



Bangalore Branch of SIRC e-Newsletter

English Monthly

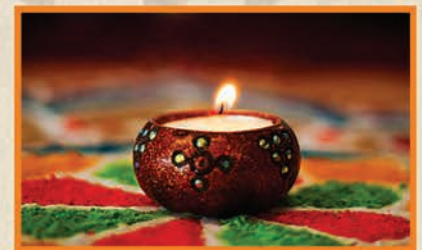
Volume 05 | Issue 3 | October, 2016 | Pages : 32

For Private Circulation only



Happy Dashara & Deepavali

- **GST Seminar on Sector-wise Impact Analysis**
on 15th October 2016
- **Seminar on**
“**Direct Taxes - Search, Seizure, Settlement & Penalty Provisions**”
on 5th November 2016
- **One Day Seminar on International Taxation**
on 12th November 2016



Chairman's Communique . . .



Dear Professional Friends,

Warm Greetings!!! Hope you have had good audit season. This milestone always test our rigor and resilience, but I am sure you have successfully completed all assignments on time. Most of the members either in industry or in practice would have been engaged in closing quarterly / half yearly accounts along with tax audits and filing of income tax returns. Our fraternity is known for taking challenges and we always withstand all pressure.

Now time to enjoy and celebrate the success with series of festivals. Dasara and Deepavali are the most celebrated festivals of India. These festivals give us strength to march towards excellence with more zeal and enthusiasm in our work. I wish these festivals bring great of success in all your business endeavours and more opportunities for all us to work together.

We celebrate, birth of Mahatma Gandhi, most revered personality in the world on 2nd Oct of every year. Once October comes, we always remember his most famous advice to all of us **"Strength does not come from winning. Your struggles develop your strengths. When you go through hardships and decide not to surrender, that is strength"**. His words are so true, hence let's not succumb on to any pressures and hardships, but these challenges will give us the opportunity to resurrect.

The month that was: September 2016

Most of our programs for the moth have been postponed due to Cauvery unrest. Many programs were not planned due to tax audit deadline.

The month ahead –October 2016:

We have planned to conduct few study circle Meetings which will be beneficial to our Members. We have a study circle meet on GST and a Seminar on GST wherein we have sector wise impact Analysis of GST on 15th Oct 2016 focusing on Manufacturing, Service and Trading sectors. Request all our

professional friends to register in advance to avoid last minute rush to conduct these significant programmes smoothly.

One day Seminar: "Direct Taxes on Search, Seizure and Settlement & Penalty Provisions" is also being organised on 5th Nov 2016 inviting very senior Resource persons. A workshop on International Taxation is also being organised to make the members to know more about the issues pertaining to transactions in the present International Business Scenario. On 3rd Wednesday of every month an interactive meeting with Managing Committee Members of the Branch including Regional Council Members and Central Council Members representing Bangalore are being organised in order to hear the member's queries and various matters affecting our profession and to share their inputs and suggestions. The first meeting will be organised on 16th Nov 2016 at 6pm at the Branch. In fact, I appreciate the initiative taken by CA Madhukar N Hiregange our Central Council Member and CA. Shravan Guduthur, Secretary of the Branch for the conduct of the above meetings.

We are happy to announce that VI Batch of Refresher course for Accountants will be launched on 17th Nov 2016 which is a fast forward course to make Accountants to be competent to prepare, present and analyse the Financial Statements and to complete the Audits smoothly. Members are requested to pass on this information to your clients and nominate your Accountants.

Further I am delighted to inform you that **two day National Convention for CA Students "UTKARSH – Elevation to Excellence" is being organised by BOS, ICAI at Bangalore on 10th & 11th Dec 2016**. Members are requested to nominate maximum number of students to make this mega event a grand success. We will be commencing regular coaching classes for IPCC & Final May 2017 examinations by 28th Nov 2016.

The details of all the afore said events are uploaded in our website-www.bangaloreicai.org and are published elsewhere in this e-newsletter.

Once again on behalf of Bangalore Branch of SIRC of ICAI, I request you to join our International Conference **Jnana Yajna - "The Quest for Excellence" in large numbers on 22nd & 23rd Oct 2016 at Hyderabad and make the same a resounding success**. Also request you to join the programmes being organised by Bangalore Branch, to update ourselves, to serve our clients, upholding the quality of our esteemed profession.

Wishing you all a Happy Dashara & Deepavali festivals.

With warm regards

CA. Pampanna B E
Chairman

CALENDAR OF EVENTS - OCTOBER & NOVEMBER 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
05.10.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet ROC Annual Filings & Related Matters CS Vijay Kumar Sajjan VENUE: Branch Premises	 2 hrs
12.10.2016 Wednesday	No Programme	—
14.10.2016 Friday 6.00pm to 8.00pm	Tax Clinic - Direct Taxes Transfer Pricing - Basics with practical approach CA Amit Prabhu VENUE: Branch Premises	 2 hrs
15.10.2016 Saturday 09.30am to 5.30pm	Seminar on "Sector-wise Impact of GST" Delegate Fees: Rs. 1000/- VENUE: Branch Premises <i>Details in Page No.: 5</i>	6 hrs
19.10.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet GST: Impact on SME Sector CA M S Keshava VENUE: Branch Premises	 2 hrs
20.10.2016 Thursday 10.00am onwards	Seminar on Emergence of National Company Law Tribunal - The Challenge Ahead Delegate Fees: Rs. 2000/- Registration Begins at 9.30am VENUE: BCIC, No.3/4, 3rd Floor, C Block, Unity Buildings, JC Road, Bangalore -560002	No CPE
26.10.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Interactive Session with CPC Officials Sri. R.K Mishra, IRS, Director of Income Tax, CPC along with other officials VENUE: Branch Premises	 2 hrs
28.10.2016 Friday 6.00pm to 8.00pm	Tax Clinic - Indirect Taxes Discussion on Recent Amendments and Important Case Laws in Indirect Taxes CA T R Rajesh Kumar VENUE: Branch Premises	 2 hrs
02.11.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Impact on GST on Real Estate Sector CA. Badrinath N R VENUE: Branch Premises	 2 hrs
05.11.2016 Saturday 09.45am to 5.45pm	Seminar on "Direct Taxes - Search, Seizure, Settlement & Penalty Provisions" Co-ordinator: CA Prashanth G S Delegate Fees: Rs. 1750/- <i>Details in Page No: 6</i> VENUE: The Chancery Pavilion Hotel Bangalore #135, Residency Road, Bangalore - 560 025	 6 hrs



CALENDAR OF EVENTS - NOVEMBER 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
09.11.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Direct Taxes -Latest Case Laws- An analysis CA. Narendra J Jain VENUE: Branch Premises	 2 hrs
11.11.2016 Friday 6.00pm to 8.00pm	Tax Clinic - Direct Taxes Trusts & Taxation CA P V Srinivasan VENUE: Branch Premises	 2 hrs
12.11.2016 Saturday 09.45am to 5.45pm	One Day Seminar on International Taxation Co-ordinator: CA Gurunath Kanathur Delegate Fees: Rs. 1750/- VENUE: The Chancery Pavilion Hotel Bangalore #135, Residency Road, Bangalore - 560 025	 6 hrs

Special Programmes for CA Students - Oct. & Dec. 2016

organized by SICASA of Bangalore Branch at Bangalore Branch Premises

Date	Topic	Speakers	Timings
01-10-2016 Saturday	Industrial Visit	Industrial Visit to M/s.NSL Sugars Ltd, Koppa, Maddur Taluk, Mandya District	8.00 am to 2.00 pm
08-10-2016 Saturday	How to Face CA Examination	CA Sampathkumar R & Rank Holders of May 2016 Examinations: 1) Ms.Sathya S (40th Rank, Final) 2) Mr. Abhishek V (13th Rank, Final)	5.30 pm to 7.30 pm
10th & 11th December, 2016	"UTKARSH" Students National Conference	Details in Page No: 8	

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

CA Raveendra S Kore
SICASA, Chairman

Advertisement	COLOUR FULL PAGE	INSIDE BLACK & WHITE	EDITOR :
Tariff for the	Outside back ₹ 40,000/-	Full page ₹ 20,000/-	CA. PAMPANNA B.E.
Branch	Inside front ₹ 35,000/-	Half page ₹ 10,000/-	SUB EDITOR :
e-Newsletter	Inside back ₹ 30,000/-	Quarter page ₹ 5,000/-	CA. SHRAVAN GUDUTHUR
	Advt. material should reach us before 22nd of previous month.		

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.

Seminar on "Sector-wise Impact of GST"

Organised by **Bangalore Branch of SIRC of
The Institute of Chartered Accountants of India**



On **Saturday, 15th October 2016**

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

Time: **09.45am to 5.30pm**

Timings	Topics	Speakers
09.45am to 10.00am	Inaugural Session	CA. Rajendra Kumar P <i>Past Chairman, SIRC of ICAI</i>
10.00am to 11.30am	GST India –Implementation & the road ahead	
11.30am to 11.45am	Tea Break	
11.45am to 01.15pm	Impact of GST on Manufacturing Sector	CA. A Sai Prasad
01.15pm to 02.15pm	Lunch Break	
02.15pm to 03.45pm	Impact of GST on Service Sector	Mr. K S Naveen Kumar, <i>Advocate</i>
03.45pm to 04.00pm	Tea Break	
04.00pm to 05.30pm	Impact of GST on Trading Sector	CA. Madhur Harlalka

CA. Pampanna B. E

Chairman

Bangalore Branch of SIRC of ICAI

CA. Shravan Guduthur

Secretary

Bangalore Branch of SIRC of ICAI

DELEGATE FEES FOR MEMBERS: ₹ 1000/-

NON-MEMBERS: ₹ 1725/- (INCLUSIVE OF SERVICE TAX)

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

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

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

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



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

Organised by **Bangalore Branch of SIRC of
The Institute of Chartered Accountants of India**

**6 hrs
CPE**

On **Saturday, 05th November 2016**

Venue: **The Chancery Pavilion Bangalore**, #135, Residency Road, Bangalore - 560 025

Time: **09.45am to 5.45pm**

Timings	Topics	Speakers
09.45am to 10.15am	Inaugural Session Opening remarks by the Seminar Co-ordinator	CA. Prashanth G S
10.15am to 11.30am	Taxation of Trusts & Institutions under section 115TD of the Income tax Act, 1961	CA. H Naginchand Khincha
11.30am to 11.45am	Tea Break	
11.45am to 01.00pm	Recent Amendments in Penalty Provisions	CA. D Devaraj
01.00pm to 02.00pm	Lunch Break	
02.00pm to 03.15pm	Law relating to Search & Seizure including search related assessments	CA. A Shankar
03.15pm to 03.30pm	Tea Break	
3.30pm to 04.45pm	Landmark Judicial Pronouncements	CA. K R Pradeep
4.45pm to 5.45 pm	Panel Discussion with emphasis on Dispute Resolution Scheme & Settlement Commission	<i>Moderator:</i> CA. S Ramasubramanian <i>Panelists:</i> CA. H Naginchand Khincha CA. D Devaraj CA. A Shankar CA. K R Pradeep

CA. Pampanna B. E

Chairman

Bangalore Branch of SIRC of ICAI

CA. Prashanth G S

Co-ordinator

CA. Shravan Guduthur

Secretary

Bangalore Branch of SIRC of ICAI

DELEGATE FEES FOR MEMBERS: ₹ 1750 /-

NON-MEMBERS: ₹ 3000/- + SERVICE TAX

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

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

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

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

IMPORTANT DATES TO REMEMBER DURING THE MONTH OF OCTOBER 2016

Due Date	Statute	Compliance
5th October 2016	Excise	Monthly Payment of Excise duty for the month of September 2016
	Service Tax	Monthly/Quarterly Payment of Service tax for the month for September 2016
6th October 2016	Excise	Monthly E- Payment of Excise duty for the month of September 2016
	Service Tax	Monthly/Quarterly E- Payment of Service Tax for the month of September 2016
7th October 2016	Income Tax	Deposit of Tax deducted / collected during September 2016.
10th October 2016	Excise	Monthly Performance Reports by Units in EOU, STP, SEZ for September 2016.
15th October 2016	VAT	Payment and filing of VAT 120 under KVAT Laws for month ended September 2016 (for Composition Dealers).
		Quarterly Payment and filing of VAT 100 under KVAT Laws for quarter ended September 2016.
	Provident Fund	Payment of EPF Contribution for September 2016 (No grace days).
		Return of Employees Qualifying to EPF during September 2016.
		Consolidated Statement of Dues and Remittances under EPF and EDLI For September 2016.
		Monthly Returns of Employees Joined the Organisation for September 2016.
		Monthly Returns of Employees left the Organisation for September 2016.
	Income Tax	Quarterly filing of E-TCS Returns for the quarter ended 30th September 2016.
17th October 2016	Income Tax	Annual return of income for the assessment year 2016-17 if the assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner (of a firm whose accounts are required to be audited).
		Due date extended vide Order u/s 119 dated 9th September 2016.
20th October 2016	VAT	Monthly Returns (VAT 100) and Payment of CST and VAT Collected/payable During September 2016.
	Professional Tax	Monthly Returns and Payment of PT Deducted During September 2016.
21st October 2016	ESI	Deposit of ESI Contribution and Collections of September 2016 to the credit of ESI Corporation.
25th October 2016	Service Tax	Half yearly return for the period April 2016 to September 2016
30th October 2016	LLP	E-Filing of Statement of Account & Solvency in Form – 8 for the F.Y 2015-16.
	Income Tax	Furnishing of Quarterly TCS certificate in respect of tax collected by any person for the quarter ending September 30, 2016.
31st October 2016	Income Tax	Quarterly filing of E-TDS Returns for the quarter ended 30th September 2016.



National Convention for CA Students @ Bengaluru



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

Venue : **Sophia School Auditorium,**
Basaveshwara Circle, Bengaluru

Organized by **Board of Studies, ICAI**

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

Time	Particulars
Day 1 - 10th December 2016, Saturday	
08.00am to 09.30am	REGISTRATIONS
09.30am to 11.00am	INAUGURAL SESSION
11.00am to 12.00pm	Interaction and Open House with BOS CA. Babu Abraham Kallivayalil , Chairman, BOS, ICAI CA. Dhiraj Kumar Khandelwal , Vice-Chairman, BOS, ICAI CA. Babu K , Chairman SICASA, SIRC of ICAI
12.00pm to 12.15pm	TEA BREAK
12.15pm to 01.30pm	TECHNICAL SESSION I Session Chairman: CA M P Vijaykumar , CCM, Chennai Topics: Ind AS – IFRS – How is India meeting Global Reporting Standards?
01.30pm to 02.30pm	LUNCH BREAK
02.30pm to 03.30pm	TECHNICAL SESSION II Session Chairman: CA Madhukar N. Hiregange , CCM, Bangalore Topics: 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	TECHNICAL SESSION III Session Chairman: CA S. Ganapathy , Chennai Topics: Risk Based Auditing in Information Technologies Environment
04.45pm to 06.00pm	TECHNICAL SESSION IV Session Chairman: CA Mohandas Pai , Bengaluru* Topics: "DEBATE"-CA Student's responsibility in technology actually a boon or a bane?
06.30pm to 08.00pm	CULTURAL PROGRAMME
08:00pm onwards	DINNER

Day 2 - 11th December 2016, Sunday	
08.00am to 08.45am	Walkathon – SWACHH BHARAT Be the change you want to see in the world
08.45am to 09.30am	BREAKFAST
09.30am to 10.30am	SPIRITUAL SESSION / MOTIVATIONAL SESSION
10.30am to 11.45am	TECHNICAL SESSION V Session Chairman: CA Padamchand Kincha H , Bengaluru Topics: International Taxation in the present Global Business Scenario & Domestic Transfer pricing
11.45am to 12.00pm	TEA BREAK
12.00pm to 01.15pm	TECHNICAL SESSION VI Session Chairman: CA. Gururaj Acharya K , Bengaluru Topics: Companies Act 2013 – 16 What a Drastic Change! Role of CAs
01.15pm to 02.15pm	LUNCH BREAK
02.15pm to 03.30pm	SPECIAL SESSION – QUIZ Quiz Master: CA. Cotha S Srinivas , SIRC-Vice Chairman, Bengaluru
03.30pm to 03.45pm	TEA BREAK
03.45pm to 05.00pm	MOTIVATIONAL SESSION: "Dream, Design and Decode the Alchemist within" By CA. T N. Manoharan , Past President of ICAI, Chennai
05.00pm to 05.30pm	VALEDICTORY SESSION

*Invited & awaiting for confirmation

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

Students are hereby requested to register for the Convention at the earliest as per the following details:

Registration fees	Rs. 600/- per student	Accommodation (if required) @ Rs. 500/- per student
Payment Mode	Cash or DD/Cheque to be drawn in favour of Bangalore Branch of SICASA , payable at Bengaluru for Online Registration: http://bangaloreicai.org/index.php/our-events	

For registration queries contact: **Ms. Geethanjali D**

Southern India Chartered Accountants Students' Association (SICASA)

ICAI Bhawan, #16/0, Millers Tank Bed Area, Vasanth Nagar, Behind Mahaveer Jain Hospital, Bangalore- 560052,
Karnataka State, India | **Ph: 080-30563511 / 513** | **Email: blrsicasa@icai.org** | **www.bangaloreicai.org**

Students (pursuing Practical Training/Industrial Training) are invited to contribute papers for presentation (1500 to 2000 words) for topics in Technical-Sessions and submit for approval a soft copy of the Paper at blrsicasa@icai.org by 31.10.2016 and a hard copy of the same along with Student's Photograph (with his/her name on the back of the photograph), ICAI Students' Registration Number, Course pursuing, complete postal address, Mobile, Landline numbers and e-mail ID be also sent to the Bangalore Branch of SIRC of ICAI, SICASA, 16//0. Millers Tank Bed Area, Vasanthnagar, Bangalore-560052, Karnataka State.

Outstation student speakers shall be reimbursed actual travelling expenses equivalent to 2 tier AC and DA @ Rs.1500/- per day for lodging and incidental expenses etc. *(It is suggested that the students submitting the papers may tentatively book train tickets pending selection of their papers. This may enable them to have confirmed train tickets.)*

Students who are interested to participate in the cultural programme are requested to register before 20/11/2016 at Bangalore Branch of SICASA of SIRC of ICAI.



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

Duration:

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

17th, 18th, 24th, 25th & 26th 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:

Affix
Passport size
photograph

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 / blrprogrammes@icai.org
Website: www.bangaloreicai.org



IMPACT OF IND AS ON FINANCIAL REPORTING

CA Mohan R Lavi



Approximately 350 listed companies presented their financial statements as per Ind AS for the quarter ended 30th June 2016 in compliance with the road map announced by the Ministry of Corporate Affairs last year. Comparatives were provided for the quarter ended 30th June 2015 along with reconciliation to profits which enabled users to decipher the major areas of difference between present AS and Ind AS.

If one were to list out the top 5 Ind AS Standards that had an impact on the financial results of companies they would be Financial Instruments, Presentation of Defined Benefit Plans in Other Comprehensive Income (OCI), Property Plant and Equipment, Revenue Recognition and Income Taxes. The impact of the standard on Financial Instruments is not surprising since the equivalent standards under Indian GAAP were recommendatory when they were issued in 2004 and are still recommendatory. Financial Instruments will find a place in any reconciliation statements because the fair values of financial assets and financial liabilities would change whenever financial statements are reported due to the diktat of mark-to-market accounting. In the case of a few companies, fair valuing financial instruments turned their profits as per Indian GAAP into losses. The permanent parking of Actuarial Gains and Losses in OCI was expected

since the OCI is a new statement in the Indian reporting scenario. Some large manufacturing companies took the trouble of capitalizing spare parts and major inspection costs as per Property, Plant and Equipment. Ind AS standards believe in the mantra of deferring revenue and discounting provisions to present value which a few companies did. Where there are financial results, there will be deferred taxes- almost every company presented this as a reconciling item. Though India initially has apprehensions about prescribing an

accounting standard for Agriculture, tea companies presented their pre-harvest assets as Biological Assets.

Impact on BSE 100 companies

Out of 100 companies that form a part of the BSE 100, 30 companies did not present their financial statements as per Ind AS due to the fact that they were either banks, financial institutions or insurance companies or because they were following a different accounting period. Out of the remaining 70 companies, the areas of highest impact were as presented below:

Area	Ind AS	No of companies (out of a sample of 70 companies) that presented a difference
Gains/Losses on Defined Benefit Plans in OCI	Ind AS 1	42
Share-Based Payment	Ind AS 102	11
Property, Plant and Equipment	Ind AS 16	25
Fair Value of Investments	Ind AS 109	40
Fair Value of Financial Assets	Ind AS 109	14
Fair Value of Financial Liabilities	Ind AS 109	12
Measurement and Amortized Cost	Ind AS 109	14
Mark to Market accounting	Ind AS 109	14
Biological Assets	Ind AS 41	1
Associates	Ind AS 28	5
Joint Ventures	Ind AS 111	1
Business Combinations	Ind AS 103	1
Others		42
Deferred Taxes	Ind AS 12	57
Inventory	Ind AS 2	2

Area	Ind AS	No of companies (out of a sample of 70 companies) that presented a difference
Leases	Ind AS 17	11
Revenue	Ind AS 11/ Ind AS 18	16
Provisions	Ind AS 37	6
Exchange Differences	Ind AS 21	6
Intangibles	Ind AS 38	7

The table confirms the fact that Ind AS 109, Ind AS 12, Ind AS 16 and Ind AS 11/18 had the maximum impact on financial reporting. Ind AS 1 for parking actuarial gains/losses in Other Comprehensive Income and Ind AS 12 for Deferred Taxes were expected to feature in any list given the very nature of those standards.

Impact on Profits

For the quarter ended 30th June 2015, the total profits of these 70 companies improved by Rs 37,795 crores. Previous GAAP profits were Rs 201,87,615 crores whereas the profits under Ind AS was Rs 202,25,410 crores. However, based on these numbers, a conclusion cannot be reached that a transition to Ind AS would improve profits. Out of the 70 companies analysed, 29 reported a reduction in profits on conversion to Ind AS while 41 reported an increase in profits. For the quarter ended 30th June 2015, Tata Motors reported the highest increase in profits of Rs 2461.12 crores despite making the highest provision for Expected Credit Losses of Rs 330. 57 crores. The profits increased primarily due to the reversal of the exchange gain that was accumulated in the Foreign Currency Translation Monetary Reserve Account. On the other hand, Power Grid Corporation reported the highest

reduction in profits on translation to Ind AS. The profits of Power Grid Corporation reduced by Rs 1087 crores mainly on account of Depreciation, Amortization, Transmission, Administration and Other Expenses due to recognition/derecognition of assets.

Impact on Specific Industries

The population of 70 companies was further analysed into industries based on the classification of industries as provided by the Bombay Stock Exchange to ascertain if the impact on specific industries could be ascertained. The increase in profits of Rs 37,795 crores was spread out across different industries as tabulated below:

Sum of Profit change	
Row Labels	Total
Aluminium	-4609
Auto	-5705.28
Auto	247241
Auto Ancillaries	3248
Breweries & Distilleries	-831
Broadcasting and Cable TV	-6558
Castings & Forgings	65
Cement	1279
Chemicals	5492
Cigarettes	-9935
Computers	1975
Computers	-600

Row Labels	Total
Construction & Contracting	540.77
Diversified	259
Engines	62
Infrastructure	-16
Infrastructure	-17593
Metals	1934
Mining & Minerals	-1371
Miscellaneous	39
Oil Drilling And Exploration	-12805
Paints & Varnishes	-27
Personal Care	-7010
Pharmaceuticals	14042
Plantations	-21
Power	9135
Power	-104377
Power - Generation & Distribution	14115
Refineries	-3272
Steel	-107987
Steel	-7746
Telecommunications	28788
Grand Total	37751.49

While the results of a single quarter may not be representative of how transition to Ind AS would impact entities, a general trend seems to be that capital intensive sectors such as Infrastructure and Steel have been heavily impacted while services sectors have not had such a heavy impact. It will be possible to arrive at a conclusion only when the results of the next few quarters and for the year ended 31st March 2017 are published and analysed.

Presentation of Excise Duty

There was confusion about the manner of presenting Excise Duty against Income from Operations due to a conflict between the Ind AS Compliant



Schedule III to the Companies Act, 2013 and SEBI requirements. While Schedule III mandated Revenue from Operations to be reported inclusive of Excise Duty (Gross), SEBI Circulars permitted reporting Revenue net of Excise Duty. Due to this, there was variance in reporting amongst companies. On September 20, 2016, the stock exchanges have informed all listed filers to present Excise Duty under the Gross Method only. Thus, we can expect uniform reporting for the September quarter.

Disclaimer

Some companies put in a disclaimer in their quarterly reports giving them the flexibility to change the numbers reported. The disclaimer went like this:

"There is a possibility that these quarterly financial results along with the provisional financial statements as of and for the year ended March 31 2016, may require adjustment before constituting the final Ind AS financial statements as of and for the year ending March 31 2017 due to changes in financial reporting requirements arising from new or revised standards or interpretations

issued by the MCA or changes in the use of one or more optional exceptions from full retrospective application of certain Ind AS as permitted under Ind AS 101"

Difference but not difference

One company identified the line item that could be different but concluded that there was no difference.

Sl No	Particulars	30.06.2016	30.06.2015
1	Net Profit(Loss) as per previous GAAP	948.78	-803.03
2	Ind AS adjustments on account of recognition and measurement of financial instruments	0	0
3	Net Profit(Loss) as per Ind AS	948.78	-803.03

Bangalore Branch of SIRC of ICAI

is looking for immediate outright purchase of commercially converted land measuring

between 20,000 to 40,000 sq. feet in Bengaluru- preferably in

Basavanagudi, Jayanagar, Banashankari, JP Nagar,

BTM Layout, Rajajinagar, Malleshwaram, Vijayanagar, and surrounding areas

with proper and good approach road with 40 feet width, preferably a Prime Location having

connectivity to Metro / Bus Station with clear title and / or Commercial Building

between 40,000 to 60,000 Sq. Ft. built up area, constructed strictly as per BBMP approved plan

without any deviation, OC Certificate is a must. Ready to move.

Interested parties can send mail

blrbldgicai@gmail.com, blradmin@icai.org | Ph: 080-30563508

CUSTOMS: REMOVAL OF MANDATORY WAREHOUSING REQUIREMENTS FOR EOUs, STPIs, EHTPS ETC.

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



Background

Notification 52/2003 - Customs dated 31.03.2003 read in conjunction with Chapter 6 of the Foreign Trade Policy (FTP) provides for manufacture of goods and supply of services by Export Oriented Units (EOUs), Electronics Hardware Technology Park Units (EHTPs), Software Technology Park Units (STPIs) and Bio-Technology Park Units (BHTPs), etc. Specified goods have been exempted when imported for use in the units, from payment of Customs duties, subject to various conditions. One of the conditions stated in the aforesaid notification pertains to warehousing of the said imported goods, by obtaining a license as a warehouse under Section 58 of the Customs Act, 1962 and permission under Section 65 of the Act, as a manufacture-in-bond facility.

The Government in order to ensure ease of doing business has examined the need of the mandatory warehousing provisions applicable to the above referred units and has issued Circular 35/2016-Customs dated 29.07.2016, as per which the need to comply with warehousing provisions by these units has been done away with.

In addition, Notification No. 44/2016-Customs dated 29.07.2016 has been issued amending the Notification No. 52/2003 - Customs

dated 31.03.2003 to give effect to the removal of the warehousing provisions as per the aforesaid circular.

Circular No. 35/2016-Customs dated 29.07.2016

- The Government in the said circular has examined the benefit of the warehousing provisions to the above referred units. Warehouses are facilities set up for customs duty deferment where the imported goods can be stored without payment of duty and the applicable duty is required to be paid only at the stage of their clearance from the warehouse.

However, in case of the above-referred units, the need for duty deferment is irrelevant as the goods procured by them are exempt from duties of customs under Notification 52/2003-Customs dated 31.03.2003, subject to certain conditions. Thus, the warehousing provisions only adds to the compliance burden of these units without adding to either improved monitoring by the department or providing any additional facilitation to them. Hence, for the purpose of ease of doing business, the warehousing provisions for the above referred units has been removed.

- As a consequence of the removal of the warehousing provisions, the above referred units shall stand delicensed as warehouses under Customs Act, 1962 w.e.f. 13th August, 2016. However, these units shall continue to adhere to other provisions of Notification 52/2003-Customs dated 31.3.2003, Foreign Trade Policy and other applicable notifications.
- Further, with the condition of warehousing being dispensed, the warehoused goods register (warehousing bond register) shall also not be required to be maintained w.e.f. 13th August 2016. However, in order to maintain records of receipts, storage, processing and removal of goods, imported by the units, it has been prescribed that the units shall maintain records of imported goods, in digital form, based upon data elements contained in Form A (attached to the aforesaid circular).
- In addition, the circular also prescribes the requirement of the software to be used by these units for maintenance of their digital records. The software to be used for maintenance of digital records must incorporate the feature of audit trail which means a secure, computer



generated, time-stamped electronic record that allows for reconstruction of the course of events relating to the creation, modification, or deletion of an electronic record and includes actions at the record or system level, such as, attempts to access the system or delete or modify a record.

- A digital copy of Form A, containing transactions for the month, shall be provided to the proper officer, each month (by the 10th of month) in a CD or Pen drive, as convenient to the unit.
- In view of the removal of the warehousing procedures for the above referred units, the system of sending re-warehousing certificates to the customs station of import shall also stand dispensed w.e.f. 13th August 2016.
- In place of the re-warehousing certificate procedure, the following is prescribed:
 - The Units shall continue to obtain / furnish a Procurement Certificate at the Customs Station at the time of import or pre-authenticated procurement certificates, as applicable to them;
 - Upon receipt of goods in the unit, a copy of the relevant bill of entry shall be provided to the jurisdictional office;
 - The jurisdictional office shall reconcile the imports with procurement certificates.
- Presently, in case of inter-unit transfer of capital goods and

manufactured goods, a procedure of bond to bond movement is followed. However, the same has now been removed and the following procedure is required to be followed:

- Any procurement by one unit from another should be supported by a procurement certificate or pre-authenticated procurement certificates, as applicable;
- The supply of the goods from one unit to another shall be based upon the usual commercial documents, such as, invoice & delivery challan;
- Upon receipt of goods, copies of documents shall be provided to the jurisdictional office of the sending and receiving unit by way of intimation;
- It is to be noted that the basic conditions stipulated and the procedural compliances prescribed in the notifications issued under customs permitting duty free procurement of inputs and capital goods by the above referred units are still required

to be fulfilled. The relaxation to the units is only in respect of the warehousing provisions to which these units were subjected to till 12th August 2016.

Authors Comments:

The introduction of the Circular 35/2016-Customs dated 29.07.2016 and Notification No. 44/2016-Customs dated 29.07.2016 shows the Government's intention towards the ease of doing business in India. The Government's decision of doing away with the warehousing provisions for the above referred units is a welcome relief and will reduce the compliance burden for the above referred units.

Our firm of Chartered Accountants require young Chartered Accountants for the post of Audit Managers. A flair for practice will be an added merit. We offer attractive package for deserved candidates.

Nature of work includes Statutory Audits, Internal Audits, Income-tax Audits, Due Diligence Audits, etc.

Please send resume by e-mail
phillipos18@gmail.com

OR contact

M/s. Phillipos & Co.

Chartered Accountants

47, Wheeler Road, P.B. No.534,

COX TOWN, BANGALORE-560 005

Tel: 080 - 25467223 / 4 AND 080 - 41251474

Advt.



TAX UPDATES - AUGUST 2016

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

VAT, CST, ENTRY TAX, PROFESSIONAL TAX

PARTS DIGESTED:

92 VST – Part 2 & 3

85 KLJ – Part 7

Reference / Description

[2016] 92 VST 210 (Karn. – HC): Asst. CCT (Audit) and others v. Federal Mogul Goetze (India) Ltd. - In the instant case the Honourable Division Bench of Karnataka High Court held that where the dealer files the revised return with additional tax liability, by virtue of Circular No. 5 of 2008 dated 07.07.2008, the Assessing Officer has to accept such revised return though filed beyond prescribed period of limitation.

Thus, the Court quashed the order of the Assessing Authority passed ignoring revised return filed by the dealer.

[2016] 92 VST 214 (Karn. – HC): Jones Lang Lasalle Property Consultant India (P.) Ltd. - In the instant case the Honourable Karnataka High Court held that when the dealer claims input tax credit in the return filed beyond the prescribed period, admitting the additional tax liability, by virtue of Circular No. 5 of 2008 dated 07.07.2008, the Assessing Officer has to accept the said return and the allow the credit.

The Court distinguished its own decision in the case of *State of Karnataka v. Centum Industries Pvt. Ltd.* [2016] 77 VST 117 (Karn. – HC), by holding that in the aforesaid case, question was with regard to the allowance/disallowance of claim of input tax credit claimed by the dealer, in the return not related to the tax period during which the input tax was paid. However, the question of allowance/disallowance of input tax credit claimed by the dealer in the revised return admitting the additional tax liability did not arise.

In other words, the Court held that in case of *Centum*, the Court did not find that even if the input-tax credit is claimed for the respective tax period for which the return has been filed resulting into additional tax liability, then also input-tax credit cannot be given adjustment thereof or would be unavailable.

[2016] 92 VST 360 (Guj. – HC): Mahadev Enterprise v. State of Gujarat and Another - In the instant case a revision notice was sent to the dealer proposing to disallow the input credit on the purchases made by the dealer from O for the reason that registration of O has been cancelled ab initio.

On appeal before the Honourable Gujarat High Court, the Court observed the impugned input tax credit relates

to the period April 2006 to March 2007 and the registration certificate of O had been cancelled on 01.07.2010 w.e.f. 01.01.2007. When the original assessment order was passed, the order cancelling the registration certificate of O did not form part of the record of the Assessing Authority.

In view of the above, the Court held that revision proceedings under Section 75 of the Gujarat Value Added Tax Act, 2003 had been initiated on the basis of the material which did not form part of the record of the order passed by the Assessing Authority. Therefore, the initiation of revisional proceedings being based upon material extraneous to the record of the order passed by the Assessing Authority, the invocation of jurisdiction under Section 75 of the GVAT Act, itself was vitiated.

2016 (86) KLJ 432 (Karn. – Trib.) (DB): Jindal Aluminium Ltd. v. State of Karnataka - In the instant case the Honourable Division Bench of Karnataka Appellate Tribunal has held that once the dealer has restricted input tax credit under Section 11(a)(6) read with Section 14, on furnace oil, the Assessing Authority once again cannot restrict the input tax credit on the very same goods under Section 17(4) read with Rule 131, as it is not the intention of the Legislature to restrict the input tax credit two times.



INCOME TAX

PARTS DIGESTED:

- a) **385 ITR – Part 4 & 5**
- b) **386 ITR – Part 1 is to 4**
- c) **240 Taxman – Parts 5 & 6**
- d) **48 ITR (Trib.) – Part 3**
- e) **49 ITR (Trib.) – Part 5**
- f) **159 ITD – Part 4, 5 & 9**
- g) **50 CAPJ – Part 2**
- h) **48-A BCAJ – Part 5**

[2016] 386 ITR 123 (Delhi): CIT v. Halliburton Export Inc. - In the instant case the question that arose before the Honourable Delhi High Court was whether the consideration received by the Assessee on sale of pre-packaged software was 'royalty' or 'fee for technical services' and was, therefore, not taxable as business income.

The Honourable Delhi High Court held that the similar question had arisen for consideration in the case of DIT v. Infrasoft Ltd. [2014] 220 Taxman 273 (Delhi), wherein the Delhi High Court had held as under:

- (a) Merely authorizing or enabling a customer to have the benefit of data or instructions contained in software without any further right to deal with them independently does not, amount to transfer of rights in relation to copyright or conferment of the right of using the copyright.
- (b) The right to use a copyright in a programme is totally different from the right to use a programme embedded in a cassette or a CD which may be a software and the payment made for the same cannot be said to be received as

consideration for the use of or right to use of any copyright to bring it within the definition of royalty as given in DTAA. What the licensee has acquired is only a copy of the copyright article, whereas the copyright remains with the owner and the licensee have acquired a computer programme for being used in their business and no right is granted to them to utilize the copyright of a computer programme and thus payment for the same is not in the nature or royalty.

Thus, the Court following its earlier decision held that the consideration received by the Assessee on sale of pre-packaged software was not 'royalty'.

[2016] 386 ITR 128 (Cal. – HC): CIT v. Shree Balaji Glass Manufacturing Pvt. Ltd. - In the instant case Assessee borrowed funds from two companies A and P in which it had substantial interest. Company A lent money out of reserve and surplus; it had insufficient accumulated profit. However, Company P had some accumulated profit, which was lent and balance sum was paid out of share premium account.

Assessing Officer treated loan amounts as deemed dividend in hands of assessee company under Section 2(22)(e) of the IT Act.

On appeal before the Honourable Calcutta High Court, the Court held that share premium does not constitute accumulated profits or even profits of a company; and where money was lent out of reserve and surplus representing share premium and not from accumulated profits, there would be no deemed dividend in hands of recipient.

It further held that, even if an amount

was paid out of accumulated profits same would not fall within mischief of section 2(22)(e) when such payment had been made in ordinary course of its business of money lending which was substantial part of business of lending company.

[2016] 386 ITR 229 (P&H – HC): CIT (TDS) v. Canara Bank - In the instant case the Assessing Officer passed order under Section 201(1)/201(1A) for not deducting tax at source under Section 194A(1) on interest credited/paid on the fixed deposit receipts purchased by the New Okhla Industrial Development Authority (NOIDA)

On appeal before the Honourable Punjab and Haryana High Court, the Court observed that Notification dated 22.10.1970 issued under Section 194A(3)(iii)(f) exempts any Corporation established by a Central, State or Provincial Act from deduction of income-tax.

In view of the above, it held that in the instant case, since NOIDA was a Corporation established by Uttar Pradesh Industrial Area Development Act, 1976 and as per provisions of Industrial Area Development Act NOIDA had been constituted by State Act, it would be entitled to exemption of payment of tax at source under Section 194A(1).

[2016] 386 ITR 267 (Raj. – HC): Principal CIT v. Rajasthan State Seed Corporation Ltd. - In the instant case, the Honourable Rajasthan High Court held that contribution to the LIC Group Gratuity Scheme claimed as deduction under Section 36(1)(v) cannot be denied when the application filed by assessee is pending for approval with commissioner for almost 25 years.

In other words, the Court held that once an application had been moved for approval and the same had not been rejected, the claim of contribution could not have been disallowed merely because the Commissioner had not accorded approval.

[2016] 240 Taxman 510 (Guj. – HC); 68 taxmann.com 329 (Guj. – HC):

Principal CIT v. Swastik Industries - In the instant case the Honourable Gujarat High Court held that payment of compensation made by assessee-firm to its retiring partners was to be treated as goodwill, and since, goodwill is an asset under Explanation 3(b) to Section 32(1), assessee's claim for depreciation on said payment was to be allowed.

[2016] 240 Taxman 567 (Karn. – HC); 71 taxmann.com 192 (Karn. – HC): CIT (Exemptions) v. Bangalore Baptist Hospital Society - In the

instant case the question that arose for consideration before the Honourable Karnataka High Court was whether the assessee is eligible claim for depreciation on assets put into use during the accounting year, even though the entire cost of the assets have been claimed by the assessee as an application of income for charitable activities and when the amendment made to Section 11(6) of the IT Act by the Finance Act (No. 2) of 2014, denies the depreciation in respect of any asset, acquisition of which has been claimed as an application income in the same or any other previous year.

The Court following its earlier decision on a similar issue in the case of DIT v. Al-Ameen Charitable Fund Trust [2016] 383 ITR 517 (Karn. – HC), held that amendment made in Section 11(6) is prospective in nature and it would operate with effect from 01.04.2015.

Therefore, the instant case being related to the assessment year 2010-2011, the aforesaid amendment does not apply. Thus, the Court held that the assessee's claim for depreciation on assets was to be allowed even though entire cost of those assets had been claimed as an application of income for charitable activities.

TS-514-HC-2016(KAR): Sri. Fatheraj Singhvi and others - In the instant case the Honourable Karnataka High Court quashed intimation under Section 200A levying fees for delayed filing of TDS return under Section 234E of the IT Act by holding that amendment made to Section 200A by the Finance Act, 2015, enabling the Assessing Officer to make adjustment by levying fee under Section 234E is applicable w.e.f 01.06.2015 and has prospective effect.

Therefore, the Court held that intimation raising demand prior to 01.06.2015 under 200A levying late fees under Section 234E is not valid. However, the Court clarified that if the demand has already being paid/met, this judgment will not enable any refund. Further, the Court kept open the issue on constitutional validity of Section 234E of the IT Act.

TS-469-HC-2016(BOM): CIT v. Knight Frank (India) Pvt. Ltd - In the instant case the Honourable Bombay High Court held that Section 145A(a) restricts its ambit only to valuation of purchase and sale of goods and inventory and would not apply to service tax billed on rendering of service as service tax billed has no relation to any goods nor does it have anything to do with bringing goods to a particular location.

TS-479-AAR-2016: Mahindra-BT Investment - In the instant case the

Assessing Officer held that Mahindra-BT Investment (Mauritius) (i.e. applicant), is liable to tax in India in respect of transfer of shares in Tech Mahindra Ltd. ('TML') to AT&T International USA carried in March 2010 on the following basis:

- (a) That the applicant was incorporated without any 'economic substance' and its sole purpose was to hold shares to facilitate tax neutral share-transfer and
- (b) The real transaction was only between TML and AT&T and the applicant company was merely a nominee company
- (c) The control and management of applicant was situated in India under Section 6(3) and hence it was taxable in India for its transaction relating to transfer of Indian company's shares

On application before the AAR, the AAR Ruled observed and ruled as under:

- (a) It was commercially agreed between TML and AT&T that the latter would be offered an opportunity to become a shareholder of TML only when AT&T had given certain level of business to TML for which certain milestones were set. There is nothing unusual or abnormal about such conditions in the Option agreement. Thus rejected the Revenue's stand of 'economic test'.
- (b) There is nothing wrong in the applicant holding the shares and transferring the same at a later stage as per the options agreement and on fulfilment of conditions by AT &T as per the agreement.
- (c) The residency tests contained under Section 6(3) of the IT Act, states that, the control and management should



be 'wholly' in India. In the instant case control and management of applicant was not 'wholly in India' as from a perusal of minutes of Board meetings of Mauritian company, it is noticed that various important decisions on financial matters, approving financial budget, dividend declaration decisions, share buy-back, option agreements, etc were taken in Mauritius by the applicant's Board of Directors.

Thus, the Court held that applicant, is not liable to tax in India in respect of transfer of shares in TML to AT&T carried in March 2010.

TS-487-AAR-2016: Dr Reddy Laboratories Limited - In the instant case the Authority for Advance Ruling ruled that service fee payable by the Applicant to its Russian subsidiary ('DRL Russia') under the Service Agreement for providing product promotion services, cannot be regarded as FTS either under Section 9(1)(vii) of the IT Act or under Article 12 of India-Russia DTAA.

The AAR rejected the Revenue's stand that medical representatives of DRL Russia were providing consultancy services to applicant by noting that medical representatives of DRL Russia merely promoted the goods by way of meeting doctors and pharmacies and their activities are executory in nature, since such services do not entail the rendering of advice to the applicant.

Further, it ruled that there is no evidence to suggest that the reports prepared by medical representatives have been utilized by DRL India in respect of brand promotion or for deciding the strategy for sale of goods in Russia and there is no evidence to suggest that applicant is

consulting DRL Russia in pursuance of the agreement for promotion of goods, therefore it cannot be considered as providing consultancy services.

AAR distinguishes Revenue's reliance on AAR ruling in case of International Hotel Licensing Company [TS-5014-AAR-2006-O] wherein it was contended that services provided in the form of advertising, marketing promotion, sales program amounted to rendering of managerial and consultancy services, by holding that reports prepared by DRL Russia are merely statistical in nature and do not support this stand. Thus, ruled that the services relating to promotion of goods cannot be categorized as consultancy services.

AAR also rejected Revenue's alternate stand that services rendered pursuant to the service agreement were managerial services, clarifying that the job of medical representatives is merely to meet doctors and pharmacies, such jobs cannot be said to be managing the affairs of DRL India in Russia.

TS-492-HC-2016(MAD): Dinamalar - In the instant case the assessee, a newspaper publication house had claimed depreciation at the rate of 60% on computerised counting and stacking machine being classified by it as 'computer machineries'. The Assessing Officer applying the functionality test held the same as plant and machinery, eligible for depreciation at the rate of 15%.

On appeal before the Honourable Madras High Court, the Court held that Assessee cannot invent its own nomenclature add the word computer which is not there in invoice and then proceed to claim depreciation at the rate of 60% with the argument that they are

computers. It held that computerised counting and stacking machine are plant and machinery as they help in easier typesetting and faster printing of newspaper and automated stacking of newspaper in correct numbers.

It further held that any machinery using computer as one of the components cannot be classified as 'computers' for depreciation purposes because that computer in the machine cannot be used for any other purpose.

2016-TIOL-2174-HC-KAR-IT: SS Jyothi Prakash v. Addl. CIT - In the instant case the Honourable Karnataka High Court held that until and unless there is some evidence to indicate that in the transaction of purchase of property, extra consideration had flowed, the report of DVO cannot form basis of any addition on the part of the revenue.

Thus, the Court held that in the instant case, since there was no evidence other than the report of DVO, it could not be relied upon for making addition.

2016-TIOL-2171-HC-MUM-IT: Supermax Personal Care Pvt Ltd v. Asst. CIT - In the instant case the Honourable Mumbai High Court held that stay of demand can be allowed, even when the tax demand is huge, if assessee undertakes not to dispose of and/or alienate its property till the time appeal is decided on merits.

[2016] 71 taxmann.com 210 (Bang. – Trib.); [2016] 240 Taxman Part 6 (Weekly Browser): Cyber Park Development & Construction Ltd. v. Dy. CIT - In the instant case the Honourable Bengaluru Tribunal has held that where no expenditure had been incurred by assessee for purpose of earning dividend income from mutual

funds, question of disallowance under Section 14A does not arise.

[2016] 71 taxmann.com 210 (Bang. – Trib.); [2016] 240 Taxman Part 6 (Weekly Browser): Cyber Park Development & Construction Ltd. v. Dy. CIT - In the instant case the Honourable Bengaluru Tribunal has held that leasehold rights on land do not fall in category of intangible asset as defined under Section 32(1)(ii), therefore do not qualify for allowance of depreciation.

[2016] 71 taxmann.com 214 (Pune – Trib.); [2016] 240 Taxman Part 6 (Weekly Browser): Vikas Keshav Garud v. ITO - In the instant case the Honourable Pune Tribunal has held that where assessee intended to let property and took appropriate efforts in letting property but ultimately failed to let same, in terms of section 23(1)(c) its ALV had to be treated as nil being less than sum referred to in section 23(1)(a) of the IT Act.

[2016] 71 taxmann.com 184 (Bang. – Trib.); [2016] 240 Taxman Part 6 (Weekly Browser): Dy. CIT v. JSR Constructions (P) Ltd. - In the instant case the Honourable Bengaluru Tribunal has held that where amount of loan was given by assessee was less than interest free funds available with it, disallowance of interest was unjustified.

[2016] 71 taxmann.com 184 (Bang. – Trib.); [2016] 240 Taxman Part 6 (Weekly Browser): Dy. CIT v. JSR Constructions (P) Ltd. - In the instant case the Honourable Bengaluru Tribunal has held that when books of accounts were as such rejected, question whether creditors appear in such books were there or ceased to exist, would become irrelevant.

[2016] 71 taxmann.com 246 (Chand. – Trib.); [2016] 240 Taxman Part 6 (Weekly Browser): Nand Lal Popli v. Dy. CIT - In the instant case the Honourable Chandigarh Tribunal has held that where profit declared by assessee as per scheme of presumptive taxation under Section 44AD was accepted, Assessing Officer could not make separate addition under Section 69C of the IT Act.

[2016] 71 taxmann.com 172 (Bang. – Trib.); [2016] 240 Taxman Part 6 (Weekly Browser): Page Industries Ltd. v. Dy. CIT - In the instant case the Honourable Bengaluru Tribunal has held that where assessee entered into licence agreement with a foreign company for sale of readymade garments under a particular brand name, since licensor company did not participate in capital and management of assessee-company as required under Section 92A(1), both companies could not be regarded as AE of each other.

[2016] 48 ITR (Trib.) 328 (Amritsar): Yadwinder Singh v. ITO - In the instant case the Honourable Amritsar Tribunal held that the provisions of Section 68 are not attracted where the assessee does not maintain books of account.

[2016] 159 ITD 373 (Ahmd. – Trib.); 70 taxmann.com 158 (Ahmd. – Trib.): Surat Textile Mills Ltd. v. Dy. CIT - In the instant case assessee-company was declared as sick industry. Consequently, as per rehabilitation scheme, all credit amounts of capital nature, like, equity share capital account, secured loan accounts etc. were transferred to credit of rehabilitation account and said credit was, then, used to adjust debit balance of profit and loss account. On assessee's net worth became positive, assessee

deducted unabsorbed depreciation from book profits to calculate minimum alternate tax under Section 115JB of the IT Act.

The Assessing Officer disallowed said deduction on the basis that once the assessee has made credits in the P&L account by way of restructuring, then, the debit balance would be considered as wiped out from the P&L Account, and therefore, no loss/unabsorbed depreciation would be available.

On appeal before the Honourable Ahmedabad Tribunal, the Tribunal held that restructuring credits brought into profit & loss account against accumulated debit balance while giving effect to rehabilitation scheme would not extinguish loss and depreciation from accounts of assessee in actual terms. Such loss would be available as per accounts prepared under Parts-II and III of Schedule-VI of Companies Act and, therefore, assessee will be entitled to claim reduction of loss/unabsorbed depreciation, whichever is lower, from book profit.

[2016] 159 ITD 402 (Chennai – Trib.); 70 taxmann.com 340 (Chennai – Trib.): Mrs. V.R. Usha v. ITO - In the instant case, the Honourable Chennai Tribunal held that where ownership of assessee over property was subject to life interest retained by her mother in said property, it could not be said that assessee owned said property fully and it could not be a reason to deny exemption under Section 54F claimed by assessee on sale of her another property.

[2016] 159 ITD 600 (Mum. – Trib.); 69 taxmann.com 431 (Mum. – Trib.): Mahindra Telecommunications Investment (P) Ltd. v. ITO - In the



instant case, Assessee-company, pursuant to an agreement with US telecommunication company AT&T Global, invested in 26 per cent of equity capital of AT&T India and balance 74 per cent was held by AT&T Global, i.e., to extent of cap on foreign investment under extant Government policy. US company had an irrevocable call option to increase its holding in AT&T India to extent permissible by laws in India by requiring assessee to sell shares to AT&T Global or its affiliates at option price. Option price was defined as equity contribution plus return at 11 per cent per annum compounded annually. Assessee was also entitled to annual call option fee.

The issue that arose for determination before the Honourable Mumbai Tribunal was whether the income by way of return on 'equity' accrued to the assessee from day-to-day, i.e., on the basis of the holding period, for each previous year comprising the holding period, or would accrue only on the sale of shares, i.e., on the exercise of the put option or, equivalently, call option by AT & T Global.

As per the assessee, the income had not accrued inasmuch as the option had not been exercised, i.e., accrued and would only be so on the (sale) transfer of shares.

As per the revenue, the income being defined to arise on the basis of time, i.e., as a linear function of and by elapse of time, accrued to the assessee on time basis and, accordingly, income worked out as accrued for the impugned year, reflected by an increase in the option price during the year, was brought to tax.

On appeal before the Tribunal, in view of facts it held that assessee's investment in shares was qualitatively very different from shareholding of, or rights as a shareholder of a private company, and shares became highly illiquid, and that increase in share price would arise irrespective of performance of company, nor arrangement was a financial arrangement, increase in option price during year could be said to be income accrued to assessee and assessable to tax as business income.

[2016] 70 taxmann.com 389 (Raipur – Trib.); [2016] 48-A BCAJ 577: ACIT v. Jindal Power Ltd. - In the instant case the Honourable Raipur Tribunal held that voluntary expenses incurred, prior to 01.04.2015, on corporate social responsibility are deductible. Explanation 2 to Section 37(1) inserted with effect from 01.04.2015 providing that expenditure incurred on corporate social responsibility referred to in Companies Act, 2013, shall not be deemed to be an expenditure incurred for purpose of business or profession does not have retrospective effect.

[2016] 70 taxmann.com 261 (Pune – Trib.); [2016] 48-A BCAJ 578: S.R. Thorat Milk Products (P) Ltd. v. ACIT - In the instant case the Honourable Pune Tribunal held that share application money pending allotment would be allowable as revenue expenditure. Share application money per se cannot be characterised and equated with share capital. Obligation to return the money is always implicit in the event of non-allotment of shares in lieu of share application money received.

[2016] 48-A BCAJ 583 (Mum. – ITAT); [ITA No. 2318/Mum/2016, dated

04.05.2016]: Subhi Construction Pvt. Ltd. v. ACIT - In the instant case the Honourable Mumbai Tribunal held that while computing annual value of the property, municipal taxes of the property are to be deducted even though a part of the property has been let.

Shri Ravindra Sunku and another v. ITO (International Taxation) - In the instant case the Honourable Bengaluru Tribunal held that in case of joint ownership of property (property purchased by the husband and wife in the joint names), the share of the co-owner shall be determined as per the ratio of their contribution in the purchase consideration

CBDT Order F.No. 282/227/2016-IT (Inv.V) dated 21.09.2016 - CBDT has issued following orders in respect to Income Declaration Scheme:

- (a) Where a declaration has been made in respect of an issue under IDS and an identical issue is also pending for years not covered by IDS, 'lenient view' be taken while levying penalty in case of income addition involving identical issue in non-IDS years;
- (b) Adds a condition that the person should pay tax and interest on such issue for non-IDS years and such person shall be treated as having "co-operated" within the meaning of Section 273A;
- (c) Directs Pr. CIT/CIT to adopt a lenient view on receipt of a valid application u/s 273A for issues that are identical to the issue on which a valid declaration is made under the Scheme for non-IDS years subject to payment of entire amount payable under the Scheme.



DIGEST ON RECENT DECISIONS UNDER COMMERCIAL TAX LAWS

CA Annapurna D Kabra

I) Ajanta Digital Lab, Rajajinagar, Bengaluru Vs. The Commercial Tax Officer (Audit – 2.2), Bengaluru and Others -2016(85) Kar. L.J. 653 (HC)

Facts:

The appellant is engaged of processing and supplying of photographs, photo prints, and photo negatives running their photo studios within the state. The issue raised is whether there exist any liability to pay tax, and if there exist any such liability, then whether the claim towards input tax credit, deduction of labour charges etc., shall also be allowed under the KVAT Act, 2003.

Grounds of Appeal:

The appellant submitted that while it is held that processing and supplying of photographs, photo prints, and photo negatives running their photo studios amounts to works contract based on Apex Court decision in the State of Karnataka vs. Pro lab and others 2015(81) Kar.L.J.377 (SC), the Assessing Authority while computing the tax payable under the KVAT Act should allow the deductions towards input tax credit, labour and like charges as specified in KVAT law. The Appellant has not declared in the monthly return as it was challenged before the Courts towards levy of tax on such contracts.

Judgment:

The court has directed the Assessing Authority to allow the available deductions and input tax credit as per law, which was claimed before the assessing authority during re-assessment proceedings.

Views:

One school of thought can be that if the dealer has not claimed the deductions or input tax credit in monthly returns but if it is claimed during the assessment proceedings, the assessing Authority should allow the deductions towards labour and like charges or claim of input tax credit as per the Books of Accounts under the KVAT Law

II) K. Siddappa and Others v. State of Karnataka and Others. -2016(85) Kar. L.J. 704 (HC).

Facts:

The appellant deals in the sale of liquor. The terms of the license conditions issued to a dealer states that the liquor sold across the counter to consumers at the sale price not exceeding the MRP indicated on the label of the container on the bottle vide Rule 3(2). No such restriction is imposed on Bars and Restaurants, Boarding houses and lodges etc. covered under the notification. In the present case, the petitioner has challenged the Notification No. FD 21 CSL

2014(II), dated 28/02/2014, dealing with the exemption of sale of liquor by dealers holding licenses CL-9 and CL-4, CL-6 or CL-7, contending that the notification is discriminatory and unconstitutional.

Grounds of Appeal:

The condition of license itself, enables the appellant to sell the liquor at a price irrespective of the MRP. Hence, the legislature has brought this class of dealer under the purview of taxation. This amendment has been brought into effect via notification dated 28-02-2014. The Bars and Restaurants located in the rural areas do not have the advantage of catering to the class of customers of economic superiority which are therefore, exempted. Thus, the impugned notification exempts liquor sold by dealers holding license CL-9 operating in rural areas in comparison with the liquor sold by a person holding a CL-7 license which would form a separate class of dealers.

Judgment:

The classification of dealers based on value addition criteria for the purpose of tax levy and exempting the dealers based on area criteria cannot be held discriminatory. Therefore, the notification exempts such rural dealers holding license CL-7 from discharging tax. Hence, it can be held that there



is no element of discrimination in the notification issued.

Views:

The rural dealers holding CL-7 are able to sell the liquor to the customers in the Boarding houses and lodges, at a rate, higher than the MRP, unlike the rural dealers holding license CL-9 who sell liquor over the counter in bars and restaurants

III) K.M.C Constructions Limited, Indiranagar, Bangalore v. The Deputy Commissioner of Commercial Taxes (Audit and Recovery), Bellary and Others. - 2016(85) Kar. L.J. 625 (HC) (DB).

Facts:

During the course of proceedings of Appeal the appellant has discharged 30% of the tax demanded, but when the application for interim stay was made, the Tribunal directed for furnishing of the Bank Guarantee of remaining 70% of the amount. Initially, the appellant accepted to submit the bank guarantee, but subsequently failed to produce any bank guarantee. Against this, the Assessing officer has initiated recovery proceedings under Section 45 of the KVAT Act as if it were arrears to tax. The Assessing officer has ordered the banker of wherever the bank account was held of appellant, to transfer all the funds lying in the bank account, and further continuously transfer the amount as and when any deposit is made, thereby freezing the account.

Grounds of Appeal:

The appellant contends that the freezing of the bank account or attaching the

bank account for transfer of funds, would not serve the purpose, even if we consider the scope and ambit of Section 45 of the KVAT Act. The appellant stated that he should be allowed to operate the bank account and the order passed by the respondent under Section 45 of the KVAT Act, should not operate as a bar in operating the bank account of the appellant.

Judgment:

The power under section 45 of the KVAT Act cannot be initiated until the matter is decided by the Tribunal. After the decision of the Tribunal in appeals if any amount remains outstanding as the tax dues then the recovery officers can initiate the recovery proceedings under section 45 of the KVAT Act.

Views

The recovery proceedings cannot be initiated once the appeal is filed by the appellant or when the matter is in progression of Appeal and the orders are yet to be passed by the Judicial Authority.

IV) Southern Power Equipment Company Private Limited, Bangalore v. Additional Commissioner of Commercial Taxes, Zone – II, Bangalore. 2016(85) Kar. L.J. 649 (HC) (DB).

Facts:

The case deals with the issue regarding liability to pay tax under the Karnataka Tax on Entry of Goods Act, 1979 on purchase of transformer oil into the local district. Initially the Assessing Authority assessed demand of tax, thereby, levying interest and penalty on the

same. Against the order, the appellant had filed an appeal to First Appellate Authority who has contended that there existed no liability of tax, interest and penalty. Subsequently the Revisional authority, on reconsideration of the matter, concluded that there existed a tax liability.

Grounds of Appeal:

The appellant thereby contended that when there existed different interpretations regarding the levy of tax, interest and penalty by the Assessing authority and the Appellate authority and Revisional Authority, and the matter required the interference of the division bench of the High court.

The division bench, thereby, stated that the transformer oil, even though is brought into the local area as a raw material and is to be used as an input in manufacturing of transformers, it shall be liable to tax @ 5% . Hence, there has been no error in the order passed by the Assessing Authority and Revisional authority, with respect to the demand of tax and interest.

Judgment:

The division bench has set aside the penalty imposed by the Assessing Authority and confirmed the order of the Revisional Authority. The Assessing Authority was directed to issue a fresh demand including interest and not penalty.

V) Rasna Private Limited, Yelachenahally Village, J.P. Nagar Post (Kanakapura Road Cross), Bangalore v. The Commissioner of Commercial Taxes, Karnataka, Bangalore. 2016(85) Kar. L.J. 692 (HC) (DB).

(Contd. on page 30)



SERVICE TAX DECISIONS

PARTS DIGESTED – STR VOLUME 44: PARTS 1 & 2

CA. A. Saiprasad

Notifications

RTU radio frequency

Existing Exemption

Services provided by Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use radiofrequency spectrum 'during the financial year 2015-16' on payment of license fee or spectrum user charges, as the case may be.

Amendment

The words 'during the financial year 2015-16' is replaced with the words 'during the period prior to 1.4.16'.

Effect

The effect of amendment is that exemption previously applying only to year 15-16 would now be applicable to the entire period prior to 1.4.16

N.No.39/16 ST dt.2.9.16

Renting of religious place precincts

Existing Exemption

Exemption to 'Services by way of renting of precincts of a religious place meant for general public has been' has been substituted as follows:

Amendment

Renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a

charitable or religious trust under section 12AA of the IT Act, 1961, or a trust or an institution registered u/s 10(23C) (v) of IT Act or a body or an authority covered u/s 10(23BBA) of IT Act;

Effect

Prior to amendment, any person renting out precincts of religious place for general public was eligible was exemption whereas after amendment, additional conditions relating to person owning and managing such religious precincts has to be satisfied. **N.No.40/16 ST dt.6.9.16**

Long Term Lease by State Industrial Development Corporations/Undertakings

New Exemption

Exemption is granted to taxable service provided by State Government Industrial Development Corporations/Undertakings to industrial units by way of granting long term (thirty years, or more) lease of industrial plots from so much of service tax leviable thereon under section 66B of the said Act, as is leviable on the one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for such lease.

N.No.41/16 ST dt.22.9.16

Note: The exemption is available only to upfront payment and not to yearly payments

Yoga

In exercise of power u/s 11C of CEA, 44 r/w S. 83, the Central Government has issued order holding that service tax shall not be required to be paid on services by way advancement of yoga, provided by entities registered under S.12 AA of IT Act, 61 for the period 1.7.12 to 20.10.15

N.No.42/16 ST dt.26.9.16

Note: Exemption has been granted to services provided by way of yoga by entities registered u/s 12AA of IT Act, 61 wef 21.10.15 by N.No. 20/15 ST. Hence the aforesaid order has been issued for the prior period.

Circulars

Clarification regarding scope of exemption of services by way of - Renting of religious precincts of a religious place meant for general public.

Circular clarified that department must not take a restricted view of 'precincts' and consider all immovable property of religious place located within the outer boundary walls of complex in which religious place is located as being located in precincts of religious place.

Immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same



management of religious place may be considered as being located in precincts of religious place.

Circular No. 200/10/2016-Service Tax dt.6.9.16

Case Laws

Whether service tax can be levied for providing accommodation less than 3 months (i.e. lodging) and on restaurants?

Lodging

The Delhi HC held that the taxable event of providing accommodation for a continuous period of less 3 months was entirely covered by the term 'luxuries' in entry no. 62 of State List and therefore outside the legislative competence of the parliament.

HC further held that since ST Valuation Rules, 06 did not provide machinery to provide rebate on room tariff. The machinery provision failed and hence the levy also failed, notwithstanding the fact that abatement was provided by a notification (26/12 ST).

Restaurants

HC held that parliament has legislative competence to levy tax on service portion of activity while serving food.

HC held that legislative carving out service portion of composite contract of supply of food and drinks was on sound constitutional basis.

Rule 2C of ST Valuation Rules, 06 (relating to restaurants and outdoor catering) was held as constitutionally valid, since it enabled the assessing authority to put definitive value on service portion of composite contract.

HC importantly held that during the course of assessment, if the assessee

was able to demonstrate on basis of accounts and records that service component is different from that obtained by R.2C of Valuation Rules, then assessing authority was obliged to consider such submission.

HC held that A.366(29A), defining deemed sale was inserted in 1982 to ensure that State Sales Tax was leviable on supply of food & drinks portion of composite contract. Service tax was levied only in 1994. Hence it could not be held on the basis of A.366(29A) that no portion of composite contract would be amenable to union levy.

Federation of Hotels & Restaurants Association V. UOI, 2016 (44) STR 3 (Del)

Whether service tax under consulting engineer service refers only to service provided by individual engineers?

The SC held that there is no justification to differentiate between company and individual as nothing was there in the statute which prevents such inclusion. The definition of consulting engineer has to derive its meaning from context or subject. The SC held that - In whatever form service is rendered, it would be chargeable to service tax as long as rendered by consulting engineer, whether it be an individual, firm, company or association of person. The SC further held that penalty u/s 78 for deliberately contravening the provision of Act was also imposable in this instance.

Tata Consultancy Services V. UOI, 2016 (44) STR 33 (Kar)

Franchisee Agreements whether liable to service tax or sales tax?

HC held that where franchise agreement is limited to precise period of time at end of which or before if there was any breach of terms, right of franchisee and all other permissions ended. On the aforesaid basis, HC held that it was not sale but a classic example of permissive use of defined intangible rights, which is subject only to service tax and not VAT.

HC held that mere inclusion of franchise in MVAT Act does not automatically make all franchisee agreements liable to sales tax. The agreement must be considered holistically. Label or description of document is irrelevant. An agreement styled as franchise might, on proper examination may turn out to be license and agreement that calls itself license might actually be franchise.

The HC held that if franchise agreement is nothing more than mere permissive use, it cannot be made liable to VAT. It would be service and hence liable to service tax.

Mahyco Monsanto Biotech India Pvt Ltd V. UOI, 2016 (44) STR 161 (Bom)

Whether Board is Governmental Authority for purpose of claiming exemption?

The HC held that Board was Governmental Authority as it was set up under State Act. It was wholly controlled by State Government. The BPL houses constructed by contractors were meant for residential purpose and not for commerce, industry or other business or profession. Hence service provided by contractors was eligible for exemption u/n 25/12 ST.

Bharat Bhushan Gupta & Co V. State of Haryana, 2016 (44) STR 195 (P&H)

Whether Rule 5A(1) of Service Tax Valuation Rules, 06 is ultravires?

The HC held that challenge to vires of R.5A(1) of Valuation Rules is well founded. R.5A(2), has already been declared ultra vires Delhi HC. Accordingly department is restrained from taking recourse u/r 5A(1) and petitioner was held as not liable to place records at department's disposal. However HC held that department was at liberty to take recourse u/s 82 of FA, 94 i.e. power to search premises and held that petitioner may respond to the summons and submit requisite documents.

Magma HDI General Insurance Company Ltd V. UOI, 2016 (44) STR 231 (Cal)

Mistake Apparent on Record

In the instant case, specific plea of assessee that value of land, though furnished by him was not taken into account while determining service tax liability. Such non-submission of submitted material was apparent on the face of the record. A rejection of application for rectification of aforesaid mistake apparent on record by Appellant was held as un-sustainable by the Tribunal and matter was remanded back to adjudicating authority.

Sree Daksha Property Developers Pvt Ltd V. CCE, 2016 (44) STR 236 (Mad)

Summons – Lawyer's Presence

The petitioner challenged summons issued to him with request to allow presence of his lawyer during investigations. The HC held that presence of lawyer in response to summons has no meaning as questions which are to be asked from person summoned cannot be asked from

lawyer. HC held that petitioner is avoiding interrogation in investigations, which are at a crucial stage and imposed costs on the petitioner.

Sudhir Kumar Tripathi V. CCE, 2016 (44) STR 251 (Jhar)

Whether classification of service can be changed at recipient's end?

Change of classification of services at recipient's end was held as not permissible as service provider was paying service tax at the behest of the department and such payment was not disputed or denied.

Newlight Hotels & Resorts Ltd V. CCE, 2016 (44) STR 258 (T)

Sim Card & Recharge Coupons whether liable to service tax?

The Tribunal held that commission received by trader/ franchisee was not taxable under Business Auxiliary Service. The Tribunal held that since BSNL had already discharged service tax on the said card and coupon on their sale to trader, demanding service tax once again from the trader amounted to double taxation.

Chotey Lal Radhey Shyam V. CCE, 2016 (44) STR 266 (T)

Tour Operator & Contract Carriage

The transport authority had certified that vehicles of the assessee were permitted to be operated as contract carriage under Gujarat Motor Vehicle Rules. Tribunal held that since such motor vehicles were not covered as a tourist vehicle under Motor Vehicles Act, service tax would not be leviable under Tour Operator's service.

CCE V. Rajan Travels, 2016 (44) STR 270 (T)

Whether pumping of RMC liable to service tax?

The Tribunal held that since activity of pumping of RMC at desired spot was not a part of activity under Commercial or Industrial Construction service but a part of sale transaction, hence service tax could not be demanded under Construction Service.

Ultratech Concrete V. CST, 2016 (44) STR 274 (T)

Note: Also see GMK Concrete Mixing Pvt Ltd V. CST, 2012 (25) STR 357 (T)

Club or Association Service – Taxability

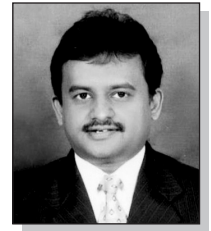
The Tribunal held that services provided under principles of mutuality was not liable to service tax. However after introduction of negative list concept, such service became taxable and appellant was paying service tax. Demand for the period prior to 1.7.12 dropped.

Goa Mineral Ore Exporter's Association V. CCE, 2016 (44) STR 281 (T)

SEZ & Exemption

The Tribunal held that as per N.No.12/13 ST, conditions have to be fulfilled by the SEZ developer at the time of availing exemption and not thereafter. Since appellant had not fulfilled the said mandatory condition of getting services approved by Approval Committee at the time of availing exemption, the appellant was not entitled to refund of service tax paid.

Kolland Developers Pvt Ltd V. CCE, 2016 (44) STR 65 (T)



VALUATION UNDER GST

CA. M.S. Keshava

Goods and Services Tax (GST), under the India context would be a destination based consumption tax. The uniqueness of this model is in the dual structure of the law, where in both Center and the State will concurrently levy tax on a common base at each stage of a transaction in the value chain. Quantification of tax, being a matter of administrative freedom, needs defined parameters within which it can operate. As opposed to the present system, where some places taxes are charged on bill value, some on MRP value and some based on valuation rules, under GST, Tax is levied and collected on the "Transaction Value" of the supply.

Where the goods are transferred from (i) one place of business to another place of the same business, (ii) the principal to an agent or from an agent to the principal, whether or not situated in the same state, the value of such supply shall be transaction value.

In case of taxable supplies "Transaction value" shall be determined in monetary terms as agreed between the parties. Where the supply consists of both taxable and non-taxable supply, the taxable supply shall be deemed to be for such part of the monetary consideration as is attributable thereto.

The parameters for determining the "Transaction value" are laid out in Section 15 of the Model GST law. Accordingly, in a unrelated party transaction, or

even in case of transactions between related parties, where relationship has not influenced the price, "transaction value" shall be the arms length price. In other words, "transaction value" shall be determined by the price charged for the supply of goods and / or services, which is actually paid or payable by the recipient to the supplier and it shall include (a) any amount that the supplier is liable to pay but is actually incurred by the recipient, to the extent not covered in the price charged for the supply; (b) proportionate value of the goods supplied by the recipient to the supplier, directly or indirectly, free of charge or at reduced cost, which the supplier has used in connection with the supply and which cost is not included in the price charged; (c) any royalties and license fee that the recipient has to pay to the supplier, directly or indirectly and is related to the supply, to the extent such royalties and license fee are not included in the price. (d) any taxes, duties, fees and charges levied under any statute other than CGST, SGST and IGST; (e) incidental expenses such as commission, packing, etc., charged by the supplier in relation to the supply, for any activity undertaken either at the time of supply or before the delivery of supply (f) subsidies provided in any form or manner, linked to the supply; (g) any reimbursement of expenses incurred by or on behalf of the supplier and (h) any

discount or incentive allowed after the supply is affected, subject to exception that such post-supply discount was agreed upon between the parties prior to the transaction and can be specifically linked to the relevant invoices.

Section 15(4) provides for various situations where the valuation rules shall be applied:

- (i) the consideration, whether paid or payable, is not money, wholly or partly;
- (ii) the supplier and the recipient of the supply are related;
- (iii) there is reason to doubt the truth or accuracy of the transaction value declared by the supplier;
- (iv) business transactions undertaken by a pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery;
- (v) such other supplies as may be notified by the Central or a State Government in this behalf on the recommendation of the Council.

As per Rule 7 of valuation rules where the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any goods and/ or services, he may ask the supplier to furnish the further information. Even upon the submission of this further information the proper officer has reasonable doubt on the truth and the

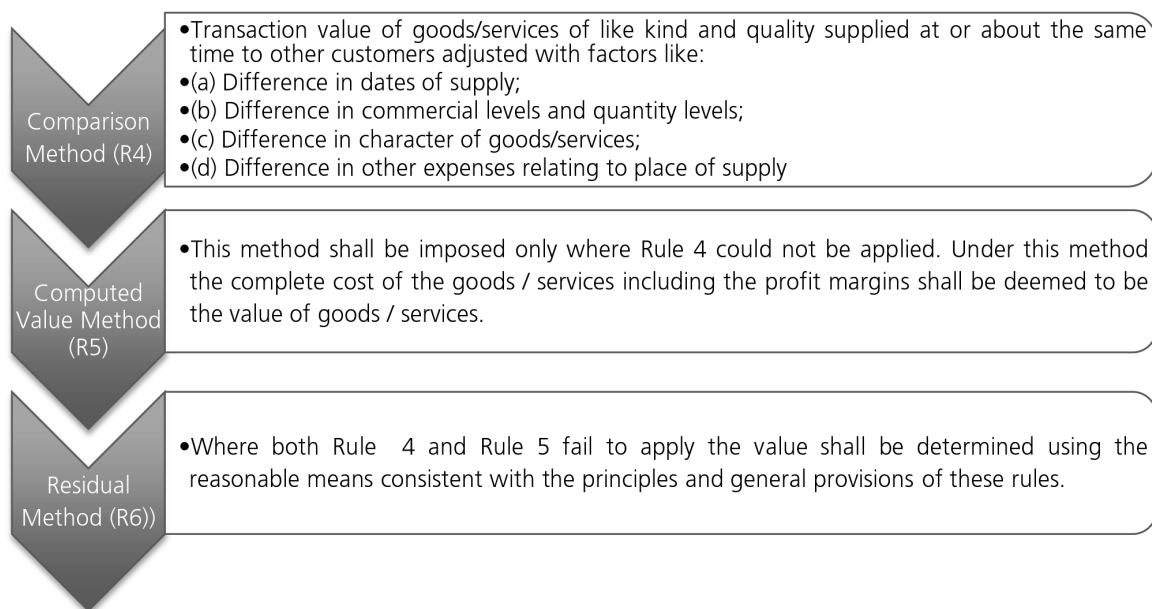
accuracy of the value declared, it shall be deemed that the value cannot be determined at transaction value and hence value shall be adopted as per the GST Valuation Rules 2016. The reasons for the doubt of the proper officer shall be intimated to the taxpayer in writing and an opportunity shall be given before enforcing the valuation rules. The various incidents where the proper officer may have a reasonable doubt are:

- (i) the significantly higher value at which goods and/or services of like kind or quality supplied at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
- (ii) the significantly lower or higher value of the supply of goods and/or services compared to the market value of goods and/or services of

like kind and quality at the time of supply; or

- (iii) any mis-declaration of goods and/or services in parameters such as description, quality, quantity, year of manufacture or production.

In such a case where the transaction value has been rejected the following methods shall be adopted by the proper officer:



Valuation - Special Cases:

S.No.	Case	Rule	Valuation
1.	Pure Agent	8(1)	<p>Transaction value shall be adopted excluding the expenditures and cost incurred by the service provider (SP) as a pure agent of the recipient (SR) of services, provided all the following conditions are fulfilled:</p> <ul style="list-style-type: none"> i) SP acts as pure agent when making payment to third party, ii) The Beneficiary should be Service Recipient, iii) SR is liable to make payment to third party, iv) SR authorize SP to make payment on his behalf, v) The fact of payment should be known to SR, vi) The amount paid on behalf of SR should be separately indicated in invoice, vii) SP recovers the amount from SR paid by him to third party; and viii) The goods procured from third party is in addition to the services provided by SP on his own account.



S.No.	Case	Rule	Valuation
2.	Money Changer	8(2)	<p>a) For currency exchanged in INR: (Buying/Selling Rate – RBI reference rate) X Total Units of currency exchanged Where the Reference Rate is not available the valuation shall be at 1% of the Gross Amount of Indian Rupees Provided or received by person exchanging the money.</p> <p>b) For currency NOT Exchanged in INR: 1% of the lesser of the two amounts the person changing the money would have received by converting any two currencies into Indian Rupee on that day at the reference rate provided by RBI. In such case reference rate is a must.</p>

Further, as opposed to the present regime, under GST there are certain transactions where are considered as Supply. For eg. Services put to private or non-business use, Assets retained after de-registration, Temporary application of business Assets to private or non-business use.

Though, schedule I of the Model GST law, lists these transactions / activities and categorize them as “supplies”, presently there are no separate valuation rules to guide the quantification of the taxes in such transactions. Therefore, It will be an administrative challenge and subject matter of litigation in the years to come and these are the challenges we are going to face in specific transactions.

DIGEST ON RECENT DECISIONS UNDER COMMERCIAL TAX LAWS

(Contd. from page 24)

Facts:

The appellant is a dealer in processed fruit products. The appellant sought for a clarification regarding the applicable rate of tax from the Authority of Clarifications and Advance Ruling, and the Advance Ruling Authority has confirmed the rate of tax to be 4% under Entry 3 of the Third Schedule of the KVAT Act, 2003, on which the appellant had acted upon. Subsequently, the Revisional authority had issued a notice, and on submission of reply, an order was passed. Being aggrieved by the said order, the appellant has appeal before the Tribunal.

Grounds of Appeal:

The appellant contended that Mango Juc-Fit in liquid form, Mango Fruit

Booster and Orange Juc-up in powder form, form part of processed foods and therefore, shall be included in Entry 3 of the Third Schedule. The revisional authority has failed to consider the aspects, before passing the orders.

He also states that the position and authority of the Advance Ruling Authority is higher than the Commissioner of Commercial Taxes. Therefore, the rate specified by the said authority shall prevail.

However, the respondent supported his stand by contending that the exercise of power by the Advance Ruling Authority under Section 60 of the KVAT Act, 2003 stands subjected to the revisional power under Section 64(2) of the KVAT Act. **Section 60(7) provides that subject to the provisions of Section 64(2) and Section 66, every order, passed under this section shall be final.**

Also, with regard to Entry 3 of the Third Schedule, on reading the entry on its whole, and not in parts, it is clear that all the products under this entry include processed goods in liquid or semi-liquid form. Therefore, Mango Fruit Booster and Orange Juc-up, which are in powder form, shall not classify under the above entry. Thereby, the above contentions of the appellant stands dismissed.

Judgment:

The appeals of the appellant have been dismissed. The orders of the revisional authority prevail over the Advance ruling authority.

Views

Also, on reading the entire entry, on a whole, it can be understood that the entry includes only those items that are in liquid or semi-liquid form, and excludes items which are powder form.

BANGALORE BRANCH OF SIRC OF ICAI
jointly with
KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION
Organises
SPORTS AND TALENT MEET

CRICKET & VOLLEY BALL LEAGUE

Date : **Sunday, 13th 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, 20th 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

KSCAA office: 080 -22222155 Email: kscaablr@gmail.com/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

**Career Counselling Programme
@ Shree Vrushabhendra Education Society's Arts, Commerce
& BCA College, Harugeri, Rayabag, Belagavi**



CA Raveendra S. Kore,
Chairman, SICASA



Participants

**SICASA Study
Circle Meeting**



CA. Kalyan Kumar K

Speakers at Study Circle Meetings



CA. Abdul Majeed



CA. A Rafeeq & Mr. Pugal Thyagrajan

**Bangalore Branch of SICASA
Industrial visit to M/S NSL Sugars Ltd
Koppa, Madhur Taluk, Mandya District for CA Students
on Saturday 1st October 2016.**

