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

Bangalore Branch of SIRC e-Newsletter

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An Awareness Programme

Analysis of Union Budget 2017

held on 2nd Feb 2017

- **Clause by Clause Discussion on Union Budget-2017 DIRECT & INDIRECT TAXES** on **10th & 11th February 2017**
- **Seminar for Women Chartered Accountants** on **11th March 2017**
- **Seminar on Bank Branch Audit** on **25th March 2017**

pragathi
Serve to grow Grow to serve

Chairman's Communique . . .

Dear Professional colleagues,

I deem it as the greatest moment and honour and have great pleasure and privilege to share my thoughts in this communique of Chairman while I bid farewell to our Bangalore Branch after completing my one year tenure as chairman. What an enriching experience!

In fact, it was a unique opportunity to be the chairman of Bangalore Branch, the largest and most dynamic branch in the country. It was an amazing and rewarding 12 months working for Branch in the midst of our Members and students and various stakeholders. One year ago it started with a wonderful journey with the guidance of my illustrious predecessors. They encouraged me to contribute my mite to strengthen our Branch.

If I have been successful in my endeavours, the credit should go to the past & present leaders of our profession. One eventful year has come to an end and to start with another, this continuity and change is inevitable for the growth and development of our profession. This change takes place in all the branches and in ICAI Headquarters in the helm of affairs and I wish the new team an empowering year, ahead.

Programmes in a Nutshell – Feb 2016 – Feb 2017

Sl no	Activity	No. of Events	No. of CPE Hrs	No of Participants
1	Awareness Programme	3	8	1112
2	Investor Awareness Programme	2	5	218
3	Conference	2	24	2744
4	Women Conference	1	6	116
5	Endowment Lecture Meeting	1	0	50
6	National Conference	1	6	563
7	Residential Refresher Course	2	24	100
8	Study Circle Meet	89	193	7867
9	Seminar	14	75	4044
10	Workshop	21	73	1683

We started the year with the theme **"Pragathi" – Serve to grow and Grow to Serve"** and we are committed to move towards positive direction. Therefore we have to serve to grow and the growth so achieved has to be sustained by continuous service. The nexus of growth and service is inter dependent and hence "SERVE TO GROW – GROW TO SERVE".

The comprehensive Activity Report of the Branch for the year 2016 is hosted in Branch website www.bangaloreicai.org .

Few of the major events we conducted during the year 2016: -

- Analysis of Union Budget 2016 & 2017
- **Jnana Pragathi** – the State Level Conference
- Two day Conference on GST –**Parivarthan**
- The National Conference for CA Students – **UTKARSH**
- Series of Workshops on International Taxation.
- Investor Awareness programmes for Members, HPCL and Public at large.
- Awareness programme on **IDS-2016** for which **Hon'ble Union Finance Minister Shri. Arun Jaitley, was the Chief Guest**.
- **Residential programs at Yercaud, Hampi** were a source of inspiration, energising the participants, inducing a great feeling of belongingness to our Alma mater – ICAI

As a corporate Social Responsibility, we conducted Course on **"Finance for Non Finance Executives"** and "**Refresher course for Accountants"** which were well appreciated by the participants and various organisations.

The Month that was: Jan 2017

Jan 2017 was also a busy month for the Branch with some significant programmes apart from regular study circle and Tax clinics

- **The first ever "Technology Summit"** organised on 7th Jan was a resounding success. The presentations made by the leading exponents of Technology made us to understand the ideas on Evolving Technology. In fact this programme was attended by 353 by Members and was a resounding success.
- One day Seminar on **"GST, office Management and Practice Development strategies** for Young CAs"organised by YMEC ICAI and hosted by Bangalore Branch on 27th Jan also was a grand success. The programme organised especially for young CAs were attended by newly 302 members and was a grand success. The Technical Session on "GST – An overview, office Management and Practice Development strategy for young CAs and other topics were a value addition to each one of us.
- Seminar on Audit of Souhardha Co-op Societies organised by KSSFCL, Bangalore was also beneficial to the Members involved in Audit of Souhardha Co-op Societies.
- Programmes in association with Davangere, Shimogga & Tumkur CPE Chapters organised on 4th, 6th & 7th Feb was also beneficial to Members.

The Month ahead: Feb 2017

- We have organised An awareness programme: **"Analysis of Union Budget 2017" on 2nd Feb 2017**. In fact, having elected me as chairman of Bangalore Branch, Analysis of Union Budget 2016 conduced on 1st March 2016 was the maiden Programme and before I hand over the chairmanship to my successor on 16th Feb 2017, I had an opportunity to organise the budget Analysis 2017.

The deliberations with the eloquent moderators and Panelists made the delegates to know more about the salient features and proposals of the budget.

- As an annual feature of the Branch **Clause by Clause Discussion on Union Budget 2017 on Direct & Indirect Taxes** is being organised on 10th & 11th Feb 2017 for the benefit of Members. As usual we expect an overwhelming response for this 2 day programme also.

To conclude:

I would like to add that my tenure as chairman of the branch strengthened me to shoulder bigger responsibilities in future. Let me take this opportunity to sincerely thank President, Vice President, Chairman of SIRC of ICAI and their team Members for having given their valuable guidance. I would like to reiterate the fact that the wholehearted support given by my colleagues in the Managing Committee, officers and staff members of the Branch and DCO and my dear professional friends, I could discharge my duties most diligently. I could complete my tenure smoothly because of the encouragement of Members, contribution of our eminent resource persons of various programmes, the service of our great Faculty Members the inspiration from students and the great support of my partners of my firm, family and friends.

We have excelled in the Past, we shall strive hard with the same and with much more vigour and strength in the ensuing times to maintain the quality of our prestigious profession. The opportunity of being a part of this noble profession brought to me the joy of being the chairman of one of the most dynamic branches of the ICAI, the Bangalore Branch. This one year tenure as chairman gave me great satisfaction I trust that I have completed the tenure performing the assigned task and happily ready to exit wishing the successor and the new Managing Committee team Members to serve Members, students and society at large making our Institute's flag fly high in the years to come.

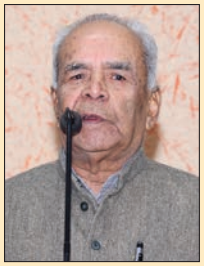
As I leave, I carry a treasure of rich experience and leave behind formidable challenges for my successor and team. I wish them all the very best in their endeavours, May the Almighty shower His blessings and make them to reach greater, newer peaks in our esteemed CA Profession.

With warm regards

Pampanna B E

CA. Pampanna B E
Chairman

Republic Day Celebration



Chief Guest
CA M S Ranganath,
Past Chairman,
SIRC of ICAI

Chief Guest
CA N Nityananda,
Past Central Council
Member, ICAI

CA Abdul Majeed,
Partner, Pricewaterhouse
Coopers

Mr. Mridul Agarwal,
newly qualified CA

Technology Summit

Inauguration

Co-ordinator CA A. Rafeq

CA Babu Jayendran

CA. Anand P Jangid

CA. Ajay Gupta

CA R. Vittal Raj

CA E. Narasimhan

CA Guru Prasad

CA B.P. Sachin Kumar

Mrs. Deepa Seshadri

Participants

8 Day Intensive Workshop on GST

Inauguration


CA Madhukar N Hiregange,
Chairman, IDT Committee


Shri D P Nagendra Kumar,
Pr. Additional Director General, DGCEI Bengaluru


CA Kalyan Kumar


CA Ramakrishna Sanghu


CA N R Badrinath


CA Jatin Christopher


CA Dayanand S


CA T R Rajesh Kumar


CA Rajesh Maddi


CA Annapurna D Kabra


CA Sandesh S Kutnikar


CA Deepak Kumar Jain B


CA B D Chandrashekar


CA Pankaj Kumar R


CA Akbar Basha


CA. M S Keshava


CA S Vishnumurthy


CA S Venkataramani


CA Lakshmi G K


Participants

Carrer Counselling Programme at G. I. Bagewadi arts, Science & Commerce College Nipani


CA. Raveendra S Kore,
Chairman, SICASA


CA. Raghavendra Puranik,
President, KSCAA


CA. Nagappa Nesur,
Secretery, KSCAA


CA. Shivaprakash
Viraktamath


Participants

CALENDAR OF EVENTS - FEBRUARY 2017

Date/Day/ Time	Topic / Speaker	CPE Credit
01.02.2017 Wednesday	***No Study Circle Meet*** ***on presentation of Union Budget-2017***	——
02.02.2017 Thursday **4.30pm to 7.30pm**	***An Awareness Programme*** Analysis of Union Budget 2017 - In association with Christ University *Moderators:* **CA. T V Mohandas Pai & CA. H. Padamchand Khincha** **VENUE:** Christ University Auditorium, Hosur Road, Bangalore – 560029  	——
04.02.2017 Saturday **9.00am to 4.15pm**	***Seminar on Budget and Joint Development*** - critical aspects, structuring of transaction in Real Estate and highlights of RERA **VENUE:** Bapuji MBA College, Shamnur Road, Davangere	**6 hrs**
06.02.2017 Monday **2.00pm to 6.30pm**	***Seminar on Union Budget 2017 and Transitional provisions of GST*** - Indirect Tax Amendments under Union Budget 2017 - Transitional Provisions under GST **CA T R Rajesh Kumar** An Analysis of DT amendments - Finance Bill 2017 **CA Naveen Khariwal G** **VENUE:** Jai Matha Gandura, Vidhaya Nagar, Shivamogga  	**4 hrs**
07.02.2017 Tuesday **09.00am to 2.00pm**	***Study Circle Meet at Tumkur*** An Analysis of DT amendments - Finance Bill 2017 **CA Naveen Khariwal G & CA Prashanth G S** Delegate fee: **Rs 350/-** **VENUE:** TDCAA Building, Srinagar, Tumkur, Near Sri Raj Theatre  	**4 hrs**
08.02.2017 Wednesday **6.00pm to 8.00pm**	***Study Circle Meet*** Capital Market and Investor Awareness Programme: "Derivatives Demystified" **CA Rudramurthy** **VENUE:** Branch Premises 	**2 hrs**
10.02.2017 Friday **10.00am to 5.00pm**	***Clause by Clause Discussion on Union Budget-2017*** **- DIRECT TAXES** Speakers: **CA. H. Padamchand Khincha** **CA. K K Chythanya** **CA. S Ramasubramanian** Delegate Fee : **Rs.1200/-** **VENUE:** Jnana Jyothi Convention Center, Palace Road, Bangalore   	**6 hrs**
11.02.2017 Saturday **10.00am to 5.00pm**	***Clause by Clause Discussion on Union Budget-2017*** **- INDIRECT TAXES** Speakers: **CA. N Anand** **CA. V Raghuraman** **Adv. K. S Naveen Kumar** Delegate Fee : **Rs.1200/-** **For both the days: Rs 2200/-** **VENUE:** Jnana Jyothi Convention Center, Palace Road, Bangalore   	**6 hrs** **Total 12 hrs**
15.02.2017 Wednesday **6.00pm to 8.00pm**	***Study Circle Meet*** Impact of Direct Tax proposals in Budget - 2017 **CA Gururaj Acharya K** **VENUE:** Branch Premises 	**2 hrs**

CALENDAR OF EVENTS - FEBRUARY & MARCH 2017

Date/Day/ Time	Topic / Speaker	CPE Credit
16.02.2017 Thursday **6.00pm to 8.00pm**	***Study Circle Meet*** Operation Clean Money - Reply to Income Tax Notice on SBN Cash Deposits - PMGKY Vs Penalty under Taxation Law (II Amendment) Act 2016 **CA Gururaj Acharya K** **VENUE:** Branch Premises 	2 hrs
22.02.2017 Wednesday **6.00pm to 8.00pm**	***Study Circle Meet*** PAN Quoting, Reporting of specified Financial Transactions & related matters under Income Tax Act- 1961 **CA Tarun Kumar Jain** **VENUE:** Branch Premises 	2 hrs
24.02.2017 Friday	**Holiday on account of Maha Shivaratri**	——
01.03.2017 Wednesday **6.00pm to 8.00pm**	***Study Circle Meet*** Information Technology Act Compliance **Mr. Naavi Vijayshankar**, *Cyber Law Consultant* **VENUE:** Branch Premises 	2 hrs
03.03.2017 Friday **6.00pm to 8.00pm**	***Interactive Session on*** Defective Returns of Demand Management **Shri. R K Mishra**, *IRS, Director of Income Tax* **CPC, Bangalore & other officers** **VENUE:** Branch Premises 	2 hrs
08.03.2017 Wednesday **6.00pm to 8.00pm**	***Study Circle Meet*** POEM - Budget Changes in International Taxation, Impact of GAAR, Important TP Cases **CA Rani N R** **VENUE:** Branch Premises 	2 hrs
10.03.2017 Friday **6.00pm to 8.00pm**	***Manthana - Professional Updates*** GST Updates **CA Annapurna D Kabra with Dept. Officers** **VENUE:** Branch Premises 	2 hrs
11.03.2017 Saturday **6.00pm to 8.00pm**	***Seminar for*** **Women Chartered Accountants** Delegate Fee: **Rs.800/-** *Details on page 7* **VENUE:** The Chancery Pavilion Hotel, #135, Residency Road, Bangalore - 560 025	6 hrs
15.03.2017 Wednesday	***Study Circle Meet*** **VENUE:** Branch Premises, **TIME:** 6.00pm to 8.00pm	2 hrs

EDITOR :
CA. PAMPANNA B.E.

SUB EDITOR :
CA. SHRAVAN GUDUTHUR

Kind Attention Members

Especially Women Chartered Accountants !!!

One Day Seminar for Women CAs

on **Saturday 11th March 2017**

at **9.30am to 5.30pm**

6 hrs CPE

at **Chancery Pavilion Bangalore**
#135, Residency Road, Bangalore - 560 025.

We deem it a pleasure to inform you that to commemorate
International Women's day on 8th March
- a **One Day Seminar for Women CAs**
is being organised by **Women Members Empowerment Committee, ICAI**
hosted by **Bangalore Branch of SIRC of ICAI**
on **Saturday 11th March 2017** from **9.30am to 5.30pm**
at **Chancery Pavilion Bangalore**, #135, Residency Road, Bangalore - 560 025.

Takeaway:

- Fair Knowledge on Contemporary Topics of Professional Interest
  - Presented by eloquent, Experienced and expert Lady Women Speakers
- Fun & Frolics
- Health Session
- Panel Discussion on topics relevant to Working Women

Hence hurry up and join us
and make this prestigious programme a resounding success.

DELEGATE FEE: ₹ **800/-**

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

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

All Women CAs are welcomed!!!!

CA. Jay Chhaira
Chairman
Women Members Empowerment Committee

CA Geetha A B
Chief –Co-ordinator & Vice-Chairman
Bangalore Branch of SIRC of ICAI

Bank Branch Audit Seminar

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

6 hrs **CPE**

On **Saturday, 25th March 2017**

Venue: **Hotel Le Meridien**, Sankey Road, Bangalore

Time: **09.45am to 5.45pm**

Timings	Topics	Speakers
9.00am to 09.45am	Registration	
09.45am to 10.15am	INAUGURATION	
10.15am to 11.45pm	Case Studies in Audit of Advances	**CA. P.R. Suresh** *Bangalore*
11.45am to 12.00pm	Tea Break	
12.00pm to 1.30pm	Expectation of Bankers from Branch Auditors	**Shri. Adikeshavan** *Chief General Manager* *SBI, Hyderabad*
1.30pm to 2.30pm	Lunch	
2.30pm to 4.00pm	Audit Planning, Executions & Building Working papers through Excel	**CA G Venugopal** *Bangalore*
4.00pm to 4.15pm	Tea Break	
4.15pm to 5.45pm	Session continues……	

DELEGATE FEES FOR MEMBERS: ₹ 2100/-
FOR OTHERS: ₹ 5725/- (INCL. OF SERVICE TAX & CESS)

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

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

Online Registration is available. Visit our website: bangaloreicai.org

IMPORTANT DATES TO REMEMBER DURING THE MONTH OF FEBRUARY 2017

Due Date	Statute	Compliance
5th February 2017	Excise	Monthly Payment of Excise duty for the month of January 2017
	Service Tax	Monthly Payment of Service tax for the month for January 2017
6th February 2017	Excise	Monthly E- Payment of Excise duty for the month of January 2017
	Service Tax	Monthly E- Payment of Service Tax for the month of January 2017
7th February 2017	Income Tax	Deposit of Tax deducted / collected during January 2017.
10th February 2017	Excise	Monthly Performance Reports by Units in EOU, STP, SEZ for January 2017.
15th February 2017	VAT	Payment and filing of VAT 120 under KVAT Laws for month ended January 2017 (for Composition Dealers).
		Quarterly Payment and filing of VAT 100 under KVAT Laws for quarter ended January 2017.
	Provident Fund	Payment of EPF Contribution for January 2017 (No grace days).
		Return of Employees Qualifying to EPF during January 2017.
		Consolidated Statement of Dues and Remittances under EPF and EDLI For January 2017.
		Monthly Returns of Employees Joined the Organisation for January 2017.
		Monthly Returns of Employees left the Organisation for January 2017.
	Income Tax	Furnishing of Quarterly TDS certificate (Form 16A) in respect of tax deducted by any person for the quarter ending December 31, 2016.
20th February 2017	VAT	Monthly Returns (VAT 100) and Payment of CST and VAT Collected/payable During January 2017.
	Professional Tax	Monthly Returns and Payment of PT Deducted During January 2017.
21st February 2017	ESI	Deposit of ESI Contribution and Collections of January 2017 to the credit of ESI Corporation.

Congratulations

CA. A.B. Chidananda
have elected as "President of Bangalore CA's Toastmasters Club"

Membership No. is 219483

INSOLVENCY AND BANKRUPTCY CODE, 2016 - PROVISIONS AS TO BOOKS OF ACCOUNT

CA Mohan R Lavi

Managing insolvency may soon emerge as an area of practice for professionals. The Insolvency and Bankruptcy Code, 2016 (Code) along with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 (Regulations) , has a number of provisions relating to books of account which are summarized below.

What are books of Account?

Section 2 (1) (a) of the Regulations defines books of account as follows:

(a) "books of the corporate debtor" means

(i) the books of account and the financial statements as defined in section 2(13) and 2(40) of the Companies Act, 2013,

(ii) the books of account as referred to in section 34 of the Limited Liability Partnership Act, 2008,

(iii) the books of accounts as specified under the applicable law, as the case may be;

Specified books of account

Section 6 of the Regulations 2016 is reproduced below:

6. *Registers and books of account.*

(1) Where the books of account of the corporate debtor are incomplete on the liquidation commencement date, the liquidator shall have them completed and brought up-to-date, with all convenient speed, as soon as the order for liquidation is passed.

(2) The liquidator shall maintain the following registers and books, as may be applicable, in relation to the liquidation of the corporate debtor, and shall preserve them for a period of eight years after the dissolution of the corporate debtor-

(a) Cash Book;

(b) Ledger;

(c) Bank Ledger;

(d) Register of Fixed Assets and Inventories;

(e) Securities and Investment Register;

(f) Register of Book Debts and Outstanding Debts;

(g) Tenants Ledger;

(h) Suits Register;

(i) Decree Register;

(j) Register of Claims and Dividends;

(k) Contributories Ledger;

(l) Distributions Register;

(m) Fee Register;

(n) Suspense Register;

(o) Documents Register;

(p) Books Register;

(q) Register of unclaimed dividends and undistributed properties deposited in accordance with Regulation 45; and

(r) such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor.

(3) The registers and books under sub-regulation (2) may be maintained in the forms indicated in Schedule III, with such modifications as the liquidator may deem fit in the facts and circumstances of the liquidation process.

(4) The liquidator shall keep receipts for all payments made or expenses incurred by him.

Indicative formats have also been prescribed in the Regulations for the various books of account listed above. The formats are indicative only and can be altered as per specific requirements of the entity.

Initiation of insolvency process

Section 10 of the Code which deals with initiation of corporate insolvency resolution process by a corporate applicant states as follows:

(3) The corporate applicant shall, along with the application furnish the information relating to—

(a) its books of account and such other documents relating to such period as may be specified; and

Interim resolution professional

Section 17 of the Code which deals with the management of affairs of the debtor states as follows:

(2) The interim resolution professional vested with the management of the corporate debtor shall—

(d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified.

Punishment

Section 70 of the Code provides for punishment for misconduct in the course of the corporate insolvency process. It states as follows;-

70. (1) On or after the insolvency commencement date, where an officer of the corporate debtor—

(c) does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

Section 71 of the Code details the following punishment for falsification of books of account of the corporate debtor

On and after the insolvency commencement date, where any person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of account or document belonging to the corporate debtor with intent to defraud or deceive any person, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

Section 186 of the Code provides for punishment of the bankrupt person in certain circumstances. The Section reads as follows:

If the bankrupt—

(a) knowingly makes a false representation or wilfully omits or conceals any material information while making an application for bankruptcy under section 122 or while providing any information during the bankruptcy process, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five lakh rupees, or with both;

Explanation.—For the purposes of clause (a), a false representation or omission includes non-disclosure of the details of disposal of any property, which but for the disposal, would be comprised in the estate of the bankrupt, other than dispositions made in the ordinary course of business carried on by the bankrupt;

(b) fraudulently has failed to provide or deliberately withheld the production of, destroyed, falsified or altered, his books of account, financial information and other records under his custody or control, he shall be punishable with imprisonment which may extend to one year, or with fine, which may extend to five lakh rupees, or with both;

Powers of Board

While exercising the powers under this Code, the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

Accounts and Audit

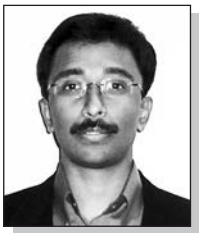
3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.

Conclusion

A lot of importance has been provided to books of account in the Code and the Regulations due to which professionals can add a lot of value as it is in their area of core competency.

CUSTOMS - DEFERRED PAYMENT OF CUSTOM DUTIES ALLOWED TO CERTAIN IMPORTERS

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



The CBE&C has issued 'Deferred Payment of Import Duty Rules, 2016' which enables a deferred payment of custom duties, subject to certain conditions. **This importers may file the BOE and clear goods without payment of duty at the time of import.**

The highlights are as under:

1. Eligible Importers - Importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three)
2. Mode of payment: The duty should be paid electronically. However, if there is a default more than once in three consecutive months, this facility of deferred payment is deemed to be withdrawn, until the duty with interest has been paid in full.
3. Exception: These provisions would not be applicable to the goods which have not been assessed or not declared by the importer in the entry made under the Customs Act, 1962.
4. Due dates for payment of customs duty after filing of BOE and import of goods:

Period	Due Date
1st to 15th of any month	17th of that month
16th to last day of the month	2nd of next month
16th to 29th of March	31st March
30th to 31st March	2nd April

5. Procedural:

- Eligible importers intending to avail the benefit should intimate to the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, having jurisdiction over the port of clearance. The Principal Commissioner of Customs or the Commissioner of Customs, as the case may be upon being satisfied with the eligibility of the importer to pay the duty under these rules, allow the eligible importer to pay the duty as mentioned below.
- Every importer certified as AEO-T2/ AEO-T3 is required to obtain ICEGATE Login to avail benefits envisaged in the AEO Programme. Further, to avail the facility of deferred payment, every AEO-T2/ AEO-T3 should nominate a nodal person borne on their establishment who would be responsible for authenticating all the customs related transactions on behalf of the AEO.
- The contact details of AEO nodal person shall also be provided in ICEGATE login to ensure that the information reaches in time at their registered mail for authentication.
- An intimation addressed to the AEO Programme Manager with a copy to the Principal Commissioner(s) of Customs or the Commissioner(s) of Customs, having jurisdiction over the port(s) of clearance will be considered as an intimation by an eligible importer.
- The eligible importer who intends to make deferred payment will indicate the same using flag "D" in the Payment Method column of Bill of Entry filed.
- To ensure that only eligible importers avail the facility of deferred payment, option has been provided in ICEGATE Login for AEO Nodal person to acknowledge such intent and authenticate using One Time Password (OTP) sent to his registered e-mail address. The Nodal person would be able to authenticate multiple Bills of Entry at once. Only on such authentication by the eligible AEO importer, customs clearance would be provided for the consignment under deferred payment of duty Rules.
- The eligible importer will also have an option to select the challans belonging to the deferred period and pay at anytime, even before the due date at their convenience.

Effective date: 16.11.2016 (Notification No. 134/2016 and 135/2016- Customs (N.T) dated 02.11.2016)

GOING DUTCH

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


Introduction

As we forge ahead as a nation with rapid reforms being undertaken by a strong central leadership, it is expected that India will remain one of the bright spots of the world economy. The year 2016 has seen a flurry of reforms in the tax domain, the biggest being the bold demonetisation drive. Along with such big bold measures on the domestic front, the current government has been bold and active in the international scene also, by finally amending the India – Mauritius treaty where the proposed amendment had been in a state of flux for a long duration. Post the amendment of India – Mauritius treaty numerous other treaties such as India – Singapore, India – Cyprus treaties have been amended in quick succession to curb the menace of jurisdiction shopping and unfair tax avoidance.

However, one of the treaties which have not been amended which could be used for tax planning purposes is the India – Netherlands treaty. In this article, we shall explore the contentious clauses of the India-Netherlands treaty from an all-round perspective taking into account the domestic law in Netherlands and the impending BEPS Action Plan.

Article – 11 of India – Netherlands Tax Treaty – Interest

1. Interest arising in one of the States and paid to a resident of the other State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of gross amount of the interest.

On reading of the above article, it can be seen that, if the payment of interest is from an Indian company to a resident of Netherlands, the income-tax charged cannot exceed 10%, and the same is true in a vice-versa situation.

Until the year 2016, if a Netherlands based entity owned more than 5% of an Indian company and earned interest income from the same company, as per Netherlands law it would have been eligible for a participation exemption in Netherlands and such interest income would have been exempt in Netherlands. However, from the year 2016, if any interest income is tax deductible in the source country, the same will be taxable as per the prevailing tax rates in Netherlands (Corporate Tax Rate in Netherlands – 25%) and foreign tax credit can be availed, if any. Therefore, earlier to 2016, a loan could have been structured to arrive from a Netherlands based company and the interest income generated from such loan would have suffered only 10% effective rate of taxation, on satisfaction of the participation exemption.

Article – 13 of India – Netherlands Tax Treaty – Capital Gains

1. Gains derived by a resident of one of the States from the alienation of immovable property referred to in Article 6 and situated in the other State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph, the provisions of paragraph 3 of Article 8A shall apply.

4. Gains derived by a resident of one of the States from the alienation of shares (other than shares quoted on an approved stock exchange) forming part of a substantial interest in the capital stock of a company which is a

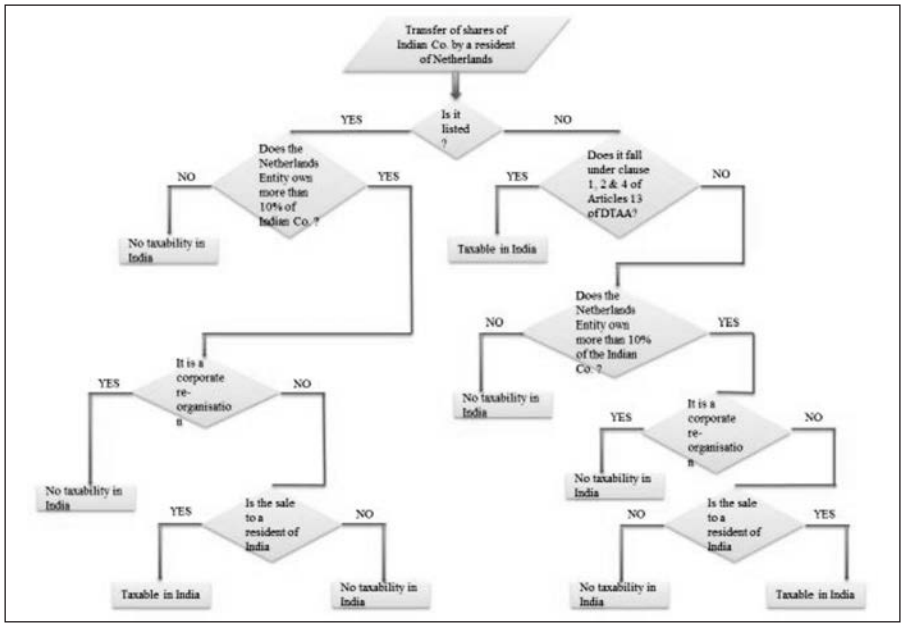
resident of the other State, the value of which shares is derived principally from immovable property situated in that other State other than property in which the business of the company was carried on, may be taxed in that other State. A substantial interest exists when the resident owns 25 per cent or more of the shares of the capital stock of a company.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the State of which the alienator is a resident.

However, gains from the alienation of shares issued by a company resident in the other State which shares form part of at least a 10 per cent interest in the capital stock of that company, may be taxed in that other State if the alienation takes place to a resident of that other State. However, such gains shall remain taxable only in the State of which the alienator is a resident if such gains are realised in the course of a corporate organisation, reorganization, amalgamation, division or similar transaction, and the buyer or the seller owns at least 10 per cent of the capital of the other.

If one focuses on sub-article (5) of Article – 13, there is an element of tax planning possible on taking into account the domestic law of Netherlands. Following chart provides a break – down of sub-article (5):

As we can see from the chart, sub-article (5) of Article – 13 provides for residence based taxation. Earlier the Indian treaties with Mauritius, Singapore and Cyprus, the Capital Gains article in the DTAA, provided for residence based taxation which was used for tax planning, to



reduce the effective rate of taxation to zero owing to the domestic laws in the respective countries. In the case of Netherlands, the domestic law provides for exemption from Capital Gains if the Netherlands entity owns at least 5% in the Indian entity. But to qualify for such an exemption the following additional conditions need to be fulfilled:

1. The Indian entity is not held as a mere portfolio investment
2. The Indian entity is subject to a reasonable effective tax rate based on Dutch tax principles ("subject to tax test"), or
3. Less than 50% of the assets of the Indian entity consist of "passive" assets based on the fair market value of the assets ("asset test")

Therefore, based on the chart above and the prevailing domestic law in Netherlands, there is a possibility of Multi-national enterprises (MNE's) structuring investment into India to reduce tax costs through planning.

Conclusion

Overall, the India – Netherlands tax treaty provides an attractive prospect for tax planning option to MNE's. Apart from the Capital Gains article there are various other beneficial provisions in the India – Netherlands treaty such as "make available" clause in the Royalty & Fees for Technical Services Article, no service PE clause in the Permanent Establishment Article. Also, as per recent news reports the Central Government does not intend to amend the tax treaty between India & Netherlands[1], as Netherlands is not currently used for tax planning.

However, the India – Netherlands treaty must be examined from the OECD Base Erosion and Profit Shifting (BEPS) action plan perspective as well, where the multi-lateral instrument under BEPS Action Plan - 15 would, as a minimum standard, modify notified bilateral tax treaties to implement either a principal purpose test (a broad treaty level GAAR) – with a simplified limitation on benefits or not, or a detailed limitation on benefits provision. The instrument will also modify the preamble of such treaties to clarify that the use of the treaty to achieve double non-taxation should not be allowed.

[1] The Economic Times – Jan 11, 2017 - India may leave tax treaty with Netherlands unchanged

TAX UPDATES - DECEMBER 2016

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

VAT, CST, ENTRY TAX, PROFESSIONAL TAX

PARTS DIGESTED:

a) 96 VST – Parts 3 & 4

b) 86 KLJ – Part 10

Reference / Description

2017-TIOL-24-SC-VAT: Southern Motors v. State of Karnataka - In the instant case the Honourable Supreme Court held that mere deferment of actual quantification of trade discounts in the tax invoice due to stipulations of contract would not render the trade discount as fictitious.

It held that Rule 3(2)(c) of Karnataka VAT Rules is not contradictory to the scheme of Sections 29 & 30 of Karnataka VAT Act, for purposes of ascertaining taxable turnover by enumerating permissible deductions from the total turnover. Requirement of reference of discount in the tax invoice or bill of sale to qualify it for deduction has to be construed in relation to the transaction resulting in the final sale/purchase price and not limited to the original sale sans the trade discount.

Thus it was held that transactions allowing such discount have to be proved on basis of contemporaneous records, and the final sale price after deducting trade discount must mandatorily be reflected in the accounts as stipulated under Rule 3(2)(c) of KVAT Rules.

INCOME TAX

PARTS DIGESTED:

a) 388 ITR – Parts 3 to 5

b) 389 ITR – Parts 1 to 3

c) 242 Taxman – Parts 1, 3, 4, 6

d) 243 Taxman – Part 2

e) 50 ITR (Trib.) – Parts 1 to 7

f) 160 ITD – Part 8

g) 161 ITD – Parts 1 to 3

h) 50 CAPJ – Part 5 & 6

i) 48-B BCAJ – Part 3

Reference / Description

[2016] 389 ITR 469 (Delhi – HC): Magneti Mareli Power Train India P. Ltd. v. Dy. CIT - In the instant case the Honourable Delhi High Court held that where assessee had used TNMM to benchmark all its international transactions, it was not open to TPO to subject only one element, i.e., payment of technical assistance fee, to an entirely different (CUP) method as this would lead to chaos and be detrimental to interests of both assessee and revenue.

[2016] 242 Taxman 371 (SC); [2016] 73 taxmann.com 212 (SC): DIT v. Linde AG Linde Engineering Division - In the instant case in view of Circular No. 7 of 2016 dated 07.03.2016, the Revenue withdraw the SLP filed against the order of the High Court wherein the High Court had held that where non-resident companies together as consortium took up turnkey contract from an Indian company, in absence of sufficient degree of joint action between consortium members in either execution or management of project, consortium would not be deemed as an AOP for purposes of Income-tax Act

[2016] 242 Taxman 1 (SC); [2016] 73 taxmann.com 61 (SC): Dawn Educational Charitable Trust v. CIT - In the instant case Assessee-trust filed an application for registration under section 12A and claimed exemption on ground that school ran by it was imparting education and, therefore, trust was meant for charitable purpose.

On appeal before the Honourable Kerala High Court, the Court held that since assessee-trust was running posh school for children of non-resident Indians on commercial lines under guise of charitable purpose, authorities were justified in rejecting application.

On appeal before the Honourable Supreme Court, the Court dismissed the Special Leave Petition filed against the High Court order.

[2016] 242 Taxman 173 (SC); [2016] 73 taxmann.com 258 (SC): Peerless General Finance & Investment Co. Ltd. v. CIT - In the instant case the Honourable Supreme Court held that unabsorbed depreciation as on 01.04.1997 could be set off against income from any head for immediate

assessment year following 01.04.1997 and thereafter if there still was any unabsorbed depreciation same could be set off only against business income for a period of eight assessment years

[2016] 242 Taxman 492 (Karnataka); [2016] 74 taxmann.com 95 (Karnataka): Bharath Beedi Works (P.) Ltd. v. Addl. CIT - In the instant case the Honourable Karnataka High Court held that where assessee had not proved that available interest free fund exceeded value of investment made and could not justify quantification towards disallowance made by it for exempted income, Assessing Officer was justified in applying Rule 8D.

[2016] 243 Taxman 105 (Gujarat); [2016] 73 taxmann.com 273 (Gujarat): Oil & Natural Gas Corporation Ltd. v. Asst. CIT - In the instant case the Honourable Gujarat High Court held that dress worn by employees merely as per dress code is not uniform for purpose of exemption as uniform allowance under section 10(14)(i)

(2017) TaxCorp(LJ) 11825 (SC); [2017] 77 taxmann.com 71 (SC): Gopal And Sons (HUF) v. CIT - In the instant case the Honourable Supreme Court held that even if HUF is not a registered shareholder in lending company, advances/loans received by HUF is taxable as deemed dividend under section 2(22)(e) if Karta-shareholder has substantial interest in HUF

TS-692-HC-2016(DEL): Earth Stone Group - In the instant case the Honourable Delhi High Court grants deduction under Section 10B to assessee (EOU) on exports made through its sister concern.

The Honourable Court held that the condition spelt out in Section 10B (3), cannot be limited or restricted to only actual receipts by the assessee. There can be basis where the assessee might export through a third party which might in the first instance received the foreign exchange and in turn transmit it

Thus, the Court rejected Revenue's submissions that assessee wasn't qualified to avail the deduction as the receipt of consideration in foreign exchange should be by the assessee in terms of Section 10B(3).

It also rejected the Revenue submissions that the sister concern not been a status holder/ an exporter in terms of the Exim Policy the benefit of deduction under Section 10B couldn't be extended to the assessee.

It also rejected Revenue's plea that unlike Section 80HHC where the benefit of deduction is available to a third party and the supporting manufacturer, Section 10B makes no similar provision.

TS-8-SC-2017: CIT v. Chandra Cement Ltd. - In the instant case the Honourable Supreme Court dismissed the SLP filed against the decision of the Honourable Rajasthan High Court wherein the High Court had held that where assessee-company, engaged in setting up of cement plant, raised unsecured loan from Managing Director in cash in excess of Rs. 20,000, mere fact that said amount was utilised for payment of constructional activities directly would not alter character of deposits and thus, upheld the levy of penalty under Section 271D for violation of provisions of Section 269SS.

The High Court had observed that the conduct or the entry and flowing of funds is sufficient to prove that the amount was admittedly received by cash in the account of assessee as having been received from R.P. Goyal and found credited as an "unsecured loan", proves that it was in the nature of a loan and certainly such loan having been received by cash, falls within the ambit of Section 269-SS.

TS-22-SC-2017; [2017] 77 taxmann.com 245 (SC): Common Cause (A Registered Society) - In the instant case the Honourable Supreme Court held that where detailed documents recovered by the authorities through raids on two business groups were random loose sheets of paper and electronic data which were not regularly kept during course of business had no evidentiary values, and thus they could not have been relied on to direct registration of FIR and investigation therein in case of high public functionaries occupying important offices. The Court held that the materials in question were not only irrelevant but were also legally inadmissible under section 34 of the Evidence Act

TS-28-HC-2017(MAD): Vinzas Solutions India (P.) Ltd. - In the instant case the Honourable Madras High Court held that the provisions of section 9(1)(vi) dealing with and defining 'Royalty' cannot be made applicable to a situation of outright purchase and sale of a product. Courts have consistently noted the difference between a transaction of sale of a 'copyrighted article' and one of 'copyright' itself. The provisions of section 9(1)(vi) as a whole, would stand attracted in the case of the latter and not the former. Explanations4 and 5 to section 9(1)(vi) cannot be expanded to bring within its fold transaction beyond the realm of the provision.

Thus held that domestic software purchase payments by assessee (an Indian company engaged in buying and selling software), are not royalty and Section 194J is not applicable.

2017-TIOL-38-SC-IT: Opera Clothings v. ITO - In the instant case the Honourable Supreme Court held as under:

(a) The issue, namely, the entitlement of export incentives to deduction under Section 80-IB has been squarely decided by this Court in Liberty India vs. CIT (2009) 9 SCC 328 = 2009-TIOL-100-SC-IT. CIT vs. Meghalaya Steels Limited (2016) 6 SCC 747 = 2016-TIOL-25-SC-IT does not in any way erode the efficacy of law laid down in Liberty India (supra) as Meghalaya Steels Limited (supra) was primarily a case where the Court was dealing with transport subsidy, which is a reimbursement of the cost incurred by the manufacturing unit in the North-Eastern part of the Country.

(b) While Liberty India (supra) dealt with a situation of post-manufacture and availability of incentive only in the event there was export of the manufactured goods. Meghalaya Steels Limited (supra), as already noted, dealt with altogether a different situation

[2016] 160 ITD 343 (Mumbai - Trib.); [2016] 73 taxmann.com 67 (Mumbai - Trib.): Taragauri T. Doshi v. ITO - In the instant case the Honourable Mumbai Tribunal held that where assessee received certain amount on account of maturity of life insurance policy taken by her husband from American Insurance Company in Abu Dubai, she was entitled for exemption under section 10(10D) on such sum received.

[2016] 73 taxmann.com 363 (Pune - Trib.); [2016] 161 ITD 217 (Pune - Trib.): Quality Industries v. Jt. CIT - In the instant case the Honourable Pune Tribunal held that interest paid by assessee firm on its partner's capital cannot be regarded as expenditure and hence the same cannot be disallowed invoking Section 14A, where such capital is found to be invested in mutual funds and tax-free dividend income is earned.

[2016] 74 taxmann.com 106 (Chennai - Trib.): Dy. CIT v. Atmel R & D India (P.) Ltd - In the instant case the Honourable Chennai Tribunal held that where assessee made payment for acquisition of software from its parent company to be used for its business purpose only, without any right of utilizing copyright of said programme, payment made in respect of same did not give rise to any royalty income.

[2016] 161 ITD 211 (Ahmedabad - Trib.); [2016] 74 taxmann.com 113 (Ahmedabad - Trib.): Nanubhai Keshavlal Chokshi HUF v. ITO - In the instant case the Honourable Ahmedabad Tribunal held that payment made by assessee to brothers who were living with him, for vacating house to be sold would be considered as an expenditure incurred for improvement of asset or title and would be deducted from long term capital gain on sale of said house.

[2016] 50 ITR (Trib.) 63 (Mum.): Smt. Anita Raj Hingorani v. ITO - In the instant case in the balance sheet, the assessee had reported an outstanding loan in the name of a proprietary concern of her husband. On verification of the balance sheet of her husband there was no corresponding debit entry. As a consequence, the Assessing Officer having not satisfied with the explanation of the assessee, treated the same as unexplained cash credit under Section 68.

On appeal before the Honourable Mumbai Tribunal, the Tribunal observed that the assessee's husband had filed a confirmation of the treating the said amount as gift before the lower authorities, which has been unjustly rejected by the lower authorities.

Therefore, the Tribunal held that addition make invoking Section 68 was unsustainable.

[2016] 161 ITD 93 (Kolkata - Trib.); [2016] 68 taxmann.com 249 (Kolkata - Trib.): Dy. CIT v. Xpro India Ltd. - In the instant case the Honourable Kolkata Tribunal held that where assessee, sold its manufacturing unit, since transferee had taken over all fixed assets and specified current assets but did not take over loan and liabilities, transaction in question could not be regarded as slump sale.

[2016] 161 ITD 226 (Hyderabad - Trib.); [2016] 74 taxmann.com 66 (Hyderabad - Trib.): Foundation for Indo-German Studies v. DIT (Exemptions) - In the instant case the Honourable Hyderabad Tribunal held that Section 12AA refers to application of income for charitable purpose, not to activities whether in India or outside; institution carrying out charitable or religious activities outside India, would be registered under section 12AA.

(2016) TaxCorp(LJ) 11811 (ITAT): Chalasani Naga Ratna Kumari vs. ITO - The Honourable Tribunal has held that the stamp duty value on the date of the agreement to sell has to be adopted and not the value on the date of the deed of sale. The proviso to Section 50C, though inserted by the Finance Act 2016 w.e.f. 01.04.2017, has to be given retrospective effect from 01.04.2003 as it is intended to remove an undue hardship and is curative in nature.

TS-697-ITAT-2016(Mum): Singapore Airlines Ltd - In the instant case the

Honourable Mumbai Tribunal held that payments made by assessee (a Foreign Airline company) for common utility terminal charges (CUTE) during AY 2010-11, constitutes a payment for 'facility' and not fees for technical service (FTS) and hence TDS under Section 194J is not applicable.

The Tribunal noted that CUTE charges were paid by assessee for providing the airline with technical infrastructure, telecommunication facilities and telecommunication infrastructure. The Tribunal accepted assessee's reliance on SC ruling in Kotak Securities Ltd wherein Supreme Court distinguished 'service' from 'facility' and held that transaction charges paid by stock exchange members to BSE do not qualify as Fees for Technical Service.

Tribunal also noted SC's observations in Kotak Securities distinguishing service from facility holding that while former is special and exclusive to the seeker of the service, the latter, even if termed as a service, is available to all and would therefore stand out in distinction to the former.

Thus, the Tribunal relying on Kotak Securities rules that payments for CUTE payment made by assessee for availing common user turnover charges are paid for facility and not service.

Relying on SC ruling in Japan Airlines, the Tribunal held that charges paid for Passenger Service Fees (PSF) is not in nature of rent and thus TDS under Section 194I is inapplicable.

TS-1034-ITAT-2016(Bang)-TP: Nike India Pvt Ltd. - In the instant case Assessee entered into an agreement with BCCI for securing sponsorship of Indian Cricket Team as per which Indian Cricket team and its officials were required to use Nike brand name on the uniform and accessories during the matches. It also entered into contract with its AE as per which 50% of the BCCI cost was shared by the AE.

The question that came up before the Honourable Bengaluru Tribunal was whether there was international transaction between the assessee and its AE.

The Honourable Tribunal noted that Nike name does not indicate any specific product but clearly promotes brand name, ITAT observes that assessee incurred the expenditure for the promotion of brand Nike and the agreement between assessee and AE acknowledges that BCCI Agreement will provide suitable benefit for Nike brands in the territory.

It held that on conjoint reading of both agreements, "the payment of 50% of the cost paid to the BCCI born by the AE of the assessee is under conscious understanding and agreement between the parties to promote and enhance the brand value of NIKE which belongs to the AE of the assessee".

It explained that as per definition of term 'international transaction' under Section 92B r.w.s. 92F(v), even an arrangement, understanding or an action in concert having a bearing on the profit income, losses or assets of the enterprises would qualify as international transaction.

Thus, the Honourable Bengaluru Tribunal upheld the existence of international transaction to the extent of sharing of cost between Nike India (assessee) and its AE in respect of contract with BCCI for promotion and brand building of Nike brand for AY 2009-10.

However, in respect of other local AMP expenses incurred by assessee for promoting its products, Tribunal notes that there was no agreement or arrangement either in writing or otherwise with AE and thus holds that such expenditure cannot result into an independent international transaction. Noting that the TPO has considered entire AMP expenditure including BCCI cost as international transaction whereas the Tribunal restricted its scope to BCCI cost, and remitted the issue to TPO for readjudication to the extent of sharing of cost between assessee and AE.

TS-4-ITAT-2017(Ahd): Elitecore Technologies (P.) Ltd. - In the instant case the Honourable Ahmedabad Tribunal held that where assessee-company received certain amount from its foreign AEs after deduction of tax at source, tax credit has to be allowed to it only to extent corresponding income has suffered tax in India and it is not correct approach to take into account gross receipts for purpose of computing admissible tax credit.

TS-6-ITAT-2017(Ahd): Dy. CIT v. Bombardier Transportation India (P.) Ltd. - In the instant case the Honourable Ahmedabad Tribunal held that where during rendition of services to assessee even if certain equipment were to be used, that by itself did not vest right in assessee to use equipment and thus, payments made by assessee could not be viewed as payments for "use or right to use" any equipment which was taxable as 'royalty'

The Tribunal noted that the payments were in the nature of reimbursements of expenses incurred by the payee on assessee's behalf without any income element embedded therein, also notes that there were specific cost allocations which were borne by the assessee.

Thus, the Tribunal held that payments made to Canadian-AE involving equipment is not 'royalty' as there is no vested 'right to use' such equipment.

TS-703-ITAT-2016(Bang): Texas Instruments (India) P. Ltd. - In the instant case the Honourable Bengaluru Tribunal denied Section 80JJAA deduction to assessee-company (engaged in manufacture & export of computer software) for AYs 2001-02 & 2002-03, as the new workmen employed by assessee fails the 'regular workmen' test as envisaged in the Explanation (ii)(c) to Sec 80JJAA.

Assessee had argued that in view of the Memorandum explaining provisions of Finance (No. 2) Bill, 1998, the condition of 300 days of employment during the previous year should be read as 300 days in a year and hence the year must be counted from the date of employment and not in a previous year.

The Honourable Tribunal noted that there is ambiguity involved in the language used in the Explanation and that used in the Memorandum, while the former uses the term 'previous year', the latter uses the expression 'in a year'.

The Tribunal though found force in assessee's stand, it opined that "though the language used in the provision appears to militate with the intention of the legislature as expressed in the memorandum as well as against the very object and scheme of the provision of providing incentive for generating more employment, it may be an omission in the provision which can be supplied only by an act of Legislature through proper amendment.

Accordingly, the Tribunal denied Section 80JJAA benefit as the 'regular workmen' condition was not met as per existing provision.

TS-31-ITAT-2017(Mum): CIT v. Sachin R. Tendulkar - In the instant case the Honourable Mumbai Tribunal held that where assessee's major income constituted of income from sports endorsement and that entire investment in shares was made out of his own funds and investment in shares with Portfolio Managers was a meagre percentage of assessee's total investments, income on sale of shares and mutual funds was to be taxable under head capital gains and not business income.

Press Release dated 30.12.2016 - India and Singapore have amended the DTAA for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income, by signing a Third Protocol today. This is in line with India's treaty policy to prevent double non-taxation, curb revenue loss and check the menace of black money through automatic exchange of information, as reflected in India's recently revised treaties with Mauritius and Cyprus and the joint declaration signed with Switzerland.

India revises tax treaty with Singapore to provide capital gains taxation similar to revised India-Mauritius treaty.

Revised treaty provides that capital gains on investments made upto March 31, 2017 will be exempt subject to fulfilment of conditions in Limitation of Benefits (LOB) clause as per 2005 protocol

For the period of 2 years starting from April 1, 2017, capital gains will be shared between India and Singapore subject to LOB clause and capital gains will be fully taxable in India (being a source State) from April 1, 2019.

The Third Protocol to the India - Singapore DTAA also inserts provisions to facilitate relieving of economic double taxation in transfer pricing cases.

Revised India - Singapore treaty also enables application of domestic law and measures concerning prevention of tax avoidance or tax evasion.

Finance Minister calls year 2016 as 'historic' with revisions to Mauritius, Cyprus & Singapore tax treaties and says that it will provide burial to 'round-tripping' and black money routes

Financial Service Commission – Circular letter dated 23.12.2016 - Mauritius issues circular laying down employment and substance requirements to be satisfied by new licensees for availing tax incentives.

The circular specifies criteria with respect to minimum number of employees resident in Mauritius, minimum annual operating expenditure in Mauritius/assets under management for various categories of licensees, viz: a) Global Headquarters Administration (b) Global Treasury Activities (c) Overseas Family Office (Single)/(Multiple) (d) Investment Banking and (e) Global Legal Advisory Services;

With respect to Mauritius global HQ companies, circular specifies employing of 10 professionals with at least two at managerial positions and incurring annual expenditure of MUR 5 million.

Similarly, sets threshold of 5 professionals / lawyers for investment bankers and Global Legal Advisory Services respectively.

With respect to multiple overseas family office, FSC requires employing atleast 3 professionals alongwith USD 5 million minimum 'asset under management' threshold for each family;

FSC circular also states that the licensee should have a physical office in Mauritius.

Circular No. 5 of 2017 dated 23.01.2017 - CBDT issued clarification for reducing tax litigation. States that Department is filing appeals mechanically, by erroneously interpreting para 8(c) of Circular 21 of 2015 (i.e. to contest cases on merits, even if the tax effect is less than the monetary limit or even if there is no tax effect).

Therefore, CBDT clarified that the aforesaid action is contrary to the instructions contained in circular no. 21 of 2015 and circular no. 8 of 2016.

CBDT directed the Department to contest cases only on merits and adds that that the import and intent of para 8 of the Circular No. 21 of 2015 is that even on issues mentioned in the said para, appeals against the adverse judgment should only be filed on merits.

Thus, the board directed Department that no appeal shall be filed in violation of these instructions, further appeals already filed may be withdrawn.

Circular 6 of 2017 dated 24.01.2017 - CBDT issued 'guiding principles' for POEM determination

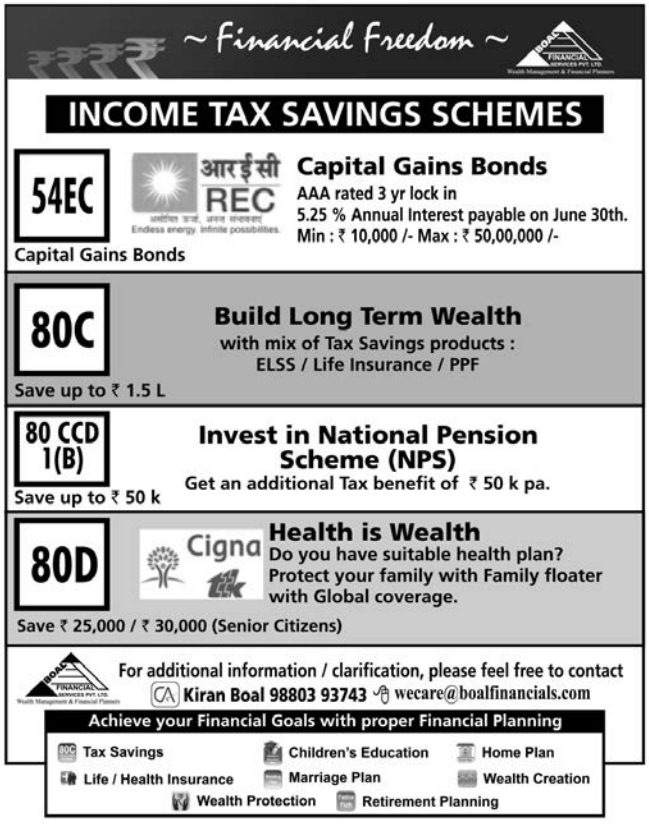
CBDT Clarification No. F/225/12/2016/ ITA.II dated 24.01.2017 - CBDT issued clarification in respect of income arising from transfer of unlisted shares by SEBI registered Category I & II Alternative Investment Funds ('AIF').

CBDT vide clarification dated 02.05.2016 had clarified that income arising from transfer of unlisted shares would be taxable under the head of 'Capital Gains', irrespective of period of holding. The said clarification also required the Revenue to take appropriate view in cases wherein the transfer of unlisted shares was made alongwith the "control and management of underlying business"

Representations were received in this regard that "the exception in clause (iii) of para 3 regarding transfer of unlisted shares along with 'control and management of the underlying business' should not be made applicable in case of certain AIFs.

CBDT observed that SEBI registered Category I & II AIFs invest in unlisted shares of ventures, many of which are new set-ups or start-ups, and thus, some form of control and management of the underlying business may be required to be exercised by such AIFs in order to safeguard investors' interest.

Thus, CBDT clarified that exception in Clause (iii) to para 3 in Clarification dated 02.05.2016, would not be applicable in cases of SEBI registered Category I & II AIFs only.



DIGEST ON RECENT DECISIONS UNDER COMMERCIAL TAX LAWS

CA Annapurna D Kabra

I) **State of Karnataka v. Soma Enterprises Limited – [2017] 97 VST 258 (Karn)**

Tax shall be levied as per sixth schedule of KVAT Act from 01.4.2006

Facts:

The respondent is involved in the business of execution of Works Contract, and uses various items like bitumen, sand and jelly etc., for the execution of works contract. The petitioner has stated that the amount towards works contract shall fall under the residuary category and shall be taxed @ 12.5% for the tax period 2005-2006. As far as the steel material was concerned, the First Appellate Authority had already assessed the ratio of 32.5%. As against this, the Tribunal has passed an order stating that the amendment inserted with respect to the residuary rate for works contract, was with effect from April 1, 2006, and therefore, prior to such date, tax shall be levied on every item independently, as per the schedule for the respective item, though it has been utilized in the execution of the works contract. Aggrieved by the same, the petitioner has moved to the High Court for an appeal.

Issue: Whether the amendment made by item No. 4/2006, shall have a prospective or retrospective effect i.e. Rate of tax on goods involved in works contract, where there was no separate charging section for works contract?

Grounds of Appeal:

The respondent has referred to the judgment passed in the case of *Durga Projects Inc, Bangalore v. State of Karnataka [62] VST 482 (Karn),* which states that Section 4(1)(c) was inserted with effect from 1st of April, 2006, thereby levying tax @ 12.5% on works contract, under the Sixth Schedule. Prior to the said amendment, tax has been levied on respective items used in the execution of works contract, at the rate applicable on the sale of such goods under Section 3(1) and 4 of the Act.

The sale under works contract is a deemed sale of transfer of the goods alone. Neither Section 3 nor Section 4 provides for a different rate of tax in case of a normal sale and a deemed sale of goods. Therefore, tax shall be payable as per the Schedule for the respective item used in the execution of works contract. It has been further stated that the amendment is prospective in operation. Since the activity of works contract has already been carried out prior to March 31st, 2006, therefore, tax cannot be levied as per the amendment. Prior to the amendment, the rate of tax was not specified in respect of transfer of property in goods, involved in the execution of works contract, therefore, in such case, tax shall be levied as per Section 3(1) of the Act.

Judgment: The High Court has approved the order passed by the Tribunal wherein, the amendment has been considered to be prospective in operation and it cannot be claimed retrospectively. Therefore, tax shall be levied on the goods used in the execution of works contract, as per the Schedule of the respective item as per Section 3(1), for the tax period prior to 1st April, 2006.

II) **TTP Technologies Pvt. Ltd. v. State of Karnataka and Others – [2017] 97 VST 308 (Karn).**

Assessment order is in favor of the principles of natural justice

Facts:

The appellant has been subject to assessment order under Section 39(1) of the Karnataka Value Added Tax Act, 2003 for the period April 2008 to March 2009. Against the order received, the petitioner had filed an application for rectification, which was rejected. Later, the appellant has filed petitions before the high court stating that the order has been passed without considering the principles of natural justice since the assessing authority had not issued a proposition notice while applying the gross profit rate, and certain audit reports were also relied upon without furnishing the same to the dealer.

Issue: Whether the principle of natural justice was followed or not while concluding re-assessment u/s 39(1) of the KVAT Act, 2003?

Grounds of Appeal:

The respondent has contended the petitions made by the appellant cannot be considered because an effective alternative remedy was available in the hands of the dealer under Section 62 of the Act. Filing of the rectification letter does not have the dealer form availing the remedy of appeal also under Section 62 of the KVAT Act, 2003. Further, the dealer was served a proposition notice and the appellant has even filed a reply thereto, which clear states that a reasonable opportunity was given to the dealer to be heard.

The principles of natural justice requires that the dealer must be notified and informed of the assessment proceedings initiated and provide a reasonable opportunity of being heard before issuing an order adverse to its interest. In the present case, the dealer was notified of the assessment proceedings before passing the order, and was also given a reasonable opportunity of being heard. Therefore, the issue of assessment order is in favour of the principles of natural justice. The High court, on the basis of the above contentions of the respondent, has dismissed the appeal petitions.

III) Southern Motors v. State of Karnataka and Others – Civil Appeal Nos. 10972-10978 of 2016 [SC]

Discount is allowable after issuance of the tax invoice.

Facts:

The appellant is a dealer in the motor vehicles and registered under the Act. During 2007-08 and 2008-09, it had raised tax invoices on the purchasers of motor vehicles according to the policy of manufacturers of the vehicles in order to maintain uniformity in price. After the sale is completed, the appellant allowed discount to its customers by issuing of credit notes, in order to meet the existing competition in the market. Hence, the net amount received, after the grant of discount was reflected in the books of accounts and returns filed thereafter. The Assistant Commissioner of Commercial Taxes, (Audit-1.6), by his reassessment orders, had allowed the discount reflected in the credit note as claimed by the appellant. However, the High Court, in its decision had disallowed such claim of discount, since only discounts mentioned in the tax invoices as eligible for deduction from the total turnover in terms of Rule 3(2)(c) of the Karnataka Value Added Tax Rules. Aggrieved by the rectified order passed by the High Court, the appellant has filed an appeal before the Supreme Court Authority.

Issue: Whether discount is allowable after issue of the tax invoice?

Grounds of Appeal:

The respondent of the case states that the discounts allowed through the issue of credit notes since the same were not revealed at the time of issuance of tax invoices. The respondent was of the view that once the sale invoice was issued and the sale price was collected along with the tax, such sales form part of the total turnover and the tax was payable on the taxable turnover, after claiming deduction permissible under Rule 3(2) of the KVAT Rules. As per Rule 3(2), discount allowed to customers shall qualify for deduction only if such amount is reflected in the sale invoice. Therefore, by issuing of a credit note post sale, but before filing of returns, cannot be construed that such discount shall be eligible for deduction under Section 3(2) of the Rules.

The appellant has relied upon Section 30 and Rule 31 of the Act clearly states that the assesse are entitled to claim deduction of discount issued to its customers by was of a credit note, in order to arrive at the taxable turnover. The appellant has contended that such discounts which are linked to achievement of targets for a particular period cannot be ascertained before hand and therefore, logically they cannot be reflected in the tax invoice. Therefore, such discounts are issued by way of a credit note at the end of such period for which such target is fixed, and are therefore, governed by Section 30 and Section 31 of the Act.

On a plain reading of Rule 3(2)(c), it can be observed that a discount to be eligible for deduction, has to be the one which is allowed in accordance with the regular practice of the dealer or in accordance with the terms of any contract or agreement entered into with the concerned party. Also, in order for a discount to qualify for deduction shall relate to the transaction resulting in the final sale /purchase price and not limit to the original sales invoice issued. The sale or purchase price is required to be adjusted on a combined consideration of the sale invoice issued along with the accounts reflecting the trade and other discounts and the actual price paid.

Judgment:

The Supreme Court has allowed the appeals of the petitioner. As per Section 30 and Rule 31, with reference to the provisions mentioned in Rule 3(2)(c), any discount allowed in terms of any contract entered into with the purchaser or is in regular practice of the dealer, shall be allowed on the basis of any account maintained by the dealer,

i.e. credit note in the present case, irrespective of its absence in the original sales invoice issued.

Comment:

Rule 3(2)(c) requiring to show the discount at the time of issuance of invoice is read down to allow discount after issuance of tax invoice as normally discounts are allowed after sale of goods and not before sale of goods.

IV) Vizien Organics v. Commissioner of Trade and Taxes and ANR. – W.P. (C) 10701/2016.

Furnishing of statutory forms is not mandatory for processing of refund.

Facts:

The petitioner had filed an application for refund. The Revenue has stated that the obligation to process the refund claim and pay interest will arise only after the necessary details including the Central Sales Tax (CST) documents are furnished. Further, on introduction of Section 38(7)(d) to the Delhi VAT Act, in 2012, the dealer's refund claim shall not be allowed in case any amounts are due and owing in the CST regime. The dealer has failed to furnish the applicable statutory forms such as C-Forms, F-Forms and H-Forms under the Central Sales Tax Rules, since the same were misplaced. In the absence of such documents, the respondent has curtailed the process of refund. Therefore, the dealer has moved before the High Court, in order to seek remedy.

Issue: Whether refund under VAT law can be withheld, where statutory forms under CST are not filed?_

Grounds of Appeal:

The petitioner has contended that both, the Delhi Value Added Tax Act and the Central Sales Tax Act, operate in separate fields and are independent of each other. Hence, while refunds applications are made under the DVAT Act, recourse to the Central Sales Tax Act and demands made there under or not. It is further highlighted that in case of non-receipt of CST forms till the date of assessment, a very high rate of 15% is charged. Therefore, if the view of the revenue is accepted, then no refund shall be issued and no interest shall be paid until the CST forms are issued, and further, 15% of such Central Sales Tax shall be paid, which shall be completely untenable.

The appellant has further referred to various circulars issued by Commissioner DVAT such as Circular Nos. 6 of 2014-15; 8,12,37 and 38 of 2015-16 which clearly emphasize that filing of hard copy of the CST forms is no longer essential and that the CST forms could be verified from TINXSYS mode for authentication. Therefore, the VAT officers were under an obligation to follow the timelines for issue of refund and that non-furnishment of statutory forms shall not restrict the issue of eligible refunds. On verification of documents, it was found that all the documents were in order.

Judgment:

The High Court has issued to the respondent to process all the pending refund claims and also to ensure that the dealers shall be entitled to applicable interest in accordance with law up to the date of payment. All the writ petitions have been allowed and the contentions stated by the respondent has have been dismissed on the grounds that furnishing of statutory forms is not mandatory for processing of refund.

V) State of Karnataka v. Manyata Promoters Pvt. Ltd.- [2017] 97 VST 479 (Karn)

The assessee was entitled to claim refund of input tax as the benefit of beneficial legislation has to be extended to the SEZ dealers

Facts:

The respondent-assessee is a developer of Special Economic Zone at Ranchenahalli as per the permission granted by the government of India. As per the policy of the Government of India, the respondent is eligible for refund of tax paid on purchases from the local dealers for the purpose of development, operation or maintenance of the processing area in a SEZ. Sub-section (2) of section 20 of the KVAT Act has been inserted to give the said benefit to those SEZ developers.

For the assessment year 2009-10, the respondent filed return in VAT-100 and claimed refund of input tax of Rs. 6, 17, 95,795. The assessing officer, on verification of the return, found that the dealer has claimed input-tax credit in a particular tax period related to purchases of some other month. As per section 35(1) of the Act, the dealer shall furnish the return within 20 days or 15 days after the end of the preceding month or any other tax period, as may be prescribed. However, if there is any omission or incorrect statement therein, the dealer can file revised return within a period of six months. Since the respondent did not file the revised return within a period of six months, belated returns cannot be accepted and rejected the claim for refund of input-tax credit. However, granted the relief only to the extent of Rs. 84, 95, 621.

Being aggrieved by the same, the respondent preferred an appeal before the first appellate authority. The first appellate authority partly allowed the

appeals and gave certain beliefs. Being aggrieved by the same, the respondent preferred appeals before the Karnataka Appellate Tribunal. The Appellate Tribunal after examining the matter granted the relief holding that there is no express provision under the KVAT Act or Rules made there under prescribing the dealer claiming input-tax credit only in the month in which the tax invoice is raised by the seller. Being aggrieved by the said order of the Tribunal, the Revenue has preferred revision petitions.

Issue: Whether filing revised return within six months is compulsory for claim refund by SEZ unit?

Grounds of Appeal:

The Revenue contended that the order passed by the Tribunal is perverse and unsustainable in law. The appellant is not entitled for the benefit of input tax claim made beyond six months. The order passed by the Tribunal holding that there is no limitation prescribed for claiming the input-tax credit by interpreting section 20(2) of the KVAT Act is contrary to law and hence sought for setting aside the order of the Tribunal by allowing revision petitions.

On the other hand respondent argued in support of the order passed by the Tribunal and contended that there is some delay in claiming refund of input tax because of many reasons. The refund of input tax cannot be denied on the ground of belated claim. A reading of section 20(2), which is a beneficial legislation, makes it very clear that the developer of SEZ or a unit located in any SEZ is entitled for the refund of input-tax credit or deduction from the output tax payable by such dealer. Section 20(2) does not contemplate any period within which, such developer shall claim refund of input tax. Further, rule 130A which was inserted with effect from April 1, 2007 also does not contemplate the period within which the developer shall claim the refund of input tax. Section 35 cannot control section 20(2).

Judgment:

The revision petitions were dismissed and the assessee was entitled to claim refund of input tax as the benefit of beneficial legislation has to be extended to the SEZ dealers. The technicalities shall not come in the way of giving some reliefs. Hence, section 20(2) has an overriding effect against section 35 of the Act.

VI) Computer Consultants v. Assistant Commissioner (CT), Hosur (South) Assessment Circle, Hosur and Another - [2017] 97 VST 391 (Mad)

ITC would not be reversed on the ground that it is in excess of what the appellant is entitled to avail simply because the selling dealer has not filed returns.

Facts:

The appellant is a registered dealer, under the provisions of the Tamil Nadu Value Added Tax, 2006. Who was served with a notice stating that, on cross-verification of the monthly returns for all the four years, viz., 2010-11, 2011-12, 2012-13 and 2013-14 from the Department's website, it was found that the dealer had reported higher purchases and availed of input-tax credit in excess. Hence, the returns filed for the relevant years, were rejected as incorrect, and the ITC, which was availed of by the appellant was proposed to be reversed. On receipt of the Show-cause notice for all the four years, the appellant appeared in person before the assessing officer and explained that they have claimed ITC on the basis of purchased bills, and requested the officer to verify the annexure II of the sellers and to drop proceedings. The respondent, however, did not accept the explanation given by the appellant and passed the impugned orders.

Issue: Whether ITC can be denied if selling dealer had not discharged tax?

Grounds of Appeal:

The appellant contended that the ITC could not have been reversed based on website reports, and this has been held to be illegal, in several decisions. ITC shall not be disallowed for the reasons that the seller had not been assessed, since the selling dealer has not filed returns. The appellant had followed rule 10(2) of the Tamil Nadu Value Added Tax Rules, 2007, and therefore, could not be said to have wrongly availed of input-tax credit. Section 19(1) states that ITC can be claimed by a registered dealer, if he establishes that the tax due on such purchases has been paid by him in the manner prescribed and that was accepted at the time when the self assessment was made. Further, it was another matter that the selling dealer had not paid the collected tax. The liability had to be fastened on the selling dealer and not on the appellant which had shown proof of payment of tax on purchases made. Thus, on this ground the appellant contends that the order is unsustainable and has to be set aside

Judgment: The appeal of the appellant was allowed and also held that the impugned orders were not tenable. ITC would not be reversed on the ground that it is in excess of what the appellant is entitled to avail simply because the selling dealer has not filed returns.

SERVICE TAX DECISIONS

PARTS DIGESTED – STR VOLUME 47: PARTS 1 & 2

CA. A. Saiprasad

Notifications

Online Information & Database Access or Retrieval Service (OIDARS) & Transportation of goods by vessel

Entry No. 34(a) of Notification No.25/12 ST exempted import of service by government, local authority, governmental authority or an individual in relation to any purpose other than commerce, industry business or profession. *A proviso has now been inserted to the effect that aforesaid exemption shall not apply to OIDARS services*.

Entry No. 34(c) of Notification No.25/12 ST exempted service provided by a person located in non-taxable territory and received by a person located in a non-taxable territory (*kindly note that the POPS could be in taxable territory though provider and recipient are located O/s India. Thus activity would have been liable to tax, but for this exemption*). A proviso has now been inserted withdrawing exemption in case of transportation of goods by a vessel from a place outside India up to customs frontiers of India, where both the service provider and recipient are located outside taxable territory.

As per R.10 of POPS, 12, the place of provision of service is destination of goods i.e. taxable territory and hence the transportation activity would be liable to service tax, though transportation is from a place outside India to the customs frontiers of India.

Since both the service provider and recipient are located outside taxable territory, the person-in-charge of the vessel or his agent as defined u/s 148 r/w S.29,30 or 38 of the Customs Act, 62, have been made as the person liable to pay service tax w.e.f. 22.1.17

Notification No.1/17 ST dt.12.1.17 r/w Corrigendum to Notification No.1/17 dt.18.1.17 r/w Notification No.2/17 ST dt.12.1.17 r/w Notification No.3/17 ST dt.12.1.17.

Aggregator of Services for Renting of Hotels, Inns, Guest Houses etc.

The aggregator of service is the person liable to pay service tax as per R.2(1)(d)(i)(AAA) of Service Tax Rules, 94.

However, there was a practical problem relating to services provided by aggregators in relation to booking of hotels, inns etc.

The consideration for staying at the hotels, inns etc. could at times be paid at the hotels, inns etc. directly by the customer to the said hotels, inns etc. The consideration in such cases did not pass through the hands of the aggregator. However aggregator was made the person liable to pay service tax on the gross value, even though it did not receive the gross rental value of such bookings.

Hence definition of aggregator has now been amended to exclude those aggregators where the service providers i.e. hotels, inns, guest houses etc. have a service tax registration and the whole consideration is directly received by the service providers and no part of consideration is received by recipient of service i.e. customers who stay in hotels, inns, guest houses etc.

Notification No.2/17 ST dt.12.1.17

Tour Operators

As per Notification No.26/12 ST, services by tour operator were eligible for abatement. Tax had to be paid on 10% of value, in case of hotel booking and 30% of the value in other cases, subject to certain condition in the both the aforesaid cases. Input service of only 'tour operator' was eligible to be availed as credit in both the aforesaid cases.

The aforesaid abatement has now been amended, as per which, service tax shall have to be paid at 60% of the value, on any service provided by a 'tour operator'.

The difference in abatement for hotel booking and other than hotel booking has thus been removed.

Further all kinds of input services, as per the definition of R.2(l) of CCR, 04 would now be available to a 'tour operator', instead of only 'tour operator' input service prior to amendment.

In case of tours organized by persons other than tour operators, the value of taxable service would be 30%. The credit of only 'tour operator' service would be available to such persons.

The term 'tour operator' had already been defined in para 2(c) of Notification No.26/12 ST, which would be necessary in the opinion of the author to draw out the distinction between tour operator and person other than tour operator.

Notification No.4/17 ST dt.12.1.17.

Case Laws

Whether service tax is liable restaurants?

The Kerala High Court held that service provided by air-conditioned restaurant, eating joints and mess u/s 66E(i) (declared service), was beyond the legislative competence of the Parliament, since the said aspects were covered by Entry No.54 and 62 of the State List. Hence service tax thereon was illegal and liable to be struck down as un-constitutional, null and void.

Kerala Classified Hotels and Resorts Association V. UOI, 2017 (47) STR 215 (Ker)

Whether refund can be denied on the ground that service rendered was not taxable?

The software technology park unit of the assessee sought refund in respect of tax paid on input service pertaining to services exported by it. Department denied the refund on the ground that service rendered by the assessee was not taxable during the relevant time.

Tribunal held that refund sanctioning authority must confine itself to the stipulations of the Rule, while dealing with refund of accumulated cenvat credit. That un-utilised credit availed for rendering services which have been exported represents tax that should not have been collected, which for the convenience of administering tax, is granted as refund.

The Tribunal held that criteria for refund are existence of accumulated credit, insufficient opportunity to utilise thereof and limiting the refund to the proportion of export turnover.

Infosys Technologies Ltd V. CCE, 2017 (47) STR 24 (T)

Whether penalty can be imposed in revisionary proceedings when suppression not alleged in revisionary proceedings?

The Tribunal held that when the order emanated from a show cause notice issued u/s 84, by invoking revisionary powers of the Commissioner, then the earlier order issued by adjudicating authority, merged into the Order of revisionary authority. That when the department failed to allege suppression in the SCN issued under revisionary proceedings u/s 84, penalty could not be imposed.

CCE V. Saraiwala Agra Refineries Ltd., 2017 (47) STR 39 (T)

Sub Contractor's Liability

The Assessee was providing services to exporters and importers in terms of Inland Container Depots (ICD) operation owned and controlled by Rajasthan Small Industries Corporation (RSIC). Agreement with RSIC revealed that assessee operated as contractor to render services in relation to import and export operations including marketing ICD services, ensuring realization of amounts etc.

The Tribunal held that the services rendered by assessee to RSIC was liable under Business Auxiliary Service. Assessee's argument that service tax liability would not arise since agreement with RSIC was in the nature of cost/ revenue sharing was held as untenable in view of the clear wordings of agreement with RSIC, wherein intention of the contracting parties were clearly mentioned.

Assessee's further contention that they were sub-contractor of RSIC and that RSIC had discharged service tax on the gross amount and hence they were not liable to service tax did not find merit. The Tribunal held that payment by RSIC would not lead to exclusion of tax liability of the assessee.

Tribunal held that though tax paid by assessee could be used as input service by RSIC, it would not alter the tax liability of assessee and that demand of tax by assessee, who was a sub-contractor of RSIC did not amount to double taxation.

The Tribunal however held that extended period of limitation could not be invoked in aforesaid case.

Max Logistics Ltd V. CCE, 2017 (47) STR 41 (T)

Technical Testing or Technical Consultancy Service?

Assessee was synthesizing chemical entities and submitting monthly reports. The test reports were more about produced components. The service involved trials, testing of products and final resultant chemicals. The service of assessee was closely monitored by client.

The Tribunal held that testing and analysis was the primary protocol for carrying out the research and hence liable for technical testing and analysis service.

CCE V. Avra Laboratories Pvt Ltd., 2017 (47) STR 230 (T)

Job worker whether eligible for Cenvat Credit on outward freight charges?

The issue was whether job worker was eligible for service tax paid on outward freight charges under GTA service for transport of manufactured biscuits from factory to depots of principal manufacturer.

Tribunal held that duty paid on input raw materials and packing materials supplied for conversion into biscuits by principal manufacturers were availed as credit. Hence Cenvat Credit was admissible on GTA service from place of removal to purchaser's premises prior to 1.4.08.

Lao More Biscuits Pvt Ltd V. CCE, 2017 (47) STR 267 (T)

Whether money received for which no service is rendered is liable to service tax?

Facts of the case: The airline enters into agreements with IATA agents for sale of cargo space and ticketing and in addition to normal commission, which is deducted by agents from the fare of the ticket, special incentive linked to productivity is also paid.

As verification has to be carried out, the assessee in this case is entrusted with the amount as custodian for disbursement and which is executed on claim filed by IATA agent. The amount not claimed remains in transit with the assessee who is liable to discharge the same, when claimed.

The revenue sought to include the aforesaid amount received from airline company, to be given to IATA agents as liable to service tax.

The Tribunal held that in the absence of any service rendered by IATA agents to the assessee, the said consideration to be paid to IATA agent was not liable to be taxed.

The Tribunal held that the expression 'gross amount charged' must not be read in isolation but in conjunction with the expression 'for such service provided'. Hence there was no scope for taxing amounts transferred to IATA agents as consideration.

CST V. Allied Aviation Ltd., 2017 (47) STR 279 (T)

Whether proprietor and proprietary firm are different persons for service tax?

The refund claim filed by the assessee was rejected by the Adjudicating Authority on the ground that refund claim was made by proprietary firm M/s. AK Associates whereas its proprietor Mr. Kishor Harilal Daga had sought the refund.

The Tribunal held that PAN given was in the name of proprietor and the same PAN was used for all purposes like Income Tax, Bank A/c etc. Therefore if any refund arose, the same ought to be released either to proprietor or proprietary firm. The proprietor and proprietary firm were not different entities and that there was no separate legal status of proprietary firm. That for all legal purposes, proprietor was having the *locus standi* for operation of the firm. Hence refund was not rejectable.

AK Associates V. CCE, 2017 (47) STR 49 (T)

Bangalore Branch of SIRC of ICAI
SOUTHERN INDIA CHARTERED ACCOUNTANT STUDENTS ASSOCIATION
National Badminton Championship 2K17

Held on 26th , 27th January 2017 at Karnataka Badminton Association, Bengaluru

Winners and Runners

Sl No.	CA Students	WINNERS	RUNNERS
1	Men Singles	Mr. Rishiketh Yaligar, Dharwad	Mr. Sagar D, Bengaluru
2	Women Singles	Ms. Monisha, Bengaluru	Ms. Amrutha Koti, Dharwad
3	Men Doubles	Mr. Toshith Malani & Mr. Jaikishan Malani, Chennai	Mr. Sagar D & Mr. Yogeshwar M, Bengaluru
4	Mixed Doubles	Mr. Rishiketh Yaligar & Ms. Monisha	Mr. Abhishek S & Ms. Amrutha Koti

Sl No.	Chartered Accountants	WINNERS	RUNNERS
1	Men Singles	CA.Vinayak Asundi, Belagavi	CA.Ashwin K, Bengaluru
2	Men Doubles	CA.Vinay Mruthyunjaya & CA.H B Sunil, Bengaluru	CA.K.Sriharsha Urala & CA.Raghavendra MN, Bengaluru

CA. Raveendra S. Kore
Chairman SICASA
Bangalore Branch of SIRC of ICAI

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

Bangalore Branch of SIRC of ICAI

Southern India Chartered Accountant Students Association

On Wednesday 15th February 2017, from 8.30 am to 5.15 pm
at ICAI Bhawan, Bangalore Branch

Time	Particulars	Speakers
8.30 am to 9.00 am	Registration	
9.00 am to 10.00 am	Inaugural Session	Inaugural address by Chief Guest & Guest of Honor
10.00 am to 11.30 am	1st Technical Session An Overview of GST-Brief concept of model GST law including concept of CGST, SGST & IGST including supply	CA Madhukar N. Hiregange Central Council Member & Chairman, Indirect Taxes Committee, ICAI, New Delhi
11.30 am to 11.45 am	TEA BREAK	
11.45 am to 1.15 pm	2nd Technical Session Levy & Composition Exemption from tax & place of supply	CA Siddeshwar Yelamali
1.15 pm to 2.15 pm	LUNCH BREAK	
2.15 pm to 3.30 pm	3rd Technical Session Tax credit (Capital goods , services & Input) including matching concept	CA Naveen Rajpurohit
3.30 pm to 3.45 pm	TEA BREAK	
3.45 pm to 5.15 pm	4th Technical Session Transitional provisions & Procedure for registration & returns	CA Hanish S

CA Raveendra S. Kore
Chairman SICASA
Bangalore Branch of SIRC of ICAI

Student Co-ordinators

Mr. Sheelavanthaiah
Vice Chairman
+91 8884441485

Mr. Charan Kumar
Secretary
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Venue: Narayana Auditorium, Bangalore Branch Premises, Vasanthnagar, Bangalore

Registration Fee : Rs. 200/-

For Registration, please Contact: Mrs. Manjula G.M- 080-30563511

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Seminar on Issues Relating to Audit of Souharda Co-op societies

Inauguration

Inauguration

Sri M.K. Ayyappa IAS

CA. Pampanna B. E., Chairman

CA. Geetha A. B., Vice Chairman

CA. Raveendranath B. V.

Mrs. H.C. Nagarathna

CA. Sunil Kumar

Sri H. V. Rajiv, Vice President, KSSFCL, Bengaluru

Sri. S. L. Prashanth Kumar

CA. Shivakumar H

Sri. Divakar A. C.

Sri. Prakash C. Majjige

Sri. S. L. Prashanth Kumar

Sri. Sharanagowda G. Patil

Role of Professionals in MSME Sector

CA K Ravi,
Sr. Vice President, FKCCI

Sri. P Ravi Kumar,
Chief General Manager, NSIC Ltd.

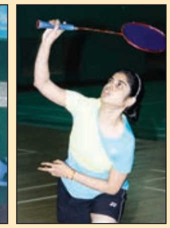
CA I S Prasad,
Co-ordinator

SICASA Badminton Championship






























One day Seminar for Young Members TARUNYA- Educate, Empower, Excel

Inauguration

CA K Raghu,
Past President, ICAI

CA Mukesh Singh Kushwah,
Chairman, YMEC, ICAI

CA Madhukar N Hiregange,
Central Council Member, ICAI

CA I S Prasad

CA Pampanna B.E.,
Chairman, Bangalore Branch

Moderator – CA.N.Nityananda

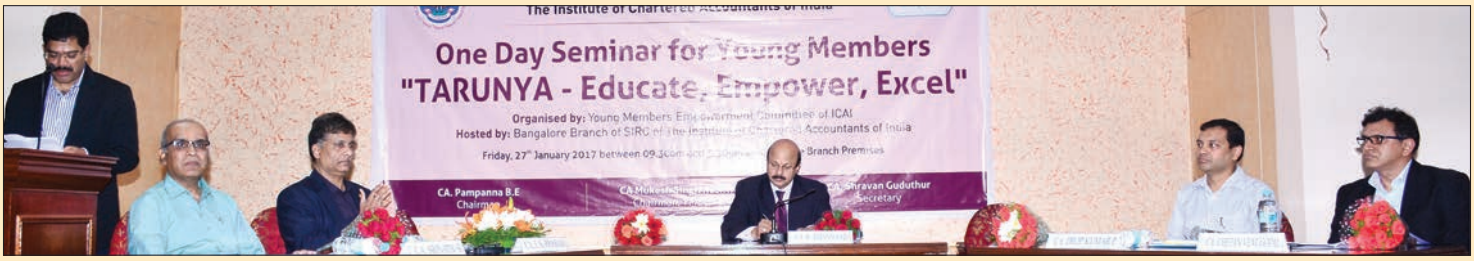
CA Anand P Jangid

CA Chetan Venugopal

CA D S Vivek

CA Dilip Kumar P

Mr. Sampath,
Corporate Trainer

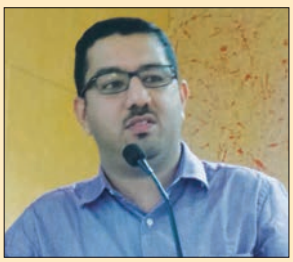


Panel Discussion

Speakers at Study Circle Meetings

CA Amith Raj & CA Krishna Prasad

CA. Narendra Jain



CA D Tarun Kumar Jain

CA Hanish S

CA Prashanth G S

CA Dr. Vishnu Bharath

CA Bishnu Kumar Agarwal

Mr. Deepak Rao, CMA

An Awareness Programme Analysis of Union Budget 2017

Inauguration

CA. Shrikanth Rao

CA. Pampanna B. E., Chairman

CA Shravan Guduthur, Secretary

Moderators: CA. T. V. Mohandas Pai & CA. H. Padamchand Khincha

Shri. Narayan Ramachandran

Shri. Ravi Gururaj

CA. Arun Anandagiri

CA. S. S. Naganand

Dr. Shubhada Rao

Felicitation to CA. T. V. Mohandas Pai

Participants

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