

**The Institute of Chartered Accountants of India**

(Set up by an Act of Parliament)



# Bangalore Branch of SIRC Newsletter

*English Monthly*

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## Lokasabha Elections 2014



CPE - April 2014  
**19**

# Chairman's Communique . . .



## **Dear Professional Colleagues,**

**At the outset on behalf of the Managing committee of the Bangalore Branch, I wish you all a very happy new financial year 2014-15.**

**Updating knowledge is the need of the hour, since many new laws are coming into force like companies Act 2013, Direct tax law Code, and GST etc.. We need to unlearn old laws and re-learn new laws. Bangalore Branch has always taken initiatives to update knowledge of the members and in order to update new laws, we have planned many programs in coming months. We request everyone to support for all the new programs.**

## **March 2014:**

### **Women's day conference:**

On the occasion of International women's day , First Women CA's conference was held on 8<sup>th</sup> of March 2014. It was a wonderful conference with all women speakers and more than 300 women delegates participated and appreciated the unique program. All the participants expressed their desire to have similar programs at least once in a year. I must appreciate CA. Geetha A.B., Treasurer, Bangalore Branch, for co-ordinating this delightful Conference.

### **Bank Audit Seminar:**

For updating the knowledge of the members, the Bangalore Branch has conducted many CPE programs in the month of March. We also conducted Bank Audit seminar for members where in more than 475 members have participated. The Seminar was inaugurated by Sri. P S Rawat, Executive Director of Canara Bank. I thank all the members for the overwhelming response for all our programs.

### **Campus placement :**

I am glad to inform you that, this year more than 18 companies participated in the campus placement program held at Bangalore in the month of March 2014; More than 75 newly qualified CA's were selected in the Campus interview by various companies and the highest salary package offered was Rs. 15 lakhs per annum.

## **Future programs:**

### **Exclusive programs for members in industry :**

In order to encourage network amongst the members serving in industry, we are having an exclusively designed program for them on 14<sup>th</sup> of June 2014. Our MC member, CA. Shivaram Bhat who is a member from industry has been nominated as the Co-ordinator for this program. I request all members in industry to support the program by registering for the same in large numbers.

## **CPE Study Circle:**

Many members expressed that, they are not able to attend many CPE programs held at Bangalore Branch, because of the distance and the traffic at Bangalore. In order to benefit the members, Bangalore Branch is contemplating to have CPE study circles at various places in Bangalore. With this, members can participate at their convenient place and avail the benefit of CPE.

For starting a CPE study circle in a particular area the required minimum strength is 100 members. I request members whoever is interested to volunteer for becoming the Co-ordinator for the CPE study circle in their area and to contact the branch or mail to us.

We are having a joint program with Basavangudi CPE Study circle on 24<sup>th</sup> April 2014 at Jain Auditorium (next to Bangalore Stock exchange) and if at all any surplus arises from such a program the same shall be donated to CA Benevolent Fund. The details have been published elsewhere in the newsletter. I request members to participate in large numbers.

## **Companies Act 2013:**

MCA has notified 183 new sections and Rules for 10 Chapters under Companies Act, 2013 .We are planning an exclusive Workshop on Companies Act 2013 and Rules there under in the month of May 2014. Members are requested to derive benefits by participating in larger numbers.

## **Lok Sabha Elections:**

It has been well said by our former President, Sri A.P.J. Abdul Kalam that the Chartered Accountants are partners in the nation building. There are several areas in which a Chartered Accountant can contribute and these areas are factors for the growth of the nation.

Chartered Accountants can play a vital role in the formation of policies. To make progress, policies have to be formed keeping in mind the factors affecting the economy at macro level. If policies are formed without understanding the impact of various factors, economy may go in a wrong direction. Chartered Accountants have good understating and clarity of the factors affecting the economy and so they can contribute to National and State Policies for growth and development.

India is the largest democratic country, voting is our right as well as our responsibility. Since we are also partner in nation building, all Chartered Accountants must necessarily vote and persuade the other voters to exercise their franchise. It is our responsibility to elect the right persons for the development of our Country. I request members to cast your vote on 17<sup>th</sup> of April 2014, the scheduled Poll in Bangalore.

Wish you all a very peaceful audit season.

With Regards,

**CA. Babu K Thevar**  
Chairman

## CALENDAR OF EVENTS - APRIL & MAY 2014

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
02.04.2014 Wednesday	Opportunities for CAs in Life Insurance Sector <b>CA. S. Lakshminarayanan Seshadri</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
04.04.2014 Friday	CPE Teleconference Programme	Branch Premises 11.00am to 01.00pm	<b>2 hrs</b>
09.04.2014 Wednesday	Impact of Service Tax/VAT on Layout Development <b>CA. Chandrashekar B. D.</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
11.04.2014 Friday	CPE Teleconference Programme	Branch Premises 11.00am to 01.00pm	<b>2 hrs</b>
16.04.2014 Wednesday	Wealth Tax - Concepts & Recent Issues <b>CA. Kanthilal Jain</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
23.04.2014 Wednesday	Issues in Taxation of Partnership firms <b>CA. Umesh Bolmal, Belgaum</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
24.04.2014 Thursday	Survey, Search, Seizure & Settlement Commission <b>Dr. CA. A. S. Vishnubharath &amp; CA. R. Ramakrishnan</b> <i>Delegate Fee: Rs.250/-</i> <b>IMPACT SEMINAR</b> <i>Venue Address: Jain University Auditorium, 34, 1st Cross, J. C. Road, Bangalore-560027, Adjacent to Bangalore Stock Exchange</i> <i>Details in Page 4</i>	Jain University Auditorium, Bangalore-560027 05.30pm to 08.30pm	<b>3 hrs</b>
25.04.2014 Friday	CPE Teleconference Programme	Branch Premises 11.00am to 01.00pm	<b>2 hrs</b>
30.04.2014 Wednesday	Discounting Cash Flow (DCF) Techniques made easy <b>CA. Amith Raj A. N. &amp; CA. Krishna Prasad</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
07.05.2014 Wednesday	Issues in Software Taxation under Service Tax <b>CA. Madhur Harlalka</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
14.05.2014 Wednesday	<b>HOLIDAY - BUDDA POORNIMA</b>		—
21.05.2014 Wednesday	Computation of Income for Charitable Trust <b>Dr. CA. N. Suresh</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>

**Note: For all programmes High Tea shall be provided 30 minutes prior to the start of the programme at the respective venue.**

### Advertisement Tariff for the Branch Newsletter

Colour full page	Inside Black & White
Outside back ₹ 30,000/-	Full page ₹ 15,000/-
Inside back ₹ 24,000/-	Half page ₹ 8,000/-
	Quarter page ₹ 4,000/-

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

Editor : **CA. Babu K. Thevar**  
Sub Editors : **CA. Allama Prabhu M.S.**  
**CA. Pampanna B.E.**

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## CALENDAR OF EVENTS - MAY & JUNE 2014

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
22.05.2014, 23.05.2014, 24.05.2014 & 31.05.2014	Workshop on Companies Act, 2013*  <i>Delegate Fees: Rs.2,250/-</i>	Devraj Urs Auditorium Opp to B'lore Branch	<b>20 hrs</b>
28.05.2014 Wednesday	Issues relating to Reverse Charge & Joint Charge under Service Tax Law <b>CA. A. Saiprasad</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
14.06.2014 Saturday	National Conference for the Members in Industry* <i>Organised by CMII, ICAI</i>	Hotel The Chancery Pavilion, Residency Road, Bangalore 09.30am to 05.30pm	<b>6 hrs</b>

\* Details will be published in our next issue

### KIND ATTENTION TO MEMBERS



## Impact Seminar on Survey, Search, Seizure & Settlement Commission

On Thursday, 24<sup>th</sup> April 2014 at Jain University Auditorium, Bangalore

Organized by Bangalore Branch of SIRC of ICAI

In association with Basavanagudi CPE Study Circle

Speakers :

**Dr. CA. A. S. Vishnubharath & CA. R. Ramakrishnan**

*Delegate Fees: Rs.250/-*

*Cash / Cheque in favour of "Bangalore Branch of SIRC of ICAI"*

***Surplus Funds of this programme will be transferred to CA Benevolent Fund***

**CA. Maddanaswamy**

*Co-ordinator*

**CA. Dileep Kumar T.M.**

*Convener, Basavanagudi CPE Study Circle*

*For further details please contact:*

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### KIND ATTENTION TO MEMBERS

***Bangalore Branch is contemplating to start CPE Study Circles at following places.***

Indiranagar, HSR Layout, Madivala, Koramangala, Ramamurthy Nagar, Hebbal,

Sanjay Nagar, Jayanagar, J.P. Nagar, B.T.M. Layout, Bannerghatta Road,

Electronic City, Rajajinagar, Vijayanagar & Yeshawanthpur.

*Interested members may mail to [blrchairman@icai.org](mailto:blrchairman@icai.org)*

## TAX UPDATES FEBRUARY 2014

CA. Chythanya K.K., B.Com, FCA, LL.B., Advocate

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

#### PARTS DIGESTED:

a) 67 VST – Part 6

b) 18 KCTJ – Part 11

#### *Reference / Description*

[2013] 68 VST 70 (Mad. – HC):  
*Vitan Departmental Stores & Industries Ltd. v. State of Tamil Nadu*

- In the instant case the Petitioner had engaged in the business of operating supermarket under franchise agreements. Assessee had entered into agreement where it agreed to transfer the right to use its system, the licensed right of its names, trademarks, systems, insignia, symbols and goodwill. The Assessing Authority levied tax at 4 per cent on the ground that the agreement clearly indicated that the dealer transferred its trade name and goodwill which were intangible goods falling under entry 46 of Part B of the First Schedule to the Tamil Nadu General Sales Tax, 1959.

The Honourable Madras High Court observed that the transaction was not a claim nor was it a debt or a beneficial interest in a moveable property but a transfer of a right in the trade mark, trading style which was incorporeal rights. The transfer of right to use its trade mark, goodwill, reputation was exclusively to the franchisee in respect of a particular outlet and any misuse of such exclusively licensed right rendered the franchise open to action which included termination of the agreement. Therefore, the Court held that it was a case where goods in the nature of intangible or incorporeal

were available for delivery; there was consensus ad idem as to the identity of such goods as the transferee had the legal right to use the goods. Thus, the Court held that all the attributes to constitute transfer of right to use the goods was fulfilled and hence, the Court held that the right given by the Petitioner was undoubtedly a transfer of right to use incorporeal or intangible goods which was exigible to tax.

[2013] 68 VST 124 (Karn. – HC):  
*State of Karnataka v. Cauvery Motors Pvt. Ltd.* - In the instant case the dealer's customers had purchased the motor vehicles from the manufacturer through the dealer. The sale price included the price of warranty. The dealer had supplied spare parts, replaced defective parts and returned the defective parts to the manufacturer. With the defective parts, the dealer raised a debit note in the name of the manufacturer. Thereafter, the manufacturer raised credit note. The dealer claimed deduction of the amounts for which credit notes were received from the manufacturer. The Assessing Authority allowed the deduction. But later on pursuant to the judgment of the Honourable Supreme Court in the case of Mohd. Ekram Khan & Sons. v. Commissioner of Trade Tax [2004] 136 STC 515 (SC), the Assessing Authority initiated re-assessment proceedings and levied tax for the spares parts supplied during the warranty period. The Assessing Authority also levied penalty.

The Honourable Karnataka High Court held if the spares parts had been purchased in the open market, both

would have had to pay sales tax. Therefore, the consideration paid by the manufacturer to the dealer by way of a credit note represented the sale price of the spare parts replaced and hence held that the same was liable to tax.

Further, with respect to levy of penalty, the Court held that penalty cannot be levied based on the subsequent Supreme Court decision.

### INCOME TAX

#### PARTS DIGESTED:

a) 360 ITR – Part 5 & 6

b) 220 Taxman – Part 5 & 6

c) 221 Taxman – Part 1 to 3

d) 29 ITR (Trib) – Part 5 to 7

e) 146 ITD – Part 4 to 7

f) 45 CAPJ – Part 2

g) 45-B BCAJ – Part 5

h) 10 International Taxation –  
Part 2

[2014] 360 ITR 633 (Mad. – HC):  
*Tamil Nadu Cricket Association v. DIT (Exemption) and Others*

- In the instant case the Honourable Madras High Court held that cancellation of registration should be with reference to objects satisfying definition of charitable purpose as at time of registration and not by subsequent amendment to Section 2(15) of the IT Act.

[2014] 360 ITR 714 (Karn. – HC):  
*CIT and another v. Infosys Technologies Ltd.*

- In the instant case the Assessee had incurred expenditure towards installing traffic signals and claimed deduction under Section 37 of the IT Act. The Assessing Officer disallowed the same. The Assessee contented that the said expenses were incurred for the welfare of the employees and hence it a deductible business expenses.



The Honourable Karnataka observed and held as under:

- (a) Though it was the responsibility of the State and in particular the Police Department either to install the traffic signal or control the traffic, the fact remains that in the absence of traffic signal or traffic police being positioned at circles, the traffic congestion is a regular phenomenon. It seriously affects the free movement of public and in the instant case, the employees of the assessee;
- (b) The Assessee also has corporate social responsibility. In order to discharge their corporate social responsibility which facilitates their business, if the employees were to reach the place early, they thought of incurring the expenditure for installing the traffic signals;
- (c) The Assessee is having nearly 500 employees. There was severe traffic congestion. The employees had to wait for longer time to reach the office. It seriously affected the business of the Assessee, resulting in delay in completing the project. In order to facilities its employees to reach their establishment safely and early, the Assessee installed traffic signals;
- (d) This expenditure is laid out or expended wholly and exclusively for the purpose of business. Therefore, the said expenditure incurred is allowable as deduction under Section 37(1) of the IT Act.

**[2014] 361 ITR 25 (AP – HC): M. Jaffer Saheb (Decd.) v. CIT** - In the instant case the Honourable Andhra Pradesh High Court held that if the right to interest on refund has legally

accrued to the Assessee, the right should be deemed to have accrued in the relevant year even though the dispute as to right is settled in the later year, by one or the other of the authorities in the hierarchy. Further, it held that interest is chargeable to tax in the respective years for which interest is paid.

**[2014] 361 ITR 290 (Karn. – HC): Puttur Petro Products P. Ltd. v. Asst. CIT** - In the instant case the Honourable Karnataka High Court held that the process of bottling of gas into gas cylinders, which requires a very specialised process and independent plant and machinery, amounts to production of ‘gas cylinders’ for the purpose of claiming deduction under Section 80-IB of the IT Act.

While holding so, the Court held as under:

- (a) Neither loose gas nor an empty cylinder can be sold to customer and it is only ‘gas cylinder’ containing gas is a marketable product which the Assessee produces;
- (b) When the Assessee produces the gas cylinder containing gas, a new product comes into existence;
- (c) Gas and cylinder are two independent products, which the Assessee does not produce or manufacture. The Assessee, however, produces/manufactures ‘gas cylinder’ and once the manufacturing process is complete, neither gas nor cylinder be regarded as original commodity but is recognised in the trade as a new and distinct commodity, as ‘gas cylinder’.

**[2014] 220 Taxman 365 (Delhi – HC); 40 taxmann.com 427 (Delhi –**

**HC): CIT (Central) v. Express Securities (P.) Ltd.** - In the instant case, Assessee had filed its return declaring long term capital gain arising from sale of shares which was claimed as exempt under Section 10(38) of the IT Act. The Assessing Officer opined that business of Assessee was not to invest in shares but to deal with shares as a stockbroker and trader. He further concluded that conversion of stock-in-trade into investment was done with an intention of not to pay taxes as Section 10(38) was introduced by Finance Act, 2004 with effect from 01.04.2005. Accordingly, Assessing Officer held that entire amount was taxable as a ‘trading receipt’ and not under head ‘capital gains’. The Tribunal, however, allowed Assessee’s claim.

On appeal before the Honourable Delhi High Court, the Court observed from records that shares in question were sold nearly two years after date of conversion of stock-in-trade into investment with a specific declaration. Further the Court also observed that in Assessee’s balance sheets of earlier two years, said shares were declared under head ‘Investment’ and at that point of time, Assessing Officer did not disturb conversion of shares.

In view of the above, the Court held that mere fact that Section 10(38) was introduced in statute by the Finance Act 2004, with effect from 01.04.2005, did not mean that conversion of shares was improper or illegal. Therefore, the Court held that the Tribunal was right in setting aside the order of Assessing Officer.

**[2014] 220 Taxman 402 (Delhi – HC); 36 taxmann.com 417 (Delhi – HC): Indus Towers Ltd. v. Asst. CIT**

**(TDS)** - In the instant case the Honourable Delhi High Court held that an assessee is entitled to file an application even before the commencement of the financial year for deduction of tax has to be made in the financial year itself by the payer. It further held that expeditious and fast track disposals are mandatory and required.

**[2014] 221 Taxman 71 (Mad. – HC)(Mag.); 42 taxmann.com 132 (Mad. – HC): CIT v. Hindustan Lever Ltd.** - In the instant case the Honourable Madras High Court held that doctrine of proportionality does not apply in case of common expenses incurred by head office for purpose of maintaining units.

In the instant case Assessee claimed deduction under Sections 80HH, 80-I and 10B of the IT Act. Assessee had different units which maintained separate accounts of income and expenditure. The Assessing Officer apportioned common administrative expenditure incurred by head office for all units on proportionate basis. The Tribunal pointed out that head office monitored requirement of finance and other action which were necessary for running all units and, hence, common head office expenses could not be proportionately distributed among various units individually on basis of respective turnover for purpose of calculation of aforesaid deductions. The Honourable Madras High Court upheld the order of the Tribunal.

**[2014] 221 Taxman 83 (Delhi – HC)(Mag.); 42 taxmann.com 439 (Delhi – HC): CIT v. DHTC Logistics Ltd.** - In the instant case the Assessing Officer found that in 30706 cases PAN was missing or incorrectly stated by deductor. Therefore, he

imposed penalty of Rs. 10,000 for each default and, thus, penalty of Rs. 30,70,60,000/- was imposed.

The Honourable Delhi High Court found that the CBDT vide its letter No. 275/24/2007-IT(B) dated 05.08.2008 had clarified that penalty under Section 272B is linked to person, i.e., deductor, and not to number of defaults regarding PAN quoted in return. Therefore, the Court held that the Assessee is liable to pay only the maximum penalty of Rs. 10,000/-.

**[2014] 29 ITR (Trib.) 531 (Mum.); [2014] 29 ITR (Trib.) (St.) 1: Robin Nana Bhai Bhatt v. Asst. CIT** - In the instant case the Honourable Mumbai Tribunal held that even if the assessee is following cash system of accounting, the advance received would be considered as income of the assessee only in the year in which the assessee has performed the work assigned to him.

**[2013] 146 ITD 343 (Delhi – Trib.); 29 taxmann.com 164 (Delhi – Trib.): Dy. DIT v. MGB Metro Group Buying HK Ltd.** - In the instant case the Honourable Delhi Tribunal held that proviso to Section 209(1) of the IT Act as inserted by Finance Act, 2012 is prospective in nature and cannot be applied retrospectively.

**[2013] 146 ITD 453 (Delhi – Trib.); 32 taxmann.com 223 (Delhi – Trib.): Asst. (TDS) v. Serco BPO (P.) Ltd.** - In the instant case, Assessee took over running BPO business of a company named IISPL at various locations. It entered into a facility agreement with IISPL to get right to use tenanted premises registered in name of IISPL. All payments to landlords were made by IISPL on behalf of Assessee after deducting TDS therefrom. Then, Assessee reimbursed said amount to

IISPL and he deducted TDS under Section 194C of the IT Act on said payment. However, Assessing Officer held that tax was required to be deducted in terms of provisions of Section 194-I from said payments and raised demand for short deduction of TDS under Section 201.

The Honourable Delhi Tribunal held that since there was no material evidencing landlord-tenant relationship or a licensor-licencee relationship between IISPL and Assessee, provisions of section 194-I were not applicable to Assessee.

**[2013] 146 ITD 591 (Delhi – Trib.); 33 taxmann.com 21 (Delhi – Trib.): Honda Trading Corpn. India (P.) Ltd. v. Asst. CIT** - In the instant case the Honourable Delhi Tribunal held that where there is an element of abnormal and huge fluctuation in the foreign exchange favouring foreign currency and which is against the Indian currency, necessary adjustments pertaining to such huge and abnormal fluctuation in the foreign exchange has to be allowed to the Assessee in determining the arm's length price of the international transaction undertaken by the Assessee.

**[2013] 146 ITD 605 (Mum. – Trib.); 38 taxmann.com 389 (Mum. – Trib.): Hathway Investments v. Addl. CIT** - In the instant case the Honourable Mumbai Tribunal held that where Assessee, a member of a society, had purchased office premises in said society and claimed depreciation thereon, Assessee was entitled to depreciation on valuation of super structure only for the reason that Assessee being a member of society could be considered as part owner in land in proportion to its shareholding in superstructure over it.



# RECENT JUDICIAL PRONOUNCEMENTS IN INDIRECT TAXES

CA. N.R. Badrinath, Grad C.W.A., F.C.A.

CA. Madhur Harlalka, B.Com., F.C.A

## CENVAT Credit

### 1. Reversal of CENVAT credit:

The assessee was subjected to a search by the Excise Department. On stocks being physically verified, it was discovered that the inputs were short in quantity as compared with the stock recorded in books of accounts. The Department sought reversal of CENVAT credit taken by the assessee on the grounds that no inputs had actually been received. A report from Regional Transport Office was also obtained wherein it was specifically stated, that the vehicle registration number as declared on the invoice is incorrect for the reasons being that, such vehicles were incapable for transportation of such heavy weight inputs. Report from RTO also stated that certain vehicles number as printed on the invoices were not registered. Based on the above facts Honorable High Court held that such CENVAT Credit is liable to be reversed. [*Gyscoal Alloy Ltd. vs. Commissioner of Central Excise [2014] 41 taxmann.com 533 (Gujarat)*]

**2. Sale to 100% EOU are deemed exports should be treated on par with physical exports:** Honorable High Court of Gujarat has held that sale to 100% EOU are deemed exports and should be treated on par with physical

exports for the purpose of Rule 5 of CENVAT Credit Rules, 2004. Accordingly, the denial of refund of CENVAT credit was set-aside. The Honorable High Court placed reliance on its own decision in the case of CCE&C v. NBM Industries [Tax Appeal No. 1805 of 2009, dated 8-9-2012][*E.I. Dupont India (P.) Ltd. vs. Union of India [2014] 41 taxmann.com 479 (Gujarat)*].

### 3. CENVAT credit of service tax paid on telephone services and air travel agent services can be claimed:

The short issue involved in the present case was whether the assessee is entitled for input service credit on “telephone services” which are installed at the residence of officers and “air travel agent services” utilized by assessee’s personnel. Tribunal relying on the judgment of Honorable High Court of Bombay in the case of Ultra tech Cement Ltd. reported in 2010-TIOL-745-HC-MUM held that any service which has nexus with the business activity of the appellant, whether it is manufacturing or rendering service, has to be treated as “input service” coming within the purview of Rule 2(1) of the CENVAT Credit Rules, 2004. In the present case the telephone service and air travel services had been availed by the assessee in the course of business activity as a

manufacturer of excisable goods. Therefore, the issue is no more res integra and the impugned order is set aside. [*JSW Ispat Steel Ltd Vs Commissioner Of Central Excise 2014-TIOL-240-CESTAT-MUM*]

### 4. CENVAT credit on inputs is not required to be reversed if the goods are destroyed in fire:

The assessee’s claim for remission of duty on account of destruction of goods in fire accident was denied on the grounds that the CENVAT credit in relation to the goods utilised in manufacture of final products is not reversed. The Tribunal relying on the decision of Honorable High Court in the case of Grasim Industries Vs. CCE Indore reported in 2007-TIOL-135-CESTAT-Delhi held that there was no requirement of reversal of CENVAT credit on inputs which have been used in the manufacture of final product which were lost in natural cause like fire etc., Accordingly, the impugned order was set aside. [*Kundan Industries Vs Commissioner Of Central Excise 2014-TIOL-239-CESTAT-MUM*]

### 5. Interest is not payable on CENVAT credit wrongly claimed but not utilized:

Brief facts of the case are that during audit of records of the appellant, it was noticed that appellant was clearing imported raw material / inputs to another unit on reversal of CENVAT Credit under Rule 3(5) of the Cenvat Credit Rules, 2004. However, actual amount of CENVAT Credit claimed on such inputs was not reversed at the time of removal of inputs as such resulting in short reversal of CENVAT Credit. On pointing out

the deficiency of short reversal by the audit party, the appellant debited the CENVAT Credit. The appellant paid a part of the total interest on such short reversal of CENVAT Credit and for balance interest contended that it was liable to pay as they had sufficient amount of CENVAT Credit over and above the amount short reversed during the respective months. The department issued show cause and confirmed the demand of such interest. On appeal before the Tribunal, held that the inputs were cleared to the sister unit who were entitled to avail the credit on the same. As such, the entire situation was revenue neutral. The Tribunal also noted that the said credit was not utilized by the appellant and was lying in their account books. Reliance placed on the judgment of Honorable High Court of Karnataka in the case of CCE & ST, Bangalore Vs. Bill Forge Pvt. Ltd. [2012 (26) STR 206 (Kar)] wherein it was held that CENVAT credit if not utilized would not attract the interest provisions. Accordingly the impugned order is set-aside. [M/s Pooja Forge Ltd Vs Commissioner Of Central Excise 2014-TIOL-238-CESTAT-DEL]

- 6. CENVAT credit can be claimed on brokerage services, air travel booking services and service for transportation of employees:** The Tribunal has held that service tax paid in relation to brokerage services, air travel booking services, services for transportation of employees etc., is eligible to claim as CENVAT credit. [Commissioner Of Central Excise

*Vs Indorama Synthetics (I) Ltd 2014-TIOL-234-CESTAT-MUM]*

- 7. CENVAT Credit of excise duty paid can be claimed on welding electrodes:** The Tribunal has held that the appellant is entitled to take CENVAT credit on welding electrodes which has been used in the repair and maintenance of inputs which has gone into manufacturing of final product. Reliance was placed on the judgment of Honorable Supreme Court in the case of Union of India vs. Hindustan Zinc Ltd. reported in 2007 (214) ELT A115 (SC). [M/s Echjay Forgings Pvt Ltd Vs Commissioner Of Central Excise 2014-TIOL-266-CESTAT-MUM]
- 8. Supplier not paying duty – CENVAT credit cannot be denied to recipient of goods:** The respondent assessee was denied the CENVAT credit on the grounds that supplier- manufacturer had not paid duty to the department. The contention of the department is that credit is allowable only if the duty is paid on inputs. Honorable High Court setting aside the impugned order has held that once a buyer of inputs receives invoices of excisable items the buyer is entitled to claim CENVAT credit on the assumption that excise duty has been or will be paid by supplier of excisable inputs. It is further held that it is most unreasonable and unrealistic to expect buyer of such inputs to go and verify accounts of supplier or to find out from department of Central Excise whether the duty is actually paid on such inputs supplied. [Commissioner of Central Excise vs Tata Motors Ltd [2014] 42 taxmann.com 64 (Jharkhand)]

## Service Tax

- 9. Service tax is not payable under reverse charge on import of services if the remuneration is not paid on receipt of such services:** The brief facts of the case are that the respondent paid service tax from their CENVAT credit account under reverse charge mechanism for the services received from the person located outside India. The Revenue issued a show-cause notice that the service tax under reverse charge mechanism is payable by PLA only. The assessee contended that they have not paid remuneration for such services received from the person located outside India and accordingly the service tax is not applicable on receipt of said services. The Tribunal held that as the respondent has not paid remuneration for receipt of such services the service tax is not applicable. Accordingly, revenue's appeal dismissed. [Commissioner Of Central Excise Vs Pmt Machines Ltd 2014-TIOL-247-CESTAT-MUM]

## Procedural

- 10. Memorandum of cross objections filed as per the direction of Commissioner (Appeals) is maintainable:** The appellant filed memorandum of cross objections as directed by Commissioner (Appeals) against the appeal filed by the revenue. The Commissioner (Appeals) rejected the Revenue's appeal and also the cross-objection filed by the appellant on the ground that the same are not maintainable inasmuch as there is no provision for filing cross-objection before Commissioner (Appeals) without giving an opportunity to show



cause against non-maintainability of cross objection. On appeal before the Tribunal, remanded back the matter for deciding on merits. Reliance was placed on the judgment of Honorable High Court in the case of Southern Auto Products v. CCE reported in 2009 (244) ELT 348 (Kar.) wherein it was held that cross-objections filed before the Commissioner (Appeals), at the direction of the Commissioner (Appeals) are maintainable. *[Eveready Industries India Ltd vs Commissioner of Central Excise [2014] 42 taxmann.com 397 (New Delhi - CESTAT)]*

#### **11. Judgment of the jurisdictional High Court is binding upon revenue authorities:**

The Revenue rejected the submissions of the assessee who had relied on the judgment of the Honorable High Court which was similar to the facts of assessee's case and which was in favour of the assessee. Reliance was however placed on another judgment of High Court which was beneficial to revenue. The reasons stated for rejection was that every assessee must fight his own battle and judgments in case of other assessee's cannot be claimed as binding by the appellant. On appeal, Honorable High Court held that the impugned order could not be sustained as the judgment of the jurisdictional High Court is binding upon revenue authorities and merely because said decision is in case of another assessee, the authorities could not have ignored the same and/or not followed the same by holding that it was not a binding ruling. In view of extraordinary

circumstances, despite appellant having alternative remedy, interference under writ jurisdiction was required. Since appellant had brought precedent of jurisdictional High Court to notice of adjudicating authority, impugned order amounted to utter/willful disregard of judgment of jurisdictional High Court and would, therefore, render adjudicating authority guilty of civil contempt of High Court. Under the guise of protecting interest of revenue, lower authority cannot be permitted to ignore binding decision of higher appellate authorities/courts. To maintain rule of law and judicial discipline, lower authority is bound by the decision of higher appellate authorities/courts. The impugned order led to multiplicity of proceedings. In view of unconditional apology of the adjudicating authority who had joined Department recently and in absence of mala fides, proceedings under Contempt of Courts Act, 1971 were closed. Further the Central Board Excise and Customs (CBEC) was directed to issue a detailed circular to all adjudicating authorities considering observations made in this judgment within a period of 30 days from date of receipt of order so that such eventuality may not happen again and again. *[E.I. Dupont India (P.) Ltd. vs. Union of India [2014] 41 taxmann.com 479 (Gujarat)]*

#### **12. Reduced penalty for ignorance of law:**

The department appeal against the order reducing the penalty was set aside by the Tribunal. Brief facts of the case is that, the respondent assessee

engaged in providing mobile services obtained service tax registration and paid applicable service tax subsequent to the investigation by the department. The Tribunal observed that respondent did not have the knowledge that they are liable to pay service tax. Respondent assessee was under the belief that service tax was to be paid by the cellular service provider. The Tribunal extended the benefit of ignorance of law to respondent in the absence of malafide intention. *[Commissioner Of Central Excise, Aurangabad Vs Plus Cellular Services 2014-TIOL-264-CESTAT-MUM]*

#### **13. Rules cannot be in conflict with purposes of the Acts:**

The Tribunal has held that CENVAT credit of Additional Duties of Excise (Textile and Textile Articles) cannot be utilized for payment of Additional Duties of Excise (Goods of Special Importance). It was further held that **utilization of the credit will be governed by the law as it stood at the time of utilization and availment of credit will be governed by the law on the date of availment. Cross-utilization of AED (T&TA) to AED (GSI) will be in conflict with Section 3(2) of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 and Section 4 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Rules cannot be in conflict with purposes of the Acts.** *[Raymond Ltd, R K Shriyan Vs Commissioner Of Central Excise 2014-TIOL-267-CESTAT-MUM]*

# Emerging Trends: Venture Capital Investment - Flavors and Choices

CA. Anjana Vivek, *Bangalore*

There are many equity investors, funding unlisted companies and early stage ventures in India today. These range from seed and angel investors, to venture capitalists (VCs) to private equity investors (PEs). In addition, there are incubators and accelerators, including those who invest management bandwidth and intellectual capital in exchange for equity ownership in a business. These could be investments made by high networth individuals (HNIs), groups of HNIs or entities which in turn have raised money from a set of investors. The word angel investment covers a range of such investment. In some cases investment is from a corpus; in other cases angels may invest in their individual capacity.

Then there are corporate, strategic investors, who are actively looking to engage with the early stage eco-system. Their investment could be in terms of funding provided for equity stake. Their support could also be in kind, for example, some tools and products of the company may be offered for either a stake or for an option to invest at some time in the future. Social investors and impact investors are another emerging class of investors. These typically look at funding enterprises which impact low income groups. Government backed institutions and organizations and special funds also finance certain kinds of R&D, technology based projects and businesses in special areas and sectors.

There are variations not just in the kinds of investors available,

individuals, HNIs, corporates etc, but also in the deals, structuring of deals and the kinds of return and exit expected. A strategic investor may want to acquire a business over a period of time, a VC may look at exiting via an IPO, an angel investor may like to sell part of her stake to a VC within a year or two of investment.

Companies seeking investment are, therefore, faced with a decision of who they should approach and what structure they need to look at. Funding strategy is not just about valuation and cash inflow. After all, the investor is going to be a part of the team driving the company, directly or indirectly. The nature of the investor and the experience brought to the table, play an important role in the future growth of the venture invested in.

Entrepreneurs and advisors need to evaluate the potential investor and understand whether they will be a value addition or value depletion to the business. For example, if a well-known VC invests, the world takes notice and it is presumed that the company has a high chance of success. On the other hand, if money is invested by group that is not known for ethical practices, the ecosystem will tar the investee with the same set of values. It may then be difficult to get VC money for the next round of funding.

In addition to examining the value brought to the table by the investor, the entrepreneur must look at other aspects. Do they have a gap

which can be filled by an investor? For example, one company in the telecom industry may need some help in contacting potential customers. Another company in the same domain may have experts in this industry in the founding team; hence they may not need any help in customer acquisition. They may want guidance in managing the company as it grows.

While there are so many varieties and flavors of investors to choose from, the reality is that, it is still not easy to raise VC funding in India today. The probability of raising money for a venture is less than 1%. Depending on whom you talk to, you will get a probability of 1 in 300 to 1 in 500 companies, approaching VCs, getting funded. When it comes to women entrepreneurs getting funded, the scene is even more dismal, maybe only 1 in 1000 get VC investment. This is why the initial investors in companies are sometimes in a lighter vein referred to as the 3 Fs; i.e. 'Family, Friends and Fools.'

So if a company is looking to raise money from this route, they must try to understand what a specific investor will look for. Is it a purely a financial return? What is the expected return? Is it a part financial and part social return; for example an impact fund may look for a lower financial return and high social impact. An accelerator may want to build the brand of the parent company. It is important to understand the true reasons which drive a potential investor to invest. Will he play an



active role or will he be just a passive observer who has put money into the company?

The founders of the investee company must also ask themselves, what they want from the business in the next 3-7 years. This is the typical time a VC stays invested in a company and in this time frame the goals and vision of the founders and investors should be aligned. Any disconnect in the vision can trigger uncomfortable situations, for both the parties to this transaction. Before the deal is signed, time spent in discussing different envisaged scenarios of company growth is well worth it.

Most importantly, before entering into any agreement, entrepreneurs need to be clear about what they are willing to give up. How much equity will they like to part with at this time and over the next 3-7 years? A firm on a rapid growth path will have a need for money over the next few years and founders may need to dilute their stake at every stage of fresh fund infusion. Stake dilution will depend on possible valuations. And valuation is really so uncertain.

It is a mix of tangibles, intangibles and perceptions of growth. It is dependent on the negotiation skills and bargaining power of one side compared to the other. It is dependent on the competitive environment and the flavor of the season.

When the venture is in uncharted territory it is much like investment in paintings, the buyer likes it and sees something that many may not. In some early stage ventures therefore, valuation then goes beyond numbers and math into the realm of competitive bidding, i.e. the investor pushes up the price as he is the person willing to pay the most. Here it becomes the seller who has the bargaining power; particularly if the venture is in (i) a minority (ii) with some tangible demonstrated leadership and value and (iii) standing out from the clutter of such companies. This is why select companies in the ecommerce domain in India, whether it is the larger firms with a wide range of offerings or those in niche areas, like jewellery, clothing etc. have commanded such high premiums in recent times.

The buyers also typically (a) have this kind of money to spare and (b) are willing to take the associated risks. Warren Buffet for example, may have the money, but is known more for investing in businesses he understands. So VC and angel investing is not for all, it is high risk with a high chance of failure and most importantly, in the view of the investor, there is a potential for high success.

Thus for the entrepreneur and advisors she has, it is important to scan the ecosystem and plan the funding strategy. One must check out who potential investors could be, their value add in addition to money and what the investor may look for in a deal. One needs to check if one meets the requirement for such funding. An investor is to be selected and approached with due care. It helps to prepare for VC investment just as if one is preparing for an exam. The better one is prepared, the higher are the chances for getting VC funded, if one otherwise meets the criteria for such funding.

## KIND ATTENTION TO MEMBERS

### Bangalore Branch is hosting **Annual State Level CA Conference**

on **21<sup>st</sup> and 22<sup>nd</sup> of June 2014**, at **Nimhans Convention Centre**, Bangalore.

Members are requested to suggest a suitable theme with tagline for the conference.

Members whose theme gets selected shall be suitably recognised  
at the time of the Conference.

E-mail: [blrchairman@icai.org](mailto:blrchairman@icai.org) / [bangalore@icai.org](mailto:bangalore@icai.org)

## Advt.

### *Congratulations*



**CA. M.R. Krishna Murthy**  
have been Co-opted  
as a member of  
Board of Studies of  
Institute of  
Chartered Accountants of India,  
New Delhi.

**Members may send  
mails directly to  
Chairman of the  
Bangalore Branch  
regarding their  
feedbacks & suggestions :  
[blrchairman@icai.org](mailto:blrchairman@icai.org)**



### KIND ATTENTION TO MEMBERS

We intend to undertake the following major renovation works in the Branch premises:

- a) Extension of Canopy, b) Refurbishment of Auditorium
- c) Upgradation of Class Rooms, d) Refurbishment Library / ITT Centre

*Members may refer any reliable and standard Architect or Interior Decorator to us for carrying out the above works; requested to send the contact details to:*

**blrchairman@icai.org**

### KIND ATTENTION TO MEMBERS

**Members are invited to get associated with the Branch for coordinating the various programmes organized by the Branch in any capacity.**

*Interested members may please mail their contact details along with their areas of interest to*

**blrchairman@icai.org**

## ANNOUNCEMENT

***Coaching Classes: IPCC & FINAL for November 2014 Examinations and CPT for December 2014 Examinations:***

### **Admissions open for Subjectwise Coaching**

In pursuance of our objective to provide fruitful and quality teaching to our students, we are pleased to inform you that CPT/ IPCC and FINAL coaching classes will be commencing at the Bangalore Branch of SIRC of ICAI from 11<sup>th</sup> June 2014. The classes will be concluded by 15<sup>th</sup> September 2014.

#### **Salient features:**

- Experienced, Expert and Dedicated faculty members
- Methodology – Conceptual teaching
- Affordable Coaching Fee
- The journey of CA with Bangalore Branch is that of progress with innumerable activities of knowledge

supported and guided by our senior renowned faculty members – resource persons

- During the course, amazing, inspiring and motivational sessions and Orientation classes will be conducted

Hence be proud to be a part of the Branch by enrolling as a student to become a prestigious member of this glorious profession.

Course	Fees	Duration (4 Months)	Timings
CPT	Rs.5,000/-	01 <sup>st</sup> July 2014 to 15 <sup>th</sup> Nov 2014 (Tentative)	05.30pm to 07.30pm (Monday to Friday) & 03.00pm to 07.30pm (Saturday) & 08.00am to 12.30pm (Sunday)
IPCC & FINAL	Rs.12,500/- for Both Groups Rs.9,000/- for Single Group Rs.3,000/- for Single Subject	01 <sup>st</sup> June 2014 to 15 <sup>th</sup> Sept 2014 (Tentative)	06.30am to 09.30am & 06.00pm to 09.00pm & (Monday to Saturday) 08.00am to 05.30pm (Sunday)

Schedule for all the subjects will be announced in due course of time.

**Registration Fees - Mode of payment: DD should be drawn in favour of “Bangalore Branch of SIRC of ICAI” payable at Bangalore.**

*For further details please contact:* Tel: **080-30563500 / 511 / 512 / 513**

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

## Seminar on Bank Branch Audit



Inauguration



Chief Guest  
Sri P. S. Rawat  
Executive Director,  
Canara Bank, Bangalore



CA. Cotha S. Srinivas,  
Secretary,  
SIRC of ICAI



CA. Vivek Krishnan Govind



CA. K. Surya Prakash



CA. P.R. Suresh



CA. R. Vittal Raj



Cross Section of Participants

## Seminar on Bank Branch Audit for Students



Inauguration



Chief Guest  
CA. Jomon K. George,  
Chairman, SICASA,  
SIRC of ICAI



Guest of Honour  
CA. Gurnath Kanathur,  
Director,  
Pierian Services P Ltd.



Release of Souvenir



CA. Vishakh Manchi



CA. Y. N. Kaleshwara Prasad



CA. Arunachalam  
Subramaniam



CA. Veerabasana Gauda



Cross Section of Participants

## Speakers at Study Circle Meetings



CA. G. Lakshminarayan



CA. Raghunath Rao



CA. S. Venkataramani



CA. B. P. Rao,  
Past President, ICAI



CA. Krishnaswamy S.,  
Past Chairman,  
B'lore Br of ICAI



CA. N. Nityananda,  
Past Central Council  
Member, ICAI



CA. Parthasarathy  
Sudarsanam



CA. Annapurna Kabra



CA. Sachin Kumar B. P.



Dr. CA. Padmini Srinivasan



CA. Ketoki Basu



CA. K. Gururaj Acharya

## 1st Women CA's Conference



Inauguration



Chief Guest  
Ms. Uma Shankar,  
Regional Director for  
Karnataka,  
Reserve Bank of India



Guest of Honour  
Ms. Bharathi P.V.,  
General Manager,  
Risk Management Wing,  
Canara Bank



CA. Geetha A. B.,  
Conference Convenor



Release of Souvenir



CA. B. P. Rao,  
Past President, ICAI



CA. Cotha S. Srinivas,  
Secretary, SIRC of ICAI



Dr. CA. Padmini Srinivasan



Ms. Veena Sethuraman,  
Behavioural Trainer, Infosys



CA. Anjana Vivek



CA. Sripriya Kumar



CA. Roopa Venkatesh



CA. Anitha Srikanth



Dr. Vijayalakshmi Balekundri



Felicitation to Ms. Uma Shankar,  
Regional Director for Karnataka,  
Reserve Bank of India



Felicitation to Ms. Bharathi P. V.,  
General Manager, Risk Management Wing,  
Canara Bank



Felicitation to CA. Usha Jaishankar



Felicitation to CA. Jayalakshmi Venkataraman



Felicitation to CA. Hema Krishnamurthy



Cross Section of Participants



Conference Co-ordinators