 2013 is **no longer effective** as the **Guidance Note on Accounting for Depreciation in Companies** in the context of Schedule II to Co's Act, 2013 is **issued** (07.10.2016)

- 2.4 Guidance Note on **Reports or Certificates for Special Purposes** (Revised 2016) issued by Auditing and Assurance Standards Board (01.10.2016)  
*This GN supersedes the earlier GN issued in 1984 and is applicable on Assurance Engagements other than Audit or Review of FS. It includes Guidance on Terms of Engagement, Procedures to obtain Evidences, Written Representations from Management, etc. Some basic elements that should form part of Reporting on Assurance Engagements are also given in the revised GN.*

- 2.5 Guidance Note on **Combined and Carve-Out Financial Statements** issued. (28.09.2016)

- 2.6 Co's (Accounting Standards) Amendment Rules, 2016 were notified on 30<sup>th</sup> March 2016 and the Amended Standards (list as per table below) are applicable to **Companies for FY's beginning on or after 30.03.2016**. In order to harmonise the Accounting Standards (issued by ICAI) applicable to **non-corporate entities** and with the amendments to corresponding Standards for Co's, WEF **accounting periods commencing on or after April 1, 2017**
- AS 6 (on Depreciation) withdrawn, and
  - the following AS are amended

AS 2 - Valuation of Inventories
AS 4 - Contingencies and Events Occurring After the Balance Sheet Date
AS 10 - Property, Plant and Equipment
AS 13 - Accounting for Investments
AS 14 - Accounting for Amalgamations
AS 21 - Consolidated Financial Statements
AS 29 - Provisions, Contingent Liabilities and Contingent Assets

- 2.7 Following two Guidance Notes on Accounting are withdrawn as the same are no longer relevant in the present day context:

- a. GN(A) 9 (Issued 1994) –Availability of Revaluation Reserve for Issue of Bonus Shares
- b. GN(A) 20 (Issued 2005) –Accounting for Fringe Benefits Tax



# CERTAIN RECENT CIRCULARS UNDER CUSTOMS LAW

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



## 1. Issuance of Procurement Certificate to EOU simplified:

The CBEC has streamlined the provisions relating to issuance of Procurement Certificate for duty free imports by EOU/STPI/EHTP units (except textile and chemical sectors) by providing that the same will be issued by the jurisdictional Superintendent of Customs or Central Excise. Hitherto, in addition to the above, the practice of countersignature by Assistant Commissioner / Deputy Commissioner was also followed.

For the textile and chemical sector, the procurement certificate would continue to be issued by the jurisdictional Assistant/Deputy Commissioner of Customs or Central Excise. [Instruction No. DGEPI/FTP/07/2015 dated 15.02.2016]

## 2. Implementation of a single window system for custom document clearance to importers and exporters:

The CBEC has introduced an 'Indian Customs Single Window Project' whereby, the importers and exporters would be able to electronically lodge their Customs clearance documents at a single point itself. The required permission, if any, from other regulatory agencies (such as Animal Quarantine, Plant Quarantine, Drug Controller, Textile Committee etc.) would be obtainable online without the importer/exporter having to

separately approach these agencies.

Salient features of the system:

- System of online message exchange between Customs and other regulatory agencies
- Online granting of No Objection Certificate (NOC) under ICES for the imported goods coming under the purview of the certain agencies. However, the Customs Broker or Importer would have to produce hard copies of check-lists, import licenses, and other certificates/documents as required by the Agency, along with a copy of the Bill of Entry. Based on the Bill of Entry Number, the Agency's officer will retrieve the Bill of Entry online on ICES, verify the documents and record its decision online. NOC module will be introduced on a pilot basis with effect from 05/02/2016 at JNCH, ACC Sahar, Air Cargo Delhi, ICD Tughlakabad, and ICD Patparganj for Drug Controllers Office, Wildlife Crime Control Bureau and Animal Quarantine
- Online referral of samples of consignment for testing and analysis (Lab Module). Initially, the Lab Module shall be launched in all Customs locations in Delhi and Mumbai with effect from 05/02/2016. Thereafter, it will be extended to other locations [Circular No. 03/2016-Cus dated 03.02.2016]

and Instructions F.No.450/147/2015-CUS-IV dated 26.02.2016]

## 3. Procedures relating to investigations by Special Valuation Branch (SVB):

The CBEC has revamped the procedures relating to investigations by Special Valuation Branch (SVB) which deal with investigation of transactions involving special relationships between buyer – seller have a bearing on the assessable value.

Highlights of the procedural amendments are as follows:

- **Functional Control:** The functional control over SVBs have been handed over to the jurisdictional Commissioners from the Director General of Valuation (DGOV)
- **EDD rationalized:** The requirement of payment of 'Extra Duty Deposit (EDD)' at 1% of the declared assessable value has been scrapped. However, if the importer fails to provide documents / information required for SVB inquiries within 60 days of such requisition, security deposit at 5% of the declared assessable value is to be paid. If the importer fails to submit documents within this extended period, the Commissioner in charge of SVB may consider the use of other provisions of the Customs Act for obtaining documents / information from an importer for conducting

investigations. In no case shall the imposition of Security Deposit exceed the period of three months specified above. Furthermore, the Board has also decided that the importer would be free to choose whether the Security Deposit to be provided for the purposes of provisional assessment shall be by way of cash deposit or a Bank Guarantee.

- **Appealable Orders:** SVBs are no longer to issue appealable orders. Instead, the investigation findings are to be conveyed by way of an Investigation Report to the referring customs formation for finalizing the provisional assessments.
- **No enquiry in certain cases:** Cases involving import of samples and prototypes, where duty chargeable is unconditionally exempted / Nil or transactions where the value of imported goods is less than Rs 1 Lakh but cumulatively these transactions do not exceed Rs 25 lacs in any financial year are not to be subjected to SVB investigation. *[Circular No. 5/2016-Customs dated 09.02.2015]*

4. **Speedy clearance of renewal of SVB orders and ongoing SVB inquiries:** The CBEC has notified the following procedure to be followed for SVB cases:

**Renewal of SVB orders currently pending:**

- Importers, in respect of whom SVB orders are pending renewal, are required to submit to the jurisdictional SVB, a declaration in the prescribed formats by 31.05.2016.
- SVB to provide to the importer a duly acknowledged receipt of the declaration.

- Where declaration in Annexure 1 provided in the circular is furnished, process of renewal to be treated as dispensed. The provisional assessments will be finalized without any further reference to the importer and Extra Deposit Duty (EDD) to be discontinued immediately.
- Communication to be sent to the authorities and importer by 30.06.2016
- Further, in cases where the a change in circumstances surrounding the sale has been stated in the declaration SVB inquiries will be initiated by serving questionnaires to the importer for completion of order under regular process. *[Circular No. 4/2016-Customs dated 09.02.2015]*

**Pending SVB investigations (other than renewal):**

- Pending SVB investigations where Extra Duty Deposit is obtained will be processed in terms of new Circular No. 5/2016-Customs dated 09.02.2015.
- Review of pending cases where the importer has provided information & documents requisitioned by SVB, EDD to be discontinued immediately.
- Where EDD has been enhanced to 5% on account of non-provision of information & documents, suitable recourse under the Customs Act to be taken by Commissioner for obtaining the necessary documents for investigations and subsequently dispensing with the EDD. *[Circular No. 4/2016-Customs dated 09.02.2015]*

5. **Withdrawal of cases pending before the High Court / CESTAT:** The CBEC had earlier provided instructions to withdraw cases

pending in High Court/ CESTAT, where the Supreme Court has decided on an identical matter and the decision has been accepted by the Department. These instructions would not apply to the following cases:

- Where there are more than one issue involved in an appeal and the SC's decision pertains to only one of these
- Where there are substantial questions of law and the SC decision has not been passed on these

With a view to expedite the process, the CBEC has requested the Principal / Chief Commissioners to submit a copy of the withdrawal of such appeals filed before the CESTAT. *[Instruction No. F.No.390/Misc.1163/2010-JC dated 04.02.2016]*

5. **Review of an order permitted only once:** The CBEC has clarified that the order passed by Commissioner (Appeals) or Principal Commissioner/ Commissioner can be reviewed only once by the Committee of Commissioners and Committee of Chief Commissioners respectively. There is no provision under the law to provide for reviewing the same order twice. *[Instruction No. F. No. 390/Review/36/2014-JC dated 17.03.2016]*

6. **Introduction of 'Integrated Declaration':** The CBEC has replaced the 'Bill of Entry' with 'Integrated Declaration' which has to be electronically submitted by the importer at the Customs Gateway (ICEGATE). Henceforth, separate application forms (both online and hardcopy) required by different



Participating Government Agencies (PGAs) like Drug Controller, AQCS, WCCB, PQIS and FSSAI would not be required. *[Instruction No. F. No. 450/147/2015-Cus-IV dated 31.03.2016]*

## 7. Implementation of 'Indian Customs Single Window Project':

The CBEC has implemented an 'Indian Customs Single Window Project' to facilitate trade. The highlights of the same are as follows:

- This project envisages that the importers and exporters would electronically lodge their Customs clearance documents at a single point only with the Custom authorities.
  - The required permission from Partner Government Agencies (PGAs) such as Animal Quarantine, Plant Quarantine, Drug Controller, Food Safety and Standards Authority of India etc. would be obtained online without the importer/exporter having to separately approach these agencies.
  - 'Integrated Declaration' is introduced replacing 9 forms that an importer or his broker is supposed to file with various agencies including Bill of Entry, Customs Valuation Declaration etc. *[Circular- 10/2016-Customs dated 15.03.2016]*
- ## 8. Clarification on co-noticees in Show Cause Notice (SCN):
- The CBEC has clarified the meaning of co-noticees in the context of deemed conclusion of proceedings as follows:
- Deemed conclusion of proceedings comes into effect only when the main noticee in a SCN pays all the duty, interest and penalty.
  - Co-noticees are those to whom no demand of duty is made with a SCN.

- Co-noticees would be benefitted by deemed closure where the main noticee complies with the conditions of deemed conclusion.

- Further, in all such cases an order to that effect must be issued by the concerned authority. However, this circular will not be applicable to cases involving seizure of goods or confiscation provision. *[Circular- 11/2016-Customs dated 15.03.2016]*

## 9. Single document sufficient for KYC verification:

In case of import consignments meant for an individual, 2 documents, one for proof of identity and other for proof of address are required for KYC verification. To address the inconveniences and delays, the CBEC has clarified as follows:

- In cases where the proof of present address is not available with the individual, the proof of identity collected at the time of delivery along with the address recorded for the delivery purpose by the courier companies would suffice for KYC verification.
- The courier company should keep a record of the address where the goods are delivered with diligence and the same would be treated as proof of address of the individual.
- The above dispensation for proof of address would be available only in respect of individuals for import of documents, gifts/samples/ low value dutiable consignments upto the maximum CIF value limit of Rs. 50,000/-. *[Circular No. 13/2016-Customs dated 26.04.2016]*

## 10. Bond value to be thrice the amount of duty for warehoused goods:

For deposit of import goods

into a warehouse, an importer is required to execute a bond for thrice the amount of duty assessed at the port of import. Hitherto, the bond value was twice the amount of duty assessed.

The bond will remain valid till the warehoused goods are duly cleared for home consumption or for export from the warehouse including the movement of goods from the port of import to the warehouse or from one warehouse to another as well as for the due accounting of goods while stored in a warehouse. The new format of bond supersedes the existing bonds prescribed under Board's Circular F.No: 473 / 82 / 78 – Cus VII dated 20th April 1978. *[Circular No. 18/2016-Customs dated 14.05.2016]*

## 11. Security for warehousing dispensed for certain imports and for other cases procedures and quantum of security prescribed:

An importer of goods filing a bill of entry for warehousing is required to furnish a security in addition to bond equal to thrice the amount of duty assessed on the goods to be warehoused.

The requirement of security in the following cases has been dispensed with:

- Imports by the Central Government, State Government or a Union Territory administration or their undertakings;
- Machinery, equipment and raw-materials imported for manufacture and installation of power generation units;
- Project imports;
- Petroleum products;

- Machinery, equipment and raw materials imported for building and fitment to ships;
- Goods used in the units operating under manufacture-in-bond scheme (section 65);
- Goods warehoused for supply to diplomats;
- Goods warehoused and sold through duty free shops;
- Goods warehoused for supply as ship stores/airlines stores;

For cases other than above, the circular provides for procedure and quantum of security to be provided which can be viewed at the attached link. *[Circular No. 21/2016-Customs dated 31.05.2016]*

**12. Procedure regarding filing of ex-bond bill of entry rationalized:**

The CBEC has notified that the importer / owner of the warehoused goods clearing goods for home consumption is required to file ex-bond bills of entry on ICES (Indian Customs EDI System). Hitherto, the ex-bond bills of entry were being manually filed (most cases) with the Commissionerates having jurisdiction over the warehouses.

Upon production of the copy of the assessed ex-bond bill of entry with the order for clearance of goods, the bond officer shall permit the removal of goods from the warehouse for home consumption. Further, the bonds to be executed by the importer while filing a Bill of Entry for warehousing are to be executed at the customs station of import itself. *[Circular No. 22/2016-Customs dated 31.05.2016]*

**13. No interest prior to extension of warehousing period:**

The CBEC

vide circular no. 21/2016-Customs dated 31.05.2016 has prescribed conditions for furnishing of security for warehousing of goods except for certain category of importers. Since the importers are now required to furnish security for warehousing the goods, CBEC has done away with the requirement of payment of interest prior to allowing extensions of warehousing period. Henceforth, interest (if any) will be required to be paid only at the time of ex-bonding of the goods from the warehouse.

Hitherto, interest accrued on the goods in the preceding period was required to be paid by the applicants before further extension was permitted. *[Circular No. 23/2016 -Customs dated 01.06.2016]*

**14. Manner of maintenance of records/filing of returns in relation to warehoused goods prescribed:**

The CBEC has prescribed the manner of maintenance of records and filing of returns under the Warehouse (Custody and Handling of Goods) Regulations, 2016 as follows:

- a. Maintenance of records in relation to warehoused goods:
  - Records are to be maintained in digital form only
  - Every licensee to maintain records of receipt, handling, storing and removal of the warehoused goods
  - Data to be stored in the prescribed Form-A
  - Data to be entered accurately and immediately upon the goods being deposited in or removed from the warehouse.
  - The software for maintenance of electronic records must incorporate

the feature of audit trail.

b. Filing of returns:

- A monthly return of the receipt, storage, operations and removal of the goods in the warehouse to be filed with the bond officer
- Return to be filed within 10 days after the close of the month to which such return relates
- Return to be filed in form prescribed in the circular. *[Circular No. 25/2016 -Customs dated 08.06.2016]*

**15. Ceiling in payments at duty free shops increased to Rs. 25,000:**

In line with the RBI regulations, passengers will now be able to purchase goods at duty free shops in Indian currency upto Rs. 25,000/-. Hitherto, the limit was Rs. 5,000/- *[Circular No. 31/2016 -Customs dated 06.07.2016]*

**16. Guidelines for provisional assessment revised:**

The CBEC has notified revised guidelines for provisional assessment. The highlights are as follows:

- The requirement of deposit of 20% of the differential duty between provisional assessed duty and duty finally assessed/ re-assessed has been dispensed with.

- The requirement of furnishing a security needs to be met by obtaining a bank guarantee or a cash deposit, as per importer's convenience. No sureties are required. The guidelines for obtaining the security is prescribed in the circular Hitherto, surety and/or security was required to be furnished, as deemed fit
- Execute of a bond in the format prescribed in the circular *[Circular No. 38/2016 -Customs dated 22.08.2016]*



## TAX UPDATES - SEPTEMBER 2016

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



### VAT, CST, ENTRY TAX, PROFESSIONAL TAX

#### PARTS DIGESTED:

92 VST – Parts 2 & 3

85 KLJ – Parts 8 & 9

#### Reference / Description

**2016 (86) KLJ 76 (SC): Dy. CCT (Vigilance) v. Hindustan Lever Limited** - In the instant case the dealer had adopted and followed uniform market price meant for whole of India. The Assessing Authority noticed that the dealer has adopted uniform market price for both the exempted unit and the non-exempted units and arrived at the conclusion that the dealer had added the tax component to the sale price of exempt unit though not under the nomenclature of tax or cess. Therefore, the Assessing Authority held that the dealer was not entitled to the benefit of exemption available to the exempted unit.

On appeal before the Honourable Supreme Court, the Court held that uniform market price does not differ in spite of differences in sales tax payable at the end point, i.e. at point of sale. It is a matter of business policy and cannot be taken exception to. The dealer adopted uniform rates, inspite of multiple units, i.e. both exempted and non-exempted unit. Such method of pricing cannot be a ground to hold that

the dealer was charging sales tax on a sale price of goods manufactured in the exempted unit.

**2016 (86) KLJ 99 (Karn. - Tri.) (DB): Network Solutions Pvt. Ltd. v. State of Karnataka** - In the instant case the Honourable Karnataka Appellate Tribunal held that 'sale invoice' which is used as a document of transfer of title to goods in usual course of business and also as the document for clearance of goods before the customs authorities can be regarded as a 'document of title to goods'.

Thus, the Tribunal held that 'sale invoice' falls under the category of '*any other document used in the ordinary course of business*' under Section 2(4) of the Sale of Goods Act, which defines the expression 'document of title to goods'.

**2016 (86) KLJ 99 (Karn. - Tri.) (DB): Network Solutions Pvt. Ltd. v. State of Karnataka** - In the instant case the Honourable Karnataka Appellate Tribunal was examining the claim of exemption by the dealer on sale in the course of import in the 'Bill to Ship to Model', as per First Limit of Section 5(2).

The Tribunal observed that the Assessing Authorities have disallowed the claim on the following key findings:

(a) The Purchase Order (PO) neither provides the description of goods nor stipulates the import of goods from outside India and hence does not occasion the goods. It is the

PO placed by the dealer on foreign vendor which has occasioned the import

- (b) The dealer is under no obligation to import the goods.
- (c) There are two sale transactions – one from foreign vendor to the dealer and other a local sale from the dealer to the end customer
- (d) No legal compulsion for non-diversion of goods.
- (e) Purchase Order does not constitute "agreement"

The Assessing Authorities held that it is the order placed by the dealer which has caused imports of equipments and not the order placed by the customer. But in the First Limb of Section 5(2) the expression 'sale or purchase occasions such import' shall mean if the sale is the cause or immediate cause of imports.

Therefore, the question that came up for examination was whether the sale of the equipments by the dealer is the reason and cause of import of the said equipments. In other words, whether the dealer imported the said goods in order to sell the same to the customers and whether sale by the dealer and imports are integrally connected or inextricably linked and whether both sale and import are part of the same transaction.

The Honourable Tribunal on going through the facts held as under:

- (a) The dealer is an authorised distributor of CISCO in India of networking products. Customer in India willing to purchase Networking products from CISCO approach the dealer
- (b) The dealer places import order on CISCO on a back-to-back basis against the purchase orders of equipments placed on them by the customers
- (c) In the case of 'Bill to Ship to' model, the foreign vendor CISCO, in pursuant to the order placed by the dealer and by mentioning the customers purchase order number and specifications, dispatches the same goods with customers specification directly to the Indian customer.
- (d) The Indian customer, if an STPI unit, obtains an import approval based on pro forma invoice issued by the dealer
- (e) There is no single case identified and narrated by the assessing authorities of the dealer having diverted the imported goods to any other customer
- (f) There is no value addition in the hands of the dealer and instead the good same sold at the same price/value as billed in the import invoice.
- (g) The dealer has acted as an intermediary between the customer and the foreign vendor and the dealer has not independently placed order on foreign vendor, without referring to the PO of the customer.
- (h) The Indian customer files bill of entry for home consumption in case

sale through ICD Model, and files bill of entry for warehousing in case of Bill-to-Ship-to Mode.

- (i) The goods are being imported without payment of duty based on the procurement certificate obtained by the Customer, which stipulates conditions such as execution of bond, maintenance or records with regard to goods imported etc.
- (j) Customers being EOU/STP units is subject to end usage conditions and restrictions on diversion of goods imported
- (k) Under the present set of transactions, the end customer has the absolute obligation to consummate the transaction. The procurement certificate and bill of entry filed by the end customer is the proof for the overall obligation of end customer.
- (l) Therefore, the import of goods is pursuant to and to fulfil the requirement of the customer's requirements, vide his order placed on the dealer
- (m) Though they appear to be two transactions, but they are so integrated connected and inter-linked dovetail into a single transaction and hence amount to sale in the course of import and therefore, are not liable to tax.

**2016-TIOL-2552-HC-MAD-VAT: Sri Kamatchi Gas Service v. Asst. CCT** - In the instant case the Honourable Madars High Court held that for a mere irregularity, penalizing the assessee dealer by denying the claim of entire input tax credit is an arbitrary exercise of power, as it is not illegal exercise.

## INCOME TAX

### PARTS DIGESTED:

- a. **386 ITR – Part 5 & 6**
- b. **387 ITR – Part 1 & 2**
- c. **240 Taxman – Part 7**
- d. **241 Taxman – Part 1**
- e. **48 ITR (Trib.) – Parts 4 & 5**
- f. **159 ITD – Part 6**
- g. **50 CAPJ – Part 3**
- h. **48-A BCAJ – Part 6**

### *Reference / Description*

**[2016] 368 ITR 690 (Delhi): Principal CIT v. Nikki Drugs and Chemicals P. Ltd.** - In the instant case the Honourable Delhi High Court held that even in cases where Assessing Officer of person searched and assessee who is sought to be assessed under section 153C is same, still Assessing Officer is required to record his satisfaction that assets/ documents seized belong to a person (assessee) other than searched person.

**[2016] 386 ITR 702 (Karn. – HC): CIT v. Anil Kumar & Co.** - In the instant case the Honourable Karnataka High Court has held that where books of account of assessee had not been rejected and assessment having not been framed under section 144, entire addition made by Assessing Officer based on estimation of income was to be deleted.

**[2016] 387 ITR 196 (Karn. – HC): CIT and another v. Kishore Rao & Others (HUF)** - In the instant case the Honourable Karnataka High Court held that Section 40(a)(ia) disallowance can be made only with respect to non-deduction of tax at source and not with respect to short deduction of tax at source by the assessee on a bona fide wrong impression.



**[2016] 240 Taxman 728 (Mad. – HC); 69 taxmann.com 16 (Mad. – HC): Sutherland Global Services (P.) Ltd. v. UOI** - In the instant case the Honourable Madras High Court has held that where it could not be discerned whether TPO arrived at a list of six comparable after mining information from a huge data base or on basis of information already available in his office and TPO had also said that he did not have time to go through entire data base furnished by the assessee, Petitioner-Assessee had made out a prima facie case for grant of stay on further proceeding.

**[2016] 240 Taxman 736 (Bom. – HC); 69 taxmann.com 19 (Bom. – HC): CIT v. Goldman Sachs (India) Securities (P.) Ltd.** - In the instant case the Honourable Bombay High Court has held that Companies engaged in providing call centre services and merchant banking business cannot be compared with company providing financial and investment advisory services.

**[2016] 240 Taxman 753 (Karn. - HC); 69 taxmann.com 259 (Karn. – HC): CIT v. Himatsingka Seide Ltd.** - In the instant case the Honourable Karnataka High Court has held that provisions of Rule 8D being prospective in effect would not be applicable for assessment year 2007-08 but would be applicable with effect from 24.03.2008 i.e. for and from AY 2008-2009, and thus, in AY 2007-2008, revenue was justified in making disallowance of 5% of exempted income as expenditure incurred to earn such income.

**[2016] 240 Taxman 753 (Karn. - HC); 69 taxmann.com 259 (Karn. – HC): CIT v. Himatsingka Seide Ltd.** - In the instant case Assessee borrowed funds from banks for acquiring fixed

assets for its new unit, as well as term loans and working capital for its existing operational manufacturing unit. Interest on term loan for new unit was capitalized and only interest pertaining to existing manufacturing units was charged by assessee to profit and loss account.

The Assessing Officer disallowed the interest claimed by Assessee under Section 36(1)(iii) by holding that the assessee has advanced inter-corporate loans to its 100% subsidiary company, for which no interest was charged and assessee has failed to prove that the same was for the business purpose.

On appeal before the Honourable Karnataka High Court, the Court observed that assessee company had been earning profits year after year and had a net worth of about Rs. 600.71 crores, whereas loan advanced to its subsidiary during period under consideration was only Rs. 9.60 crores and aggregate loans advanced by assessee to this subsidiary including that of earlier year was about Rs. 21.03 crores. Further, the Court held that Assessing Officer had not established with any material evidence that loans that were advanced interest-free to subsidiary were diverted from loans taken.

Thus, the Court held that in the instant case where loan was actually taken, may be as term loan or may be as working capital, interest could not be disallowed. On the question of diversion of fund, it is settled that the business wisdom of the assessee cannot be substituted by the Assessing Officer.

**[2016] 241 Taxman 34 (Bom. - HC); [2016] 70 taxmann.com 71 (Bom. - HC): Mrs. Leena R. Phadnis v. CIT**

- In the instant case Assessee's claim of exemption under section 10(10C) in respect of amount received on voluntarily retirement from State Bank of India (SBI) was disallowed by intimation issued under section 143(1). Later on, assessee, learning that such benefit was being extended to various ex-employees of SBI who opted for VRS, filed revised return of income and since time to file revised return had expired, she filed application under section 119(2) for condonation of delay.

Application was rejected on ground that CBDT had not issued any specific instruction for condonation of delay in filing revised return on such issues in case of SBI employees.

On appeal before the Honourable Bombay High Court, the Court observed that as per Section 119(2)(b) of the IT Act, it is very clear the authority concerned has to apply his mind to the applicable before him and if he finds that not granting of the application would result in 'genuine hardship', then the application is to be allowed by condoning the delay.

Thus, the Court held that non-acceptance of application to entertain revised return of income, would itself lead to a 'genuine hardship' to assessee and this alone was sufficient for purpose of allowing application under section 119(2)(b) and there is no requirement of any specific instructions being issued by CBDT to Income-tax department to entertain revised return of income in case of ex-employees of SBI filed after expiry of period of limitation.

**[2016] 241 Taxman 84 (Guj. - HC); [2016] 69 taxmann.com 44 (Guj. - HC): Pal Gram Hindu Sarvajanic Trust v. ITO** - In the instant case the Assessing

Officer issued notice for reassessment on ground that assessee accumulated and set apart certain amount for future application but did not intimate department, purpose and period for which income was being accumulated/ set apart and since time stipulated for utilization of accumulated fund had lapsed, it became chargeable to tax.

On appeal before the Honourable Gujarat High Court, the Court held that since assessee did not intimate department, it did not comply with requirement for accumulation of amount and, thus, no amount could be said to have been accumulated/ set apart for future application and, therefore, question of non-utilization of such amount and, consequently, taxing same as deemed income of trust would not arise.

**TS-525-HC-2016(GUJ): Oil & Natural Gas Corporation Ltd. v. Asst. CIT (TDS)** - In the instant case the Assessing Officer held the assessee in default under Section 201(1)/(1A) for not deducting TDS on payment of 'uniform allowance' to its employees. As per the assessee the dress code at work place would qualify as uniform and hence assessee is eligible for exemption under Section 10(14)(i) r.w. Rule 2BB with respect to uniform allowance.

On appeal before the Honourable Gujarat High Court, the Court observing the dress code specifications viz. half/full sleeve shirts for males, salwar kameez/ western business suits for women, clarified that a dress code would not include the term 'uniform'.

The Court held that the term 'uniform' in the context of dressing carries a vastly different connotation and would necessarily include precise instructions

as to the dress, design, and also colours which will achieve a uniformity in dressing at a work place or at the place of study or some such collection of group of persons belonging to by and large a common class.

Thus, the Court denied exemption under Section 10(14), and according holds assessee in default u/s 201 for TDS default.

**TS-532-SC-2016: V.S. Dempo & Co. (P.) Ltd.** - In the instant case, the Honourable Supreme Court held that Assessee is entitled to exemption under section 54E in respect of capital gains arising on transfer of a capital asset on which depreciation has been allowed.

The Court upheld the decision of the Honourable Bombay High Court in the case CIT v. ACE Builders (P.) Ltd. [2006] 281 ITR 210 (Bombay), wherein the High Court had held as under:

- (a) Legal fiction created in section 50 is to deem capital gain as short-term capital gain and not to deem an asset as short-term capital asset and, therefore, it cannot be said that section 50 converts long-term capital asset into short-term capital asset.
- (b) Section 54E does not make any distinction between depreciable asset and non-depreciable asset and, therefore, exemption available to depreciable asset under section 54E cannot be denied by referring to fiction created under section 50

**TS-539-HC-2016(P & H): Sunil Kumar Gupta v. Asst. CIT** - In the instant case the Honourable Punjab & Haryana High Court held that where the agreement provides that the owner shall pay the amounts for the common facilities,

maintenance charges, outgoings etc. it is obvious and reasonable to presume that the same is factored into the rent, fee or compensation payable by the lessee or the licensee. In that event the same cannot be added to the rent agreed to be paid. However, if the maintenance charges etc. are stipulated to be payable by the licensee or the lessee it must form a part of the rent for the purpose of computing the annual value of the property.

Thus, the Honourable Court in the instant case held that maintenance charges payable by the Sub-Sub-Licencee under Sub-Sub-Licence Agreement to the builder directly and not to the Assessee (i.e. sub-licencee) has to be included as a part of the rent received by the Assessee (i.e. sub-licencee).

**TS-788-HC-2016(BOM)-TP: PTC Software (I) Pvt Ltd** - In the instant case the Honourable Bombay HC excludes the comparable companies having different financial year ending other than 31<sup>st</sup> March.

**TS-790-HC-2016(DEL)-TP: Principal CIT v. Saxo India (P.) Ltd.** - In the instant case the Honourable Delhi High Court held that mere availability of proportion of the turnover allocable for software product sales per se cannot lead to an assumption that segmental data for relevant facts was available to determine the profitability of the concerned comparable

**2016-TIOL-2467-HC-KAR-IT: CIT v. Gregory Mathias** - In the instant case the Honourable Karnataka High Court held that as stock-in-trade is excluded from the definition of capital asset under Section 2(14) of the IT Act, benefit under Section 54F cannot be availed, in case of transfer of said stock-in-trade.

**2016-TIOL-2495-HC-DEL-IT: Principal**

**CIT v. Amrapali Grand** - In the instant case the Honourable Delhi High Court held that proceedings under Section 153C cannot be initiated on assessee, on basis of documents recovered during search of assessee's group company premises 'pertaining to assessee'.

The Court held that the term 'pertain to' was not present in the statute at the relevant time of assessment year and instead it was 'belong to'.

**TS-570-HC-2016(BOM): Shapoorji Pallonji and Co. Pvt. Ltd.**

- In the instant case the Honourable Bombay High Court dealing with the writ challenged by the Assessee against the letter issued by Revenue expressing its helplessness to process the return of income under Section 143(1) in view of technical glitch encountered in the ITD application for AYs 2014-15 and 2015-16, observed as under:

- (a) As per Sec 143(1), Assessing Officer was required to process the return by sending an intimation to the assessee whereas in present case, Assessing Officer was unable to process the return not because of his "volition" but due to the failure of technology employed by the IT Department
- (b) The system difficulty continued till date even though the matter was taken up by the Revenue with the system administrator

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

- (a) Computerisation of the system is meant to assist the IT Department in discharge of its statutory obligations and not to act as a substitute for human action

- (b) Where the computer system is an hindrance to the discharge of statutory obligations, then the least that would be expected is that the senior most Officers of the Department would address this issue on war-footing" as it affects a large number of assesses

Thus, the Honourable Court directed CCIT to ensure that the computer system runs in accordance with the Act or come up with an alternative so that the return can be processed by the Assessing Officer under Section 143(1).

**[2016] 48 ITR (Trib.) 548 (Jaipur):**

**Srikishan Agarwal v. Dy. CIT** - In the instant case, the Honourable Jaipur Tribunal relying on the decision of the Honourable Delhi High Court in the case of ITO v. V.P. Sharma [2006] 154 Taxman 34 (Delhi) (Mag.), held that the expression 'any sum' used under Section 159(1) which deals with liability of legal representative on death of assessee, includes only tax and not penalty.

**[2016] 71 taxmann.com 332 (Mum.**

**- Trib.); [2016] 240 Taxman (Weekly Browser) Part 7: Peepul Tree Properties (P.) Ltd. v. Asst. CIT** - In the instant case the Honourable Mumbai Tribunal held that prepayment charges and processing fee made for purpose of availing loan at lower interest cost are allowable under Section 24(b) of the IT Act.

**[2016] 71 taxmann.com 321 (Delhi - Trib.); [2016] 241 Taxman (Weekly Browser) Part 1: Society For Participatory Research in Asia v. ITO** - In the instant case the Honourable Delhi Tribunal held that where assessee-society worked with community organizers, adult educator, health care

workers, social workers etc. in training them to use participatory research methodology in their work, Assessing Officer could not conclude that activities of assessee were not in nature of 'education' under section 2(15) merely on pretext that income from education constituted a small proportion of total receipts of society

**[2016] 48-A BCAJ 721 (Delhi - Trib.); [2016] 72 taxmann.com 147 (Delhi - Trib.): Sanjeev Puri v. Dy. CIT** - In the

Therefore, the Court held it cannot be said that prior to introduction of Section 192A w.e.f. 01.06.2015 there was no TDS liability on EPFO. With regard to computation of amount of deduction of tax, the Court held that the Assessing Officer was not justified in estimating 50% of withdrawals as being made by employees who rendered less than 5 years continuous services. Therefore, the Court directed the Assessing Officer to take guidance from section 192A to compute TDS liability of EPFO even for the period prior to Section 192A.

**[2016] 72 taxmann.com 83 (Delhi - Trib.); [2016] 241 Taxman (Weekly Browser) Part 1: Employees Provident Fund Organization v. Dy. CIT** - In the instant case the Honourable Delhi Tribunal held that TDS under Section 192(4) applicable to Employees Provided Fund Scheme under the 1952 Act prior to introduction of Section 192A w.e.f. 01.06.2015 as EPF is a recognised provided fund within the meaning of the definition in Section 2(38) of the IT Act and as such the Fourth Schedule to the IT Act applies to it and it is not covered under Section 10(11). It further held that with the introduction of Section 192A, liability of EPFO to deduct TDS has become much clearer.

Therefore, the Court held it cannot be said that prior to introduction of Section 192A w.e.f. 01.06.2015 there was no TDS liability on EPFO. With regard to computation of amount of deduction of tax, the Court held that the Assessing Officer was not justified in estimating 50% of withdrawals as being made by employees who rendered less than 5 years continuous services. Therefore, the Court directed the Assessing Officer to take guidance from section 192A to compute TDS liability of EPFO even for the period prior to Section 192A.

**[2016] 48-A BCAJ 721 (Delhi - Trib.); [2016] 72 taxmann.com 147 (Delhi - Trib.): Sanjeev Puri v. Dy. CIT** - In the

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

Therefore, the Tribunal held that ownership of a flat which is shown as a residential house in municipal records but is actually used as an office is not be regarded as ownership of a 'residential house'.

**TS-752-ITAT-2016(DEL)-TP: Aithent Technologies Pvt. Ltd.** - In the instant case the Honourable Delhi Tribunal held that transaction between head office ('HO') in India and branch office ('BO') in Canada cannot be subject to ALP determination so as to make TP addition. However, it held that in case of reverse scenario, Indian branch office of foreign general enterprise will be considered as an 'enterprise' under Section 92F(iii) and transactions between the two will be 'International transactions' in terms of Section 92B.

**TS-522-ITAT-2016(DEL): Galileo India Pvt. Ltd.** - In the instant case the Assessee had claimed depreciation on discarded assets, viz. furniture & fixtures, office equipment and computer items, used by assessee for its data processing business which was stopped in July 2008. The said claim was denied by the Assessing Officer on the ground that the said assets were not used for the purpose of business during the impugned assessment year.

On appeal before the Honourable Delhi Tribunal, relying on the jurisdictional High Court in the case of CIT v. Yamaha

Motor India Pvt. Ltd. [2010] 328 ITR 297 (Delhi) held that under Section 32, the expression "*used for the purpose of business*", also includes assets used in earlier financial years.

Thus, the Tribunal held that assessee is eligible to claim depreciation on 'discarded assets' which formed part of block, but were not used for the purpose of business during AY 2010-11.

**TS-533-ITAT-2016(PUN): Quality Industries v. Jt. CIT** - In the instant case the Honourable Pune Tribunal held that interest paid to partners towards use of partner's capital is not 'expenditure' and hence the same cannot be disallowed invoking section 14A where such capital is found to be invested in mutual funds and tax-free dividend income is earned.

**TS - 549 - ITAT - 2016 (Ahd) : Dharamshibhai Sonani** - In the instant case the Honourable Ahmedabad Tribunal held that first Proviso inserted under Section 50C(1) of the IT Act by the Finance Act, 2016 w.e.f. 01.06.2017, is retrospective in nature, as it has been amended to remove hardship by implementing Easwar committee recommendations.

The first proviso to Section 50C(1) provides that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.

**TS-551-ITAT-2016(Mum): Jawaharlal L. Agicha** - In the instant case the Honourable Mumbai Tribunal held

that consideration received under the development agreement of land is not chargeable to capital gain tax as the joint development agreement does not result into transfer under Section 2(47)(v)

**TS-553-ITAT-2016(Bang): United Breweries Ltd.** - In the instant case assessee claimed depreciation on Rs. 62 crore worth of goodwill recorded in books at the difference between the fair market value ('FMV') of assets taken over and value of goodwill in the books of amalgamating company/predecessor was only at Rs. 7 Crore.

On appeal before the Honourable Bengaluru Tribunal, the Tribunal observed that 5th proviso to Section 32(1) provides that depreciation allowable in the case of succession, amalgamation or merger, demerger should not exceed the depreciation allowable had the succession not taken place.

In view of the above, the Honourable Bengaluru Tribunal restricted the assessee's (amalgamated /successor company) claim of depreciation on goodwill arising on amalgamation applying 5th proviso to Sec 32(1) for AY 2008-09 by holding that assessee cannot claim depreciation on assets acquired under amalgamation more than the depreciation allowable to amalgamating company.

**TS-824-ITAT-2016(CHNY)-TP: Sensiple Software Solution Pvt. Ltd.** - In the instant case the Honourable Chennai Tribunal held that reference made by the Assessing Officer to the Transfer Pricing Officer is contrary to the Board's Scrutiny Instruction No. F.No.225/93/2009/ITA-II dated 10.09.2011 as the international



transaction entered into by the assessee did not exceed Rs. 15 Crores.

**TS-827-ITAT-2016(Bang)-TP: United Engineers (Malasia) Berhad Quorum**

- In the instant case the Honourable Bengaluru Tribunal held that when the transactions in question are falling under the ambit of definition of 'international transaction' as provided under Section 92B of the IT Act, then the AE (foreign company) being tax resident of India will not take out the matter from the purview of the TP provisions.

**ITA No. 3239/Del/2014 dated 30.08.2016 [AY 2007-2008]: Devender Kumar v. ITO** - In the instant case the Honourable Delhi Tribunal held that LIC premium and the Tuition Fees paid from the banking channels are enough documentary evidence for deduction under Section 80C of the IT Act.

**2016-TIOL-1786-ITAT-AHM: ACIT v. Anoli Holding Pvt. Ltd.** - In the instant case the Honourable Ahmedabad Tribunal held that deduction under Section 80IB of the IT Act is allowable even if the assessee fails to file the return of income before the due date specified in section 139(1).

**TS - 561 - ITAT - 2016 (Bang)]: Shushrutha Educational Trust** - In the instant case the Honourable Bengaluru Tribunal held that first proviso to Section 12A(2) though inserted by Finance Act, 2014 w.e.f. 01.10.2014, (which provides for roll-back of registration for earlier years) is retrospective in nature as the amendment is remedial in nature.

Thus, the Tribunal allowed exemption under Section 11 to assessee-trust for AYs 2004-05 to 2007-08 despite Section 12A registration granted only w.e.f. April 1, 2008.

**2016-TIOL-1822-ITAT-AHM:**

**Amul Research & Development Association v. ITO** - In the instant case Assessee was a registered society under Section 12A of the IT Act. The main object of assessee was to provide for research, establishment and running of veterinary hospitals, laboratory services, artificial insemination centre/ services and veterinary help to cattle for improving livestock health. During relevant year, assessee collected cess at rate of 12 paise per litre from milk producers members in lieu of providing them research, animal nursery, fertility, vaccination and breed improvement facilities etc. Assessing Officer took a view that aforesaid activity carried out by assessee was in nature of trade, commerce or business including profit motive. He thus invoked proviso to Section 2(15) and denied exemption of income claimed by assessee.

On appeal before the Honourable Ahmedabad Tribunal, the Tribunal held that term 'medical relief' as mentioned in Section 2(15) includes aforesaid relief made available by assessee to milch animals in lieu of a nominal cess at rate of 12 paise per litre. Therefore, assessee could not be regarded as an entity advancing any other object of general public utility covered by proviso to Section 2(15) of the IT Act.

**CBDT Notification No. 90/2016 dated 05.10.2016** - CBDT notifies new application form under Section 270AA(2) to be made to the assessing officer for seeking immunity from levy of penalty u/s 270A (for under-reporting and misreporting of income) and prosecution proceedings under Section 276C or Section 276CC.

Section 270A was amended by

Finance Act, 2016 to provide for a new mechanism for levying penalty for under-reporting and misreporting of income. As per Sec 270AA(2), a taxpayer can file an application for immunity within one month, subject to a condition that assessee has paid tax and interest due as per assessment order and no appeal has been filed against such order.

CBDT prescribes New Form No 68 which seeks details of the assessee alongwith the details of assessment/reassessment order and payment of tax/interest.

The new rule 129 and Form 68 shall come into force on April 1, 2017.

**CBDT Circular No. 35 of 2016** - CBDT clarifies that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 194-I of the Act. Therefore, such payments are not liable for TDS under section 194-I of the Act.

**CBDT Notification No. 94 of 2016 dated 17.10.2016** - Pursuant to comments received from stakeholders on the draft buy-back rules released in July, 2016, CBDT has now notified final rules.

CBDT introduces new Rule 44BB for computing amount received by the company in respect of issue of share for computing buy back tax payable under Section 115QA.

The final rules provide for computation mechanism of 'amount received' in 12 different scenarios depending upon manner of issue of shares (eg, regular issue, amalgamation, demerger, bonus

**(Contd. in page 35)**

# DIGEST ON RECENT UPDATES AND DECISIONS UNDER COMMERCIAL TAX LAWS

CA Annapurna D Kabra



**V**ide Notification No FD 73 CSL 2016 dated 17.10.2016, the Government of Karnataka reduces with immediate effect the tax payable by the dealer under the KVAT Act to **five and half percent** on the sale of following goods namely **CCTV cameras, CCTV Recording devices, CCTV cables, CCTV Power supplies, CCTV Racks and CCTV accessories.**

**I) Rangoli Digitals, Bejai Church Cross Road, Mangalore v. State of Karnataka. -2016 (86) Kar. L.J. 89 (Tri.) (DB).**

**Revision of order of Commissioner revising the order of Advance Ruling Authority is prospective and not retrospective**

- The appellant deals in the business of I-Flex banners printing, paper printing, sign boards printing, and digital printing. The appellants case was taken up for re-assessment, wherein re-assessment orders were passed, levying tax @ 12.5%, as against the tax paid by the appellant @ 4%. Being aggrieved by the said orders, the appellant filed an appeal before the first appellate authority, and on such appeal being rejected, filed an appeal before the Tribunal.
- The appellant has contended that in the Third Schedule of the KVAT Act, 2203, Entry No. 48 mentions

‘printed materials other than books meant for reading ...’ The expression printed material is used generally without specifying the media on which the printing is done. Hence, such entry is applicable to the appellant.

- It has been held that until the Commissioner had revised the order of the advance ruling authority, the rate of tax collected and discharged was @ 4%. On setting aside the order of the advance ruling authority, the commissioner confirmed by the High court of Karnataka, that the rate applicable shall be 12.5% to all the dealers. In order to avoid confusion, it was held that the revised order shall be applicable ‘Prospectively’ and not retrospectively.
- Hence, it is deemed that the appellant is liable to pay tax @ 12.5% from the date of clarification given by the Commissioner dated 27/07/2010. It has been justified that since the order setting aside the previous order was passed only on 27/07/2010, till then the previous order still hold good and is valid under the eyes of law and therefore prior to 27/07/2010 the rate of tax shall be at 4% and not 12.5%.

**II) Shree Ramakrishna Courier and Cargo Services v. State of Tripura**

**and Others 2016(94) VST 542 (Tripura).**

**Security deposit rate prevalent on date of approval of Registration will apply.**

- The appellant had applied for registration in terms of Section 22 of the Tripura Value Added Tax Act, 2004, as a transporter being a courier on April 22, 2015. Therefore, he had deposited Rs. 3.6 lakhs as security as per Rule 12(4) of the Act. The Commissioner, thereby, revised the security deposit to Rs. 12 lakhs and thereby, the Superintendent of Taxes raised a demand against the petitioner for an additional amount as security deposit.
- **The memorandum dated July’20, 2015 itself provides that the change would operate prospectively.** Therefore, the new amount of deposit shall apply only from July 20, 2015. Also, no clear explanation was given as to why the application for registration which was filed on April 24, 2014 was kept pending till April 22, 2015.
- On inquiry, the petitioner was found competent to be registered as a transporter, though belatedly on April 22, 2015, the demand for security deposit was made. Therefore, the relevant date for



the purpose of determining the amount of security deposit shall be April 22, 2015 and not July 31, 2015. By applying the new rate, the respondent had given a retrospective effect to the memorandum, which is not sustainable.

- Therefore, the levy by the respondent was to be set aside and the Commissioner was directed to issue the registration certificate for the transporter within thirty days.

**III) Kairali Ayurvedic Health Resort Private Limited v. Commercial Tax Officer (Luxury Tax), Palakkad and Others - 2016 (94) VST 465 (Ker).**

**Ayurvedic center was treated as "hotel" under the Kerala Tax on Luxuries Act 1976.**

- The petitioner had an ayurvedic hospital registered under Section 4(2)(e) of the Kerala Tax on Luxuries Act, 1976. The petitioner was assessed under the Act treating the establishment as a 'hotel' and the order was ultimately confirmed by the Tribunal.
- It was held by the respondent that the definition of the term 'hotel' under section 2(e) of the Act states ' hotel, means a building or part of a building where residential accommodation is by way of business provided for a monetary consideration..'. The various facilities provided by the petitioner included 30 luxurious air-conditioned villas, swimming pool, internet and personal laundry services etc.
- The existence of the facilities noted, were not disputed by the petitioner.

It was therefore, held that the predominant activity carried out was of an ayurvedic center functioning as the hotel of the petitioner. All the petitions filed by the appellant were dismissed and the ayurvedic center was treated as "hotel" under the Kerala Tax on Luxuries Act 1976.

**IV) Shivam Trading Company v. Commercial Tax Officer (Enforcement) South Zone – 22, Koramangal, Bangalore. -2016 (94) VST 201 (Karn).**

**Levy of penalty before passing an order- Illegal**

- The petitioner had purchased goods from Lucknow and caused entry into the State of Karnataka under two different invoices, dated March 12, 2003. At the check-post, the goods, along with the relevant documents like Invoices and E-esugam receipts were verified and permitted to continue the transportation into the State of Karnataka.
- At the time of unloading, the vehicle was once again intercepted by the Commercial Tax Officer, on which, the some documents were produced at the check-post. The officer rejected the submission, and passed an order for penalty under section 53(12) of the KVAT Act, 2003, stating that the numbers of the invoices were of two different series, and no e-esugam form was forthcoming.
- It was later, held that in case there is a need to pass an order for penalty, it is pre-supposed an a notice to show cause is required to be issued,

and if no sufficient cause is shown, then the penalty can be imposed.

- Also, the officer had passed the order on April 6, 2013, after collecting the amount of penalty on March 27, 2013. Therefore, the collection of penalty without an order is illegal and cannot be sustained. Hereby, the petitioner of the appellant was allowed and the respondent was ordered to refund the penalty within four weeks.

**V) Jay Ambey Traders and Another v. State of Gujarat and another 2016 (94) VST 338 (Guj.)**

**Detention of Vehicle and collection of Penalty not preceded by Order – Illegal**

- An order was placed by a party in Delhi. The consignor got the goods transported from Nagpur to Delhi, by availing the service of a company engaged in such transportation. The driver of the truck took the route via Changodar. On March 22, 2016, the truck was stopped at Changodar road by the authorities and was asked to produce invoice, lorry receipts and other relevant documents.
- Later, the authorities seized the registration certificate along with the other documents. On the same days, the second respondent issued a notice under section 67(6) and 70(A) of the Gujarat Value Added Tax Act. He also passed a detention order on the same day, on the grounds that goods were to be offloaded at Changador and called upon the driver to explain.

- It was later held that no notice was served to the petitioner before passing the order. Also, the petitioner was given only an hours' time to contend before the authorities. Therefore, the order has been passed without providing an opportunity of being heard. There was nothing mentioned in the notice to indicate what exactly was the information required by the respondent.
- It was recorded in the detention report that the petitioner failed to produce the required documents, but it was not clearly stated as to which documents and information was required by the authorities. Thus, the detention order suffered from the breach of the principles of natural justice as well as lack of application of mind and therefore stood vitiated.

**VI) Commissioner of Commercial Tax, U.P v. A.R. Thermosets (Pvt.) Ltd. 2016 (94) VST 258 (SC).**

***Bitumen includes Bitumen emulsion***

- The petitioner is engaged in the manufacture and trading of 'bitumen emulsion'. The product bitumen has been classified under Schedule II Part A of the Act at Sl. No. 2 and is taxable @ 4%. The Commissioner of Commercial Tax decided the application vide order dated January 23<sup>rd</sup>, 2009, that bitumen emulsion was not bitumen but was another unclassified commodity which would be liable to tax @ 12.5%.
- The petitioner concluded that Entry 22 of Part A of Schedule II uses the word 'Bitumen' without any further qualification. Therefore, it would include any product which shares the composition identity and in common parlance is treated and

used as bitumen. Bitumen emulsion is only a variety of bitumen.

- Also, Entry 22 does not exclude or specify that it would not include bitumen of all types and varieties. The petitioner also stated that there is no other Entry in which bitumen emulsion can be taxed. The residuary entry would only include goods, which cannot be covered under any other entry in the Schedule. When the word 'Bitumen' has been used as a generic expression, it would be erroneous to take it outside the purview of the specific entry.
- Bitumen Emulsion is nothing but processed bitumen. The process does not change the composition, identity or its use. It performs the same function as bitumen. Hence, in popular and commercial sense, bitumen emulsion is nothing but bitumen which shall be taxed @ 4%.

## TAX UPDATES - SEPTEMBER 2016

***(Contd. from page 32)***

issue, conversion of bond or debenture, sweat equity share issue, share- buyback in demat form etc).

**CBDT Circular No. 36 of 2016 dated 25.10.2016** - CBDT issues clarification regarding taxability of compensation received by land owners towards land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('RFCTLARR'):

- (a) Section 10(37) of the IT Act provides for exemption of compensation

received on compulsory acquisition of an agricultural land, subject to fulfilment of certain conditions.

- (b) Section 96 of the RFCTLARR Act provides that compensation received for compulsory acquisition of land under the RFCTLARR Act (except for those made under Section 46 therein) is exempt from the levy of income-tax.
- (c) No demarcation is made between compensation received for compulsory acquisition of agricultural and non-agricultural

land in Section 96 of the RFCTLARR Act

- (d) The scope of exemption provided in Section 96 is wider than tax-exemption provided under IT Act.
- (e) Thus with a view to address the uncertainty regarding taxability of compensation received on compulsory acquisition of non-agricultural land, the exemption available in Section 96 of the RFCTLARR Act extends to non-agricultural land "even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961"



# SERVICE TAX DECISIONS

## PARTS DIGESTED – STR VOLUME 44: PARTS 3 & 4

CA. A. Saiprasad



### Notifications

*Service of transportation, by educational institutions to students, faculty and staff*

Central Government has issued order u/s 11C of CEA, 44 r/w S.83 of FA, 94 that service tax payable from 1.4.13 to 10.7.14, on provision of transportation service by educational institutions to students, faculty and staff of such institutions shall not be required to be paid.

Notification No.45/2016 –ST dt.30.9.16

### Circulars

The Board has issued guidelines for arrest in relation to offences punishable under FA, 94.

Consequent to amendment by FA, 16, power of arrest under FA, 94 is available to the department only if a person collects service tax but fails to pay the same to the government within 6 months from the date on which such payment became due **and** the amount exceeds Rs.2 crores.

Circular No.201/11/2016-ST dt.30.9.16

### Case Laws

*Whether Job Work/ Contract Manufacturing of alcoholic liquor fit for human consumption is liable to Service Tax?*

The Delhi HC has held that where alcoholic liquor for human consumption is not manufactured by the entity holding license/ brand owner but by another

entity holding such license and cost of such manufacture is to be reimbursed by the principal manufacturer/ brand owner, such activity would be covered within the meaning of S.65B(44) of FA, 94. Therefore manufacture of alcoholic liquor for human consumption on contract basis has held as service and hence amenable to service tax.

HC held that Entry No. 51 of State List envisages manufacture of alcoholic liquor but does not contemplate a situation of manufacture of alcoholic liquor by one person for another. When it comes to manufacture for another, 'in pith and substance', it is a service performed by one person for another and hence cannot fall within ambit of Entry No.51 of State List. The value addition under job works is sought to be made amenable to service tax.

HC held that while facially it might seem that same activity is made subject to two imposts, in pith and substance what is made amenable to service tax is 'service aspect' of job works and not 'manufacturing aspect'. Hence applying 'aspect doctrine', parliament has power to tax the service aspect

*Carlsberg India Private Limited V. UOI, 2016 (44) STR 349 (Del)*

**Note:** The Delhi HC has distinguished the decision in *Maa Sharada Wine Traders V. UOI, 2009 (15) STR 3(MP)*, wherein MP HC had held that packaging/ bottling of

*liquor is part of manufacturing activity of liquor and hence not liable to service tax.*

**Note:** The wording of Delhi HC decision in no uncertain terms state that the activity carried out by the job worker/ contract manufacturer was manufacture of alcoholic liquor for human consumption.

In the view of the author, whether such manufacture was for own person or another person (i.e. principal manufacturer), it would not change the fact that 'manufacture of alcoholic liquor' has taken place, the authority to levy tax on which rests solely with the States and not the Union.

In the view of the author, the amendment made by FA, 15 amending the definition of negative list to 'remove manufacture of alcoholic liquor' and bring contract manufacturing of alcoholic liquor within the ambit of service tax 'in pith and substance' is a tax on manufacture of alcoholic liquor, the power to tax which cannot be sourced from Entry No.97 of Union List due to specific power conferred on the States vide Entry No.51 of state List by the Constitution.

In the view of the author, the 'aspect doctrine' would also not apply since the wordings of the HC specifically state that 'manufacture by an entity for another entity/ person' is the nature of service.

While the author accepts that manufacture for another person is

an activity and hence a service, it is submitted that power to tax such activity has been provided specifically to States. Once tax on a specific activity has been conferred on the states, service tax, cannot be recovered on such services since the authority to levy service tax is Entry No.97 and the said entry would not operate where specific taxing powers have been conferred on the state.

*The manner of recovering tax on an activity, whether as goods (i.e. alcoholic liquor) or service (i.e. manufacture of alcoholic liquor) would not alter the fact that authority to impose tax on manufacture of alcoholic liquor has been provided to the states and hence entry no.97 of Union List would not operate in such a scenario as per Ujagar Prints V. UOI, 1988 (38) ELT 535 (SC).*

*Whether Services provided from SEZ unit of an entity to its own DTA unit, without consideration would be leviable to service tax?*

The Gujarat HC held that service tax would not be leviable in aforesaid case since value of services was NIL.

The HC relied on CCE V. L&T Ltd, 2016 (44) STR 391 (Guj) wherein it was held that there was no provision under FA, 94 to charge tax on deemed value/ consideration, when value of service charged was NIL.

*Principal Commissioner of Service Tax V. L&T Limited, 2016 (44) STR 369 (Guj)*

*Whether entire complexion of the order can be changed in the guise of rectification of mistake?*

The HC held in the aforesaid facts that entire complexion of the order cannot be changed while seeking to rectify order by imposing equivalent penalty and levying interest not levied earlier.

*CCE V. Capt. K.P. Dinakaran, 2016 (44) STR 374 (Ker)*

*Whether application for Served from India Scheme can be rejected without granting opportunity for personal hearing?*

The HC while remitting the matter back to the competent authority i.e Joint Director, DGFT held that application cannot be rejected without grant of personal hearing by Foreign Trade Development officer, who in this case was not even the competent authority to reject application in the first instance. *Leaap International Pvt Ltd V. Zonal Joint DGFT, Chennai, 2016 (44) STR 375 (Mad)*

*Whether display on advertisement on advertisement display sites would be liable to Service Tax or VAT?*

The HC held that advertisement sites were used by the assessee in this case for rendering advertisement services and no right to use advertisement site had been granted by the assessee.

HC held that mere display of advertisements on sites should not lead to a conclusion that the advertisers had acquired the right to use advertisement sites.

HC held that transfer of right to use goods entails delivery of the goods in question. Since the sites were located in restricted areas and advertisers were not having unmitigated access to the sites, it cannot be held that right to use site was transferred to the advertisers to make the transaction exigible to VAT.

The HC held that not every advertisement is displayed on hoardings, panels, display board, kiosks etc. *HC held that where movable property (i.e. goods in the form of hoardings, display boards)*

*are involved and there is a transfer of right to use such hoardings in favour of advertisers, then such transaction would be liable to VAT.*

The HC held that possession of such hoardings is a pre-requisite to impose VAT under right to use of goods.

The HC also noted that in case of **composite contracts** VAT would not be payable on entire contract irrespective of service element.

The HC held that in case of **indivisible contracts**, other than contracts, which by legal fiction are deemed to be divisible i.e. contracts u/a 366(29A) of the Constitution, the **dominant intention** of the parties to the transaction would be material to determine the nature of the transaction i.e. whether the transaction is a sale of goods or provision of service.

*Tim Delhi Airport Advertising Pvt Ltd V. Special Commissioner-II, Department of Trade & Taxes, 2016 (44) STR 399 (Del)*  
*Pre-Deposit to prefer Appeal under service tax before Commissioner (Appeals) & CESTAT.*

The HC held that amendment made to S.35F of CEA, 44 (r/w S.83 of FA, 94) restricting Tribunal & Commissioner (Appeals) not to entertain appeal unless pre-deposit is made will not apply to stay applications and appeals pending before aforesaid appellate authorities prior to amendment of aforesaid section.

The HC held that when statute itself makes it clear that right of appeal is subject to certain **restrictions** with effect from a particular date (16.8.14 in this instance), the general rule that law relating to appeal which is **vested right** that accrues to litigant on the date of commencement of *lis* would not be applicable.



*Muthoot Finance Limited V. UOI, 2016 (44) STR 569 (Ker)*

*Can the ground to claim benefit of exemption notification be taken for the first time before the Appellate Authority?*

The HC held that claim for benefit of exemption is a legal ground and can be raised for the first time before appellate authority though not raised before adjudicating authority. HC held that ground could be taken more so where revenue had not pointed out anything which would otherwise disentitle the assessee from the benefit of exemption.

*CST V. Bacha Finlease, 2016 (44) STR 590 (Guj)*

*From which date would interest be granted in case of delay in refund of pre-deposit?*

The HC held that relevant date for calculating interest in case of refund of pre-deposit is three months from the date of order. HC further held that there would no requirement on the assessee to file a formal refund application for claiming refund of pre-deposit and interest would be payable if such refund is not made within three months from the date of order.

*Shreewood Products Pvt Ltd V. CCE, 2016 (44) STR 592 (P&H)*

*What is the proper document to ascertain whether Cenvat Credit has been properly availed?*

The Tribunal held that only document to ascertain whether credit has been availed correctly or not is Cenvat Credit Account and not ST-3 Return. The Tribunal held that when there was no allegation that the Appellant have wrongly availed credit as per Cenvat Credit account and no corroborative

evidence of alleged wrong availment was adduced then Cenvat A/c must be treated as the proper document to determine Cenvat Credit availed.

*Chandigarh Network Systems Pvt Ltd V. CCE, 2016 (44) STR 603 (T)*

*Whether house-keeping service is an input service for a manufacturer?*

The Tribunal held that keeping factory premises neat and clean is a statutory requirement u/s 11 of Factories Act, 1948, without complying which, the manufacturing operations were not possible. Hence house-keeping service was in the nature of input service.

*Indian Additives Ltd V. CCE, 2016 (44) STR 611 (T)*

*Whether credit can be taken on the basis of Distributor's Invoice?*

The Tribunal held that distributor's invoice can be treated as duty paying document when the invoice had reference to manufacturer's invoice and the manufacturer's invoice showed distributor as consignee and also mentioned the appellant's name below with endorsement of delivery to them. The Tribunal further noted that the distributor's VAT invoice and manufacturer's invoice matched wrt description of goods. Hence the tribunal held that there was a clear link between the two invoices and credit would be allowable u/r 9 of CCR, 04.

*Allen Career Institute V. CCE, 2016 (44) STR 613 (T)*

*Whether refund of input services should not be given when the assessee is not a service provider and has not exported services?*

The revenue had granted refund on 'inputs' but rejected refund of 'input services' on the ground that assessee

was not a service provider and services had not been exported. Tribunal held that such a plea was not acceptable and that different yardsticks were not applicable for input service as compared to inputs to establish their nexus with the manufactured export product. The Tribunal held that such differences were not statutorily intended. Tribunal finally held that input services having been used in export of goods remained unutilized and hence said accumulated credit was refundable u/r 5 of CCR, 04.

*CCE V. Reliance Industries Limited, 2016 (44) STR 616 (T)*

*Whether input services can be claimed as drawback upon export?*

The Tribunal held that component of input service was included in the definition of drawback only from 13.7.06 as per Customs, Excise and Service Tax Drawback Rules, 95. **Hence Appellant was entitled to refund of credit on input service lying unutilised till 13.7.06 u/r 5 of Cenvat Credit Rules, 04 instead.**

The Tribunal held that for the period when there was no procedure laid down to claim refund u/r 5 of CCR,04, the substantive benefit of refund could not be denied for absence of procedure to claim the same.

In respect of refund claim on input services availed beyond place of removal, the Tribunal held that Cenvat Credit would be available to exporter for services availed upto port of export and that assessee would be entitled to refund of service tax paid on services received beyond place of removal for the period prior to 1.4.08.

*Matrix Clothing Pvt Ltd V. CCE, 2016 (44) STR 618 (T)*

# BENEFIT TEST IN TRANSFER PRICING

CA Sachin Kumar B P and CA A Omar Abdullah



## Introduction

We are living in a globalized world and it is the age of the global Multi-National Enterprise today. Majority of the economies of the world are dominated by the Multi-National Enterprise of various sizes as organisations spread their wings seeking newer markets or cost-saving benefits. One of the features of these MNE's being sharing of resources amongst the various locations to save costs. The sharing of resources results in rendering of Intra-group services. Therefore, Intra-group services are those which are performed by one member of a MNE for the benefit of one or more related members (located in different tax jurisdiction) of the same group.

In general, the categories of services that could be regarded as intra-group services include the following:

- management services;
- administrative services; coordination, budgetary control, financial advice, accounting, auditing;
- research and development;
- product development;
- technical services;
- purchasing, marketing and distribution;
- engineering services;
- staff-related matters, such as recruitment and training; etc.

The OECD Guidelines also identify certain services or activities that are deemed to be non-beneficial for the recipient thereof. As a result, those activities cannot be regarded as chargeable intra-group services. The main categories of non-beneficial services identified in the OECD Guidelines are:

- shareholder / custodial activities;
- duplicative services;
- incidental benefits received, solely attributable to being part of a group
- passive association benefits; and
- on-call services

India is host to a range of MNE's and the presence of such Intra-group service payments is a common feature in these MNE's. During the Transfer Pricing (TP) assessment it is common for the Transfer Pricing Officer (TPO) to analyse these Intra-group service payments in detail as services being intangible, there is a chance that associated enterprises (AEs) would indulge in payments for fictitious services. In many instances the TPO has arrived at an ALP value of 'Nil' for such Intra-group service payments by applying the 'Benefit Test' to these transactions. In this article we will be discussing the 'Benefit Test' applied to Intra-group services during the Transfer Pricing assessment in detail.

## Benefit Test

For benchmarking arm's length price of an International Transaction many

countries adopt the benefit test to ascertain whether intragroup services are actually provided or not. Even the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing guidelines give preference to benefit test which is discussed in subsequent paragraphs in detail.

## OECD Transfer Pricing Guidelines on Benefit Test

As per OECD TP guidelines of 2010 Chapter - VII there are two main aspects to be considered while determining the arm's length price of intra group services which are determined as under:

### a) Whether intra-group services have been rendered

Under the arm's length principle, the question whether an intra-group service has been rendered when an activity is performed for one or more group members by another group member should depend on whether the activity provides a respective group member with economic or commercial value to enhance its commercial position.

This can be determined by considering whether an independent enterprise in comparable circumstances would have been willing to pay for the activity if performed for it by an independent enterprise. If the activity or service is not the one for which the independent enterprise would have been willing to pay or perform for itself, the activity



ordinarily should not be considered as an intra-group service under the arm's length principle.

Further, benefits obtained from an intragroup service purchase or benefits expected from the transaction must be analysed from the perspective of both the parties

### b) Whether the amount of the charge, if any is in accordance with the arm's length principle.

Once it is determined that an intra-group service has been rendered, it is necessary to determine whether the amount charged for the transaction is at arm's length.

This means that the charge for Intra-group services should be that which have been made and accepted between independent enterprises in comparable circumstances.

To justify the arm's length nature of intra group services, the next step would be to Identify actual arrangements to

charge for intra group services. The 2 types of charging methods are :

- i. Direct charge method – More suitable where it is obvious that a service has been rendered and especially if the MNE rendered the specific services to unrelated third parties at the same time and the MNE has the ability to demonstrate a separate basis for charge;
- ii. Indirect charge method – Applicable only if similar services are not rendered to independent parties; Certain cost allocation and apportionment methods which necessitate some degree of estimation or approximation are adopted which must be sensitive to commercial features of individual case

### Benchmarking intragroup services - Transfer Pricing Guidelines – other countries

In considering the arm's length return for intra-group services the benefit

to the recipient of the services if any should be taken into consideration. If no benefit is received by the recipient of the service, as per common parlance no remuneration should be actually paid for such transactions as there is no benefit received by the recipient of service. When there is no benefit received by a related party in an International Transaction there is no requirement for consideration to be paid. When any consideration is paid without any benefit being received by the party then such consideration paid will not be considered as at arm's Length as there was no requirement for any consideration to be paid in the absence of benefit element in the transaction. A few countries have specific guidelines on benchmarking of Intra-group services for transfer pricing purposes. Below fig. 1.1 is an extract of Transfer Pricing guidelines on Intra-group services as per Singapore Transfer Pricing law.

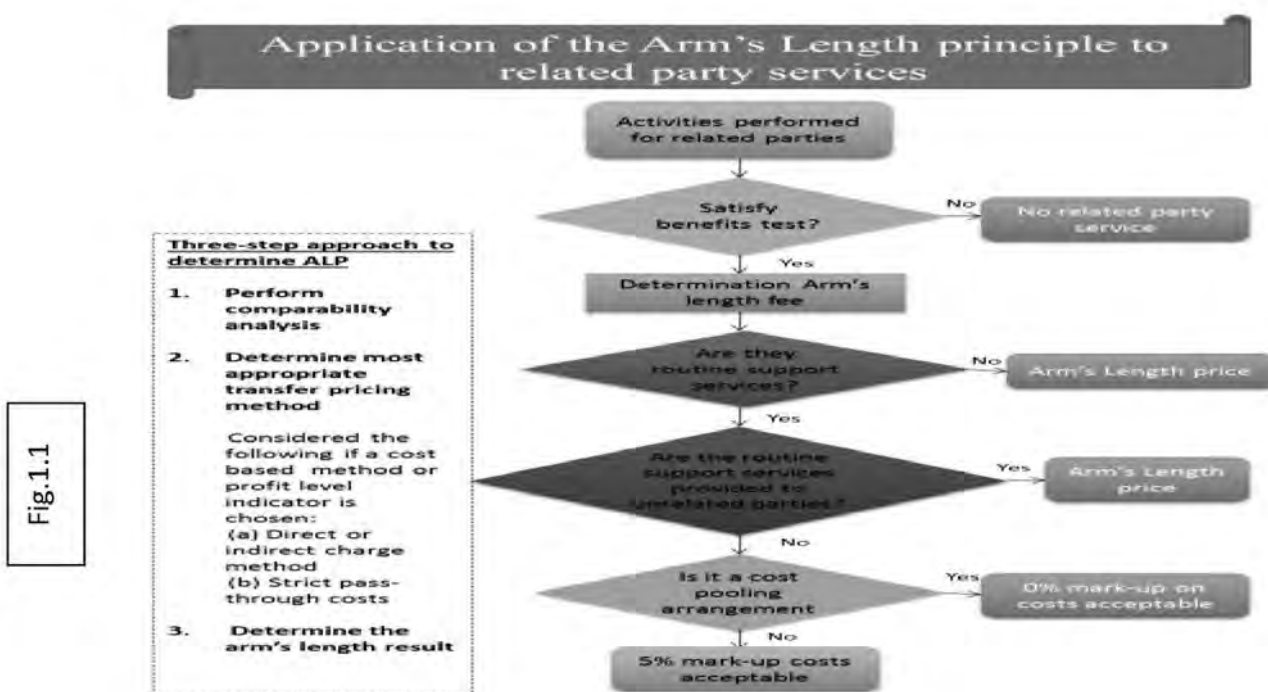


Fig.1.1

## **Intra-group services – Indian TP Landscape**

Unlike the Singapore TP guidelines as mentioned above, the Indian TP provisions do not contain any specific guidelines on Intra-group service payments. In many cases the TPO has arrived at an ALP value of 'Nil' arriving at a conclusion that no benefit has been obtained by the assessee from such intra-group service payments. These orders of the revenue authorities have been challenged before the judiciary to a degree of varying success.

### **Decisions in favour of the Assessee**

#### **Dresser Rand <sup>(1)</sup>**

- TPO/AO cannot question the commercial wisdom of the taxpayer
- Disapproved that since the taxpayer has qualified staff on its roll, there was no need to obtain such services from its AE
- Services availed by the taxpayer is legitimate – furtherance of its business interests entails such costs
- Allocation of cost on the basis of headcount and turnover is reasonable

#### **McCann India Pvt Ltd. <sup>(2)</sup>**

- Substantial evidence placed on record of benefits of services provided by AE
- Entity level benchmarking using Transaction Net Margin Method was accepted
- Assessing Officer (AO) cannot dictate the business needs. The term 'benefit' has wide connotations.

#### **Safran Aerospace India Private Limited <sup>(3)</sup>**

- Not necessary for the assessee to show that any legitimate

expenditure incurred by him was incurred out of necessity

- Not necessary to establish that it has resulted in any profit or income either in the same year or in any of the subsequent years
- Expenditure should have been incurred wholly and exclusively for the purpose of business

### **Decisions in favour of the Revenue**

#### **Gemplus India Pvt Ltd. <sup>(4)</sup>**

- The charge for management must be commensurate with the nature, volume and quality of services
- There were no evidence/details available on record to demonstrate the nature of services rendered
- The tribunal held that the expenses incurred should ideally be apportioned on the basis of actual services rendered to the individual units

In **Knorr-Bremse India Pvt Ltd.**<sup>(5)</sup> the tribunal had decided the case in favour of the revenue on the grounds that the perusal of the documents reveal that the activities are in the nature of shareholder activities and the intra-group services provide only incidental and passive association benefit has been provided by the AE. However, this was challenged before the High Court by the assessee, on the grounds that the revenue cannot question business expediency of a transaction and also as the assessee had adopted Transaction Net Margin (TNM) Method to benchmark transaction and Intra-group services need not be benchmarked separately since the revenue had not questioned the TNM Method. The P&H High Court in its November – 2015 order remanded the matter back to the tribunal arriving at

its conclusion that, *"on a reading of the orders of the TPO, the DRP and of the Tribunal makes it clear that one of the main reasons for not accepting the assessee's case was that the assessee had not been able to substantiate that the payment for the services had actually increased its profits. As we noted earlier, the TPO, in fact, further held that the assessee should have been able to show the level of increase in profit post the said transactions. We are unable to agree with this finding. The answer to the issue whether a transaction is at an arm's length price or not is not dependent on whether the transaction results in an increase in the assessee's profit. This would be contrary to the established manner in which business is conducted by people and by enterprises. Business decisions are at times good and profitable and at times bad and unprofitable. Business decisions may and, in fact, often do result in a loss. The question whether the decision was commercially sound or not is not relevant. The only question is whether the transaction was entered into bona fide or not or whether it was sham and only for the purpose of diverting the profits."*

### **Conclusion**

Benchmarking of Intra-group services has always been a challenge. Though the judiciary in many cases such as Knorr-Bremse case law which followed the precedent laid down by the decision of the Delhi High Court in **CIT vs. EKL Appliance Ltd.**<sup>(6)</sup> have consistently ruled that question of business expediency/benefit test cannot be a ground for making an adjustment to the transfer price for Intra-group service, nevertheless it is advisable



for assesseees to maintain substantial documents evidencing receipt of intra-group services (Eg: Written Contracts, Letters, Manuals, Proof of Visits, Time sheets, etc.,) for a smooth transfer pricing assessment process. Further, it is pertinent to note that under the Indian tax regulations, the primary onus to prove that the international transactions are at arm's length is on the taxpayer and the tax authorities have powers to make appropriate adjustments where such onus is not adequately discharged by the taxpayer.

The Base Erosion and Profit Shifting (BEPS) Action Plan 8-10 of the OECD

also have focused on the benchmarking of Intra-group service where Chapter – VII of the Action Plan defines a wide category of low-value adding Intra-group services and a simplified approach to benchmark the same. India has been a frontrunner in adoption of the BEPS recommendations and we may be soon witness to a change in the Transfer Pricing provisions of the Income-tax Act, 1961, incorporating the recommendations of the BEPS Action Plan 8-10.

References:

(1) Dresser-Rand India Private Limited v. ACIT [ (ITA no. 8753 / Mum / 10) dated 7 September 2011 ]

(2) McCann Erickson India Pvt. Ltd. v. ACIT (ITA No. 5871/Del/2011)

(3) Safran Aerospace India Private Limited v. DCIT (ITA No. 1261/Bang/2010)

(4) Gemplus India Private Limited. V. ACIT (ITA No.352/Bang/2009) Asst. Year – 2003 -04

(5) Knorr Bremse India Pvt. Ltd. V. ACIT (ITA No. 5097/Del/2011), Knorr Bremse India Pvt. Ltd. V. ACIT (ITA Nos.182 & 172 of 2013) (Punjab & Haryana HC)

(6) CIT vs EKL Appliances (ITA No 1068/2011 & 1070/2011) (Delhi High Court)

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# GST IMPACT ON SMES AND THEIR PREPAREDNESS

CA. M.S. Keshava



With the Central government coming out with a four tier GST rate structure of 6%, 12%, 18% and 26% in the recently concluded GSTN council meeting, the possibility of GST kicking in from 1<sup>st</sup> of April 2017 is even more certain. Few Small and Medium Enterprises (SMEs) who are still skeptical about the GST roll out will remain, a vanishingly tiny minority as the gap between GST ready and GST unsure segments widens. The kind of push that the government is giving to this path breaking indirect tax reform is resulting in GST information frenzy that can wash over and drenches you with so much GST material to put rest of the matters into a back burner.

In emerging economies like India, SMEs play a very significant role in the economic development. Formal SMEs employs over 80 million people and contributes up to, 40%-45% of the total exports and 20-22 percent of GDP. These numbers are significantly higher when informal SMEs are included. As per the fourth All-India Census of MSMEs (2006-07), 94 per cent of the enterprises are in the unorganized sector. SMEs are predominantly driven by self funded entrepreneurs and family businesses and are fundamentally strong in business aspects and conventionally conservative in their financial outlook or tax efficient business planning.

All along the governments, both at the center and state levels have nurtured this segment by providing some comfort zone to shield them from vicious competition posed by large players. The support could be in the form of investment-based subsidies, tax exemptions, registration thresholds, composition schemes, relaxation in statutory compliance procedures, etc. However, this era of protectionism is coming to an end. Once GST kicks in, SMEs have to be ready to compete with large payers and for this they have to update their knowledge and re-work on their models to survive in the business. This threat is also bringing in more opportunities in the form of level playing field, wider market availability due to uniformity in tax laws and tax rates, competitive pricing due to nullifying cascading effect, transparent tax administration, weeding away parallel unaccounted businesses, etc.

## Trading Enterprises: -

SMEs presently in the trading business would be registered under the state VAT laws once their threshold turnover exceeds the limits set in the respective states. As per the existing scheme of taxation, they are not coming under Central Excise and hence they become ineligible for CENVAT credit on their inward supplies. Similarly, there is not credit available for the CST paid on the purchase of merchandise or

capital goods. For example if any trader operating in Karnataka is sourcing his merchandise from a manufacturer in Maharashtra, he would be charged Central excise at the appropriate rate by the manufacturer and also 2% CST against Form C. In the absence of CENVAT / Input credits, these duties and taxes would add up to the cost of merchandise in the hands of the trader. Under the GST regime, this scheme is undergoing a change. The Karnataka trader will be charged IGST only at the prescribed rate by the Maharashtra manufacturer on the transaction value of the supplies. The entire IGST paid by the trader will be eligible for input credit and hence the cost to the trader will not include the taxes component. This should enable the traders to rework on their costing and become more price competitive in the market. This will not only help such enterprises consolidate and compete in the existing market but can also help to expand their market reach to other states as the pricing decision for interstate transactions becomes tax neutral.

While Section 143 of the Model GST law (MGL) provides for credit in the electronics credit ledger the amounts carried forward as VAT input taxes as appearing in the last return filed by the trader under the earlier regime, it is to be noted that, there is no credit for the Central excise and CST component



in respect of the closing stock held as on the appointed date. Therefore, it becomes extremely important for the trader to plan the transition well in advance and ensure that, minimum stocks of goods suffering Central Excise and CST is remaining in closing stock. Section 145, which deals with credit of un-availed input taxes, in its sub-section (1) clause (ii) stipulates that, eligibility for such un-availed credits of input duties and taxes in respect of inputs held in stock and inputs contained in semi finished or finished goods, is subject to the said taxable person being eligible for CENVAT credit on receipt of such inputs under the existing law as well as under the GST law.

Similarly, trader who is not eligible for CENVAT credit on Capital Goods in the present regime will not be entitled to claim credit on transition to GST. Hence, it is prudent on the part of the traders to rethink on their capital goods purchases and postpone it to post GST implementation, as the entire taxes paid under GST on such *eligible* capital goods will be available as input credit.

Further, traders operating branches in various states may be availing the benefit of inter branch stock transfer, which is presently not liable for CST on production of Form F. Going into GST, Section 3 of MGL expands the scope of supply cover transactions of inter branch stock transfer and hence there will be IGST liability, which will be based on the transaction value as arrived in terms of Section 15 (2). This may not impact the cost of the product as such since there is input credit available for IGST paid, but will certainly impact the cash flows and working capital.

Further, traders having taxable turnover below the threshold limits as per respective state VAT laws will have to realize that the threshold under GST, though higher in value terms, will be reckoned based on the *aggregate turnover*. As per Section 2 (6) of the Model GST law, "*aggregate Turnover*" shall include turnover of taxable supplies, non-taxable supplies, exempt supplies and export supplies. Thus, assuming a retailer presently in the groceries business selling food items, vegetables, fruits etc., which are non-taxable under the VAT laws may have turnover in excess of the threshold limit, say Rs.25 lakhs, may also be charging a nominal amount towards carry bags provided to the customers to carry the non-taxable merchandise sold by him. The turnover of these carry bags may not be significant but will still be a component of total turnover, in spite of this he will not be required to register under the VAT laws (as his turnover in taxable goods is lower than the threshold). However, under GST, since he will have "*aggregate TO*" in excess of the threshold limit and that will have of some component of "*taxable turnover*", he will not be a person supplying exclusively non-taxable goods / services and hence he will become one of the persons liable for registration as specified under Schedule III.

Hitherto, traders are not used to paying taxes on advances received for supply of goods. However, under GST the term consideration u/s 2 (28), includes advances received and appropriated against any supplies. Tax liability on such advances arises on receipt of such advance as per the "time of supply of goods" provisions of as laid out in

Section.12 of CGST/SGST law. Therefore, GST liability has to be discharged on such advances.

Unregistered SME traders under the present laws, may not have maintained proper records / documents for the input taxes paid on their inputs as there was no benefit available to them. However, going into GST they may become liable for registration and if they want to avail input credit on the closing stock held as on the appointed date, it becomes important for them to maintain proper records to ascertain the taxes component that is eligible for input credit on transition and also ensure that they carry invoice and / or such other document as may be prescribed in support of such claims, which should not have been issued earlier to 12 months from the appointed date [section 145 (1) (iv) & (v)].

One more important aspect that needs to be considered is that, the "*aggregate turnover*" under GST law will have to be construed as turnover of all supplies across the country effected by that legal entity and that will include supplies made from all the states. Thus, traders who presently enjoy independent threshold in each of the states, will have to gear up for registration and compliance under GST, in each of the states they operate from once their "*aggregate turnover*" on all India basis exceeds Rs.20 lakhs (Rs.19lakhs for registration) [for northeastern states including Sikkim, the threshold limits will be Rs.10 lakhs for payment and Rs.9 lakhs for registration].

#### **Manufacturers: -**

Manufacturers who are not under SSI exemption would be registered under

Central excise and also under VAT laws and will be paying both the taxes as applicable on the item manufactured. GST will help such entities in respect of registration, input credits and compliance, as the matters will get simpler for them under GST. Since such entities would be filing their returns both under central excise and VAT, they will be allowed to take credit u/s 143 the duties and taxes, both CENVAT and VAT carried forward in their last returns filed under respective laws. The only condition that needs to be satisfied here is that such credits should be admissible under the present regime and also under the GST regime. While CENVAT credit carried forward will be available as credit in CGST electronic credit ledger, the VAT credits will be available under SGST electronics credit ledger. Section 143 (2) provides for recovery of any amount of credits so carried forward if later found to be ineligible or recoverable, as a result of any proceedings initiated, such amounts shall be recovered as arrears of revenue under the GST law.

Manufacturers having taxable turnover not exceeding Rs.150 lakhs, presently enjoy SSI exemption as provided under notification 8/2003-CE. Going into GST, the threshold for all categories of persons, including SSI manufacturers will be Rs.20 lakhs / Rs.10 lakhs (NE states) of the "aggregate turnover" across all states. Hence most of the SSI manufacturers will now get pushed out of the exemption zone and will be exposed to the complex world of tax laws and compliance. SSI sector will lose out the tax exemption advantage and will be pitted against large manufacturers in a competitive environment. They have to now become

aware of the various benefits available under the GST law, including the input credit eligibility for inputs goods / services and capital goods and make best use of the available benefits to be price competitive in the market.

Unlike traders, SSI manufacturers coming into GST will be eligible for credits of un-availed CENVAT amount of input taxes in respect of closing stock of inputs, input component of semi finished goods and finished goods as provided u/s 145 and also on capital goods as provided u/s 144. This will be in addition to the credits u/s 143 of the unutilized VAT amounts as carried forward in their last returns. Therefore, they need to gear up and focus on their procurements, accounting, book keeping and documentation from now itself if they want to avail these benefits. It is important to note that the credit availability u/s 145 shall be calculated in accordance with the generally accepted accounting principles; hence it is advisable to follow such accounting principles, proactively so that, the eligible benefits will not be lost.

#### **Service Enterprises: -**

Service SMEs will experience a major impact in terms of rate of tax, transition, registration, compliance and input credits. Presently states do not have power to levy tax on services; therefore the effective rate of taxes remains to be 15%, inclusive of cess. However, going into GST few of these Services will be taxed @ 18% and over, which itself will be a huge impact on the cost of services to the end consumer.

Further, service SMEs having taxable turnover in excess of the threshold of Rs.10 lakhs, presently enjoy centralized

registration and filing only half yearly returns. Getting into GST, these entities threshold will be based on aggregate turnover as computed on all India basis. They will have to obtain state-wise registration in each of the states individually where they are making taxable supplies. Assuming a Chartered accountant firm has main office in Bangalore and small fixed establishments in four other states, in the existing scheme of things, they will be enjoying centralized registration at Bangalore and will be filing only two half yearly returns every year at Bangalore. Since the service tax is one single component levied, collected and administered by central government, the CENVAT credit eligibility is also reckoned on all India basis without any requirement to maintain state wise records. However under GST the scenario will be completely different, in as much as, these entities will not only be required to obtain registration in all the five states but will also have to file, like any other registered supplier of goods / services, monthly minimum three returns for each of the registered entities. As per the MGL they have to file GSTR-1, by 10<sup>th</sup> of every month giving details of outward supplies, GSTR-2 by 15<sup>th</sup> to reconcile auto populated inward supplies and GSTR-3 by 20<sup>th</sup> being consolidated return. This means they will be filing at least 15 returns every month for all the five entities put together. This is a huge compliance burden impacting the business model of the service SME under the GST regime. Further, the input credit eligibility also will get decentralized to the extent that, the input credits available for each of the states will have to be used towards



the GST liability arising in that respective state. Even though, CGST is levied under one single law across all states, it is indicated that ITC pool will be linked to registration and not legal entity. Hence, IGST, SGST and CGST of one state pool cannot be utilized for payment / liability in another state.

Inter entity supply of services will also attract tax under the GST regime. Presently the Bangalore establishment of the CA firm is not liable to pay service tax on any services that are provided to its Chennai or other establishment located elsewhere, however, under GST this will be inter state supplies and IGST will become liable. Though this may not impact the cost of services, as full credits will be available for such IGST paid, there will be cash flow / working capital issues faced by the entities.

SMEs registered under service tax law under the present regime, carrying any VAT suffered capital goods on the appointed date will not be eligible for VAT input tax credit on the transition to GST as there is restriction u/s 144 to say that only the entitled amount under the present law, which remains un-availed shall be available for input credit. Hence, if there are any plans for acquiring any capital asset that is eligible for input tax credits under GST, it is advisable to push such acquisition till GST is implemented.

#### **SMEs under Composition Scheme:-**

In the existing taxation scenario, the state governments under the respective VAT laws have provided for a simplified composition scheme for small businesses in the un-organised sector, especially in the works contract, hotels and catering businesses. Entities opting for this scheme pay a certain fixed percentage

or fixed amount as taxes on the total turnover. However, they are not allowed input credits on their inputs or capital goods. Since they are ineligible for input credits, most of these businesses do not pay attention to the input tax component on their procurements. However, under GST these entities may become ineligible for composition scheme or they may find it impractical to be under composition primarily because, Section 8 of the MGL which deals with the composition of taxes places lot of limitations on the part of the suppliers who opt for this provision.

As per Section 8 of the MGL, small suppliers having annual aggregate turnover not exceeding Rs.50 lakhs may be permitted to pay a certain fixed percentage, which shall not be lower than 1% as their tax on their total turnover. This is subject to liability under reverse charge that is liable u/s 7(3). There are certain conditions stipulated in the provisions to be eligible for this scheme. In the first place the threshold Rs.50 lakhs of "aggregate turnover" which will be reckoned on all India basis; Once any entity opts for composition scheme for any business vertical, then compulsorily it has to go under the same scheme for all business verticals operating under the same PAN; Persons having inter-state supplies are not eligible for this scheme; on availing this scheme, they will not be entitled to input tax credits; they will not be eligible to collect tax on their outward supplies because of which the persons buying from such suppliers will not get credit of the taxes. Further, if any person who has opted for composition is later found, by the concerned authority, to be ineligible

for such scheme then, such taxable person will not only be liable to pay taxes at such higher rates, but will also be liable for equal amount of penalty u/s 8 (3).

Considering these limitations, it is highly unlikely that many of the SMEs who are presently under composition will choose to continue as composition suppliers under GST. Persons who switch over from composition to regular scheme under GST will be allowed credit of eligible duties and taxes on inputs held in stock as provided u/s 146. The credit availability is subject to conditions as specified in clause (i) to (vii) of Section 146 (1).

Considering that the persons under composition scheme are mostly in the unorganized sector, they will be averse to maintenance of proper records to satisfy the conditions stipulated under section 146 to become eligible for such credits of duties and taxes held in stock as on the appointed date. If they want to avail the benefit provided under the law, they have to ensure maintenance of proper records to ascertain the input component of the eligible duties and taxes in respect of the stock held on the appointed date and use those goods for making a taxable supply under GST; they should be eligible for credits of such taxes under the present regime, but for they being under composition and also be eligible for credits under the GST regime; they should be in possession of invoice and / or such other document as may be prescribed supporting the eligible tax credit and such document should not have been issued earlier to 12 months from the appointed date.

What is noteworthy here is that service SME which did not have composition scheme option under the present regime, will also be eligible to opt for this scheme if their "aggregate turnover" is not exceeding Rs.50 lakhs p.a., provided all other conditions of section 8 are satisfied. Many of the small size SMEs, may avail this benefit and save trouble of complying with complex record maintenance or return filing, etc. They will still have to file one return in GSTR 4 on or before 18<sup>th</sup> of succeeding month at the end of each quarter.

#### **Job-Workers:-**

Presently job-workers need not take registration and pay taxes, as long as the principle manufacturer declares the job-worker's premises as his additional place of business and gives an undertaking that he takes the responsibility for the payment of taxes on such value addition done by job worker. Section 43A of the MGL provides to continue such benefit even under GST regime. However one important deviation that needs emphasis is that, section 43A only covers supplies of goods between the principal supplier and the jobworker and return of such goods. It does not cover the labour charges charged by the job worker. Therefore, exemption that is presently available under Notification 25/2012-ST dated 20.06.2012 may not be available under GST, going purely by the Model Law.

Section 151-152, provides a jobworker, on declaration to be filed on the appointed date, a window period of six months from the appointed date for return of goods received for job work prior to the appointed date, back

to any of the business premises of the registered taxable person who had earlier sent those goods for job work, without payment of taxes. This period of six months can be further extended by another two months by the competent authority, if sufficient cause for delay is established. However, if the goods are not returned within the said period or returned after the said period, job worker will have to pay GST treating such return as taxable supplies under GST and the principal manufacturer will also have to pay tax for not getting back the goods within the permitted time.

Therefore, it becomes important for the job worker to maintain proper records from now on and especially in respect of goods held for job work as on the appointed date to avoid payment of taxes under GST.

#### **Impact on working capital:-**

Most of the SMEs will find that, under GST there is going to be at least 15-20% increase in their working capital requirements, because of following reasons

- No concessional purchase benefit [C/F Form]
- Tax payable on stock transfers [Principal to/from Agent]
- Tax Payable on Advances
- No benefit for High sea / SICOI sales
- No SSI exemption; -Tax out flow under both CGST and SGST
- Interstate sales – Higher tax outflow
- Credit of input taxes available only on remittance by the vendors;

#### **Conclusion:-**

Large enterprises have geared up and are ready for the smooth transition into the GST regime and have created special GST cells in-house, to study the impact of the new legislation and also for migration from the existing regime. Understandably, they have affordability and financial viability to invest in such exercise while their SME counterparts are lacking in such luxury of resources. SMEs will look for help from professionals like Chartered Accountants, not only to understand the impact of the new law but also for a smooth transition into the GST regime in the most optimal way by utilizing the benefits available under the proposed GST law.

The general feeling is that, SMEs are yet to realize the impact of the GST on their businesses and prepare for the GST roll out. They might miss the bus and end up losing most of the transition benefits offered under the MGL unless they are educated and encouraged to start tracking their transactions, keeping proper records and documentation, etc. well in advance. Professionals like CAs, have to make them aware of the kind of additional financial resources that may be required under the GST regime considering the enhanced working capital needs, investments in technology, book keeping, compliance and manpower training, etc.

SMEs may also need help in identifying possible areas of concern so that they may collectively voice their grievances before the appropriate authorities and be heard so that any possible modifications / alterations in the law can be considered before it is rolled out.

## BANGALORE BRANCH OF SIRC OF ICAI

jointly with

**KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION**

Organises

# SPORTS AND TALENT MEET

## CRICKET & VOLLEY BALL LEAGUE

Date : **Sunday, 13<sup>th</sup> November, 2016.**

Time : **8:00 AM – 6:00 PM**

Venue : **HMT SPORTS CLUB, JALAHALLI.**



### Cricket Format

6 to 8 Overs per team, Tennis Ball  
Restricted to 10 Teams only.



**100m, 200m, 400m & 800m Athletics.**

400m Relay with Entry Fees **Rs.200/- (Per Team)**

Entry Fees : **Rs. 3500/- Per Team (CRICKET)**

**Rs:1000/- Per Team (VOLLEY BALL)**

Registration closes on 10th November 2016.

## TALENT MEET

On **Sunday, 20<sup>th</sup> November 2016**

Timings: **9:00AM - 6:00PM**



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

### Events CA'S

Shuttle Badminton (Singles/Doubles)

Chess

Table Tennis (Single)

Carrom

Tennis



### Family Members & Children

Shuttle Badminton (Doubles)

Singing Competition

Musical Chair

Drawing Competition for Children

Rangoli/ Flower Decoration

Instrumental /Dance

Carrom/ Chess



Events Fees: **For CA's : Rs.150/-** For Each Event, **Family Members & Children: Rs.50/-** For Each Event

Registration closes on 17th November 2016.

**Interested participants can contact & send registrations to:**

Bangalore Branch : Ms. Geetanjali - 080-30563500 / 513, Email: [blrregistration@icai.org](mailto:blrregistration@icai.org)

KSCAA office: 080 -22222155 Email: [kscaabl@gmail.com](mailto:kscaabl@gmail.com)/[info@kscaa.com](mailto:info@kscaa.com)

**CA. Pampanna .B.E**

Chairman, Bangalore Branch.  
9986752428

**CA. Raghavendra Puranik**

President, KSCAA  
9632245475

**CA. Raveendra.S.Kore**

Sports Meet Co-ordinator  
Bengaluru Branch.  
9902046884

**CA.Shravan Guduthur**

Secretary, Bangalore Branch.  
9844546161

**CA.Nagappa Nesur**

Secretary, KSCAA  
9886711611

**CA. Chandrashekara Shetty**

Chairman Public Relations  
& Sports Committee KSCAA  
9880722807

## Seminar on "Sector-wise Impact of GST"



Inauguration



Chief Guest  
CA. Rajendra Kumar P,  
Past Chairman, SIRC of ICAI



CA. Pampanna B.E.,  
Chairman



CA. Geetha A B.,  
Vice-Chairman



CA. Shivaram Bhat,  
Treasurer



Felicitation to the Chief Guest CA. Rajendra Kumar P



CA .Madhur Harlalka



CA Sai Prasad A



Mr. K S Naveen Kumar



Participants

## One Day Symposium on GST at SIT, Tumkur



Inauguration



CA Raveendra S.Kore,  
Chairman, SICASA



Participants

## Valedictory Session of the 19th Batch of the course on Finance for Non - Finance Executives



CA K Gururaj Acharya,  
Course Co-ordinator



Chief Guest  
CA K.S Madhava Murthy,  
Past Chairman, SIRC of ICAI



CA. Pampanna B.E.,  
Chairman



CA. Shravan  
Guduthur,  
Secretary



Participants

## SICASA How to face CA Exam



CA Sampathkumar R



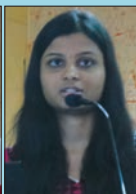
CA. Pampanna B.E.,  
Chairman



Rank Holder  
Mr. Abhishek V



Rank Holder  
Ms. Sathya S



Participants

## Ayudha Pooja



CA. Babu Jayendran

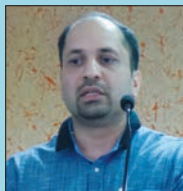


## CA Final Pre-Exam Crash Courses 27th Batch of GMCS Group

## Speakers at Study Circle Meetings



CS Vijay Kumar Sajjan



CA Amit Prabhu



CA M S Keshava



CA T R Rajesh Kumar



Sri. R.K Mishra, IRS,  
Director of Income Tax, CPC



## Interactive Session with CPC Officials