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PROFESSIONAL AWARDS

The best articles published in this Journal in the categories of 'Direct Taxes', 'Company Law and Auditing' and 'Allied Laws and Others' will be awarded the Trophies/ Certificates of Appreciation after being vetted by experts in the profession.

Articles and reading literatures are invited from members as well as from other professional colleagues.

QUOTES FOR THE MONTH

No matter what you have done for yourself or for humanity, if you can't look back on having given love and attention to your own family, what have you really accomplished?

- Lee Iacocca

In a period of upheaval, such as the one we are living in, change is the norm. To be sure, it is painful and risky, and above all, it requires a great deal of very hard work.

- Peter Drucker

ATTENTION

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EDITORIAL

"Though they are fictions, students are advised to read....."

This was the statement that used to appear, as a foot note, in the Study Material of Organization and Management, provided by the ICAI to the Students of CA Final, two and a half decades back. The fictions referred to in the above stated note are the books "Money Changers" and "Wheels" authored by legendary Arthur Hailey.

Neither do I intend to pinpoint the reservation in the statement nor emphasize the latent disbelief towards a particular class of literature, viz. fiction. The positive aspect of the statement is - in addition to the regular reading, the students of the CA profession should also read fictions. Reading fiction should not be a taboo. It is neither unethical nor unprofessional.

A fiction is a fiction and its writer never claims it to be otherwise. The central idea of the fiction generally is a brain child of the author, the birth of which may be somewhere in what he has imagined or observed or what he has overheard while roaming within a knowledgeable or powerful circle or even an event which has actually happened. But the crux is – with superb research, immaculate narration, fertile imagination and excellent language, the author creates a masterpiece. In the 200 to 400 pages of the book devoted to a subject, the book imparts expert knowledge on the issue covered.

I advocate some such masterpieces. The reader might have different titles in mind but ultimately all these lead to the same end - the unobstructed reading.

"Fountainhead" by Ayn Rand portrays a professional of second to none creativity yet highly "selfish". The book wonderfully explains the meaning of "selfishness" which is akin to independence of a professional. The authoress bluntly states: "There is nothing like inconsistency and transience of human feelings. I read a book sixteen years ago and I still like it." Toooo cool, ain't it!!!!

"D.A. Draws a Circle" by Earl Stanley Gardner, inter alia, presents a situation where a police Inspector who had actually seen the place of crime and seen the dead body and had drawn a circle around it, has been cross examined by the lawyer and was made to state before the Jury that he may not have seen the body. A classic situation even we professionals would wish happens in our assignments.

"World Rapers" by Jonathan Black masterly narrates situations of manipulative accounting – i.e. how Balance Sheet is inflated, how the information provided to the bankers by way of monthly statements of Stock and Creditors, etc is abused.

"In High Places" by Arthur Hailey is the story of a young rookie struggling to rise in the field of Law practice. When he receives an opportunity to outshine, he excels. While required to quote fees on another case, he has been advised by an Industrialist "young man, never sell yourself cheap".

"The Firm" by John Grisham throws light on complex network of high profile professional firms, its tactics, internal politics, "services" it provides etc.

"Cold Steel" is on acquisition of Arcelor by L.N. Mittal. Written by two British Journalists, the book, interalia, throws light on micro specialization on unheard of fields, some of which can be considered by CAs also.

"Storm in the Sea Wind" written by Alam Shrinivas, again a Journalist, unfolds intricate financial maze of Reliance Group.

"Spy who came in from Cold" by John Le Carre is a mind boggling spy story. This book has been proclaimed as one of the twelve world best spy stories by Readers Digest. The uniqueness of the book is that, unlike its contemporaries, the first 50 pages and last 50 pages of the book do not disclose the suspense of the story.

The titles stated above are what I have read and are not the only one. There can be many. Share them with your likeminded friends and spread the learning. All the above and many other fictions can help one think out of the box. Between the lines, they show how to put forward arguments in a manner generally not conceived.

In essence "READ BUDDY READ!"

CA DARSHAN SHAH
EDITOR

PRESIDENT'S MESSAGE

DEAR PROFESSIONAL FRIENDS,

I sincerely thank you all for having considered me to be the President of this August Association Friends, slogan for this year is **"Proactive To Change"**

Proactive means taking the initiative by acting rather than reacting to events in order to be positive and practical to the changes.

Friends, as you all are aware that Association is regularly arranging study circle and Brain Trust meetings, but just because no CPE credit is granted the participation is constantly receding. This problem was discussed in last EC meeting and it was decided that the Study Circle Meeting should be thrown open to all. The requirement of Registration should be done away with. It is decided to call Young Faculties to share their expert knowledge on current topics and I hope more participation will come from your side to encourage the young faculties. I request you all to subscribe for Brain Trust, in which we will be calling expert faculties on various subjects. For the benefit of members we have planned to hold free meetings under Professional Development Committee also.

Also we intend to celebrate our Diamond Jubilee year by holding Lecture Meeting Series and a programme of entertain ment in the month of December.

A Musical programme is organized on 27th June 2011, to give Tribute to the musical legend Shri R D Burman, and A Talent Evening on 12Th August as usual.

38th RRC is planned from 6th to 9th August at a resort near Jaipur, The Detailed circular MUST HAVE REACHED YOU ALL.

I request all of you to participate in all programmes.

Honesty be our Goal!

In Today's world of competition, we see that the man who is clever is able to win over his rivals. PRACTISING honesty does not seem to pay. Lord Krishna explains in the Gita to Arjuna, that he must use all means to win, as we cannot afford to LOSE the battle. What do we do?

Rev. Dada J. P. Vaswani replied this in one of the sessions:-

Lord Krishna does not ask us to do anything to win the battle. I think confusion has arisen out of this mistaken notion that work is the end. Work is not an end in itself, work is only a means. The end is different. You have to decide your own goals. You have to decide your own end. If your end is to be the richest man in the world, then your work will be along that direction. According to the Gita, the goal should be God realization, but according to you, it may be different. But in the achieving of our goals, we must not forget that our means should be pure. For instance Mahatma Gandhi was very careful to point out that in the achievement of that goal, in the achievement of independence, we must see that our means are pure and honest. That must not be forgotten. If my goal is wealth but my means are impure and if I achieve the goal, all the money that I have will be soiled money. It will not be clean money. And soiled money will never give you happiness. Soiled money will never give you peace of mind. The goal of life should be that which should make us happy, that should make us feel at peace with all. For that the means has to be pure and honest. This is the teaching of the Bhagavad Gita.

ARTICLE...

PART - I

FINANCE ACT, 2011

CA. P. N. Shah

The author is the past President of ICAI. He can be reached at info@shahco.in

CA. H. N. Shah

1. Background

1.1 The Finance Minister, Shri Pranab Mukherjee, presented the third Budget of UPA – II Government in the Parliament on 28th February, 2011. The Finance Act, 2011, has now been passed by both Houses of the Parliament on 24th March, 2011, without any discussion. It has received the assent of the President on 8.4.2011. There are only 35 sections in the Finance Act amending some of the provisions of the Income tax and Wealth tax Act. This year's amendments in our Direct Tax Laws are very few, probably because the Direct Taxes Code Bill, 2010 (DTC), introduced in the Parliament is under discussion and will replace the existing Income tax Act and Wealth tax Act hopefully from 1.4.2012.

1.2 Part 'B' of the Budget Speech deals with proposals relating the Direct Taxes, Excise Duty, Customs Duty and Service tax. In para 139 and 140 of his Budget Speech the Finance Minister has stated as under.

> "139. In the formulation of these (tax) proposals, my priorities are directed towards making taxes moderate, payments simple for tax payers and collection of taxes easy for the tax collector."
>
> "140. As Government's policy on direct taxes has been outlined in the DTC which is before Parliament, I have limited my proposals to initiatives that require urgent attention."
>
> After presenting his budget proposals, he has concluded his speech as under.
>
> "197. As an emerging economy, with a voice on the global stage, India stands at the threshold of a decade which presents immense possibilities. We must not let the recent strains and tensions hold us back from converting these possibilities into realities. With oneness of heart, let us all build an India, which in not too distant a future, will enter the comity of developed nations."

1.3 The various important amendments made in the Income tax Act and Wealth tax Act can be briefly stated as under.

(i) Slabs for tax payable by Individuals / HUF/ AoP/ BoI have been revised and the tax burden on these assessees have been reduced to some extent.

(ii) MAT on Corporate Bodies has been marginally raised and surcharge on Income of companies is reduced.

(iii) Alternate Minimum Tax (AMT) will be levied on Limited Liability Partnership (LLP).

(iv) Certain exemption and deduction provisions has been relaxed.

(v) Provisions relating to taxation of International Transactions have been made more strict.

(vi) Scope of cases which can be referred to Settlement Commission has been widened.

(vii) Some procedural changes have been made.

1.4 In this article some of the important amendments made in rates of taxes and in some of the provisions of the Income tax and Wealth tax Acts have been discussed.

2. Rates of Taxes, Surcharge and Education Cess

2.1 Rates of Income tax

(i) For Individuals, HUF, AoP, BoI and Artificial Juridical Persons the threshold limit of basic exemption has been revised upwards for A.Y. 2012-13. Age limit for resident senior citizens has been lowered to 60 years from the present limit of 65 years. Further, a new category of '**VERY SENIOR CITIZEN**" who is a resident and 80 years and above has been created. The revised tax rates for A.Y. 2012 – 13 as compared to A.Y. 2011-12 are as under.

(a) Rates in A.Y. 2011 – 12 (Account Year ending 31.3.2011)

Income Slab (Rs. in Lacs)	Senior Citizens (65 Years and above) (Residents)	Women (Below 65 years) (Residents)	Others
Upto 1.60	Nil	Nil	Nil
1.60 to 1.90	Nil	Nil	10%
1.90 to 2.40	Nil	10%	10%
2.40 to 5.00	10%	10%	10%
5.00 to 8.00	20%	20%	20%
Above 8.00	30%	30%	30%

Note: There is no surcharge but education cess at 3% (2 + 1) of tax is payable.

(b) Rates in A.Y. 2012 – 13 (Accounting Year ending 31.3.2012)

Income Slab (Rs. in Lacs)	Very Senior Citizens (80 years and above) (Residents)	Senior Citizens (60 years and above) (Residents)	Women (Below 60 years) (Residents)	Others
Upto 1.80	Nil	Nil	Nil	Nil
1.80 to 1.90	Nil	Nil	Nil	10%
1.90 to 2.50	Nil	Nil	10%	10%
2.50 to 5.00	Nil	10%	10%	10%
5.00 to 8.00	20%	20%	20%	20%
Above 8.00	30%	30%	30%	30%

Note : No surcharge is payable but education cess @ 3% (2 +1) of tax is payable. 2

(ii) The impact of these changes can be noticed from the following charts.

(a) Tax Payable in A.Y. 2011 – 12 (Accounting Year ending 31.3.2011)

Income (Rs. in Lacs)	Tax on Senior Citizens (65 Years and above) (Residents) (Rs.)	Tax on Women (Below 65 years) (Residents) (Rs.)	Tax on Others (Rs.)
3.00	6,000	11,000	14,000
5.00	26,000	31,000	34,000
8.00	86,000	91,000	94,000
10.00	1,46,000	1,51,000	1,54,000
15.00	2,96,000	3,01,000	3,04,000
25.00	5,96,000	6,01,000	6,04,000

The above tax is to be increased by 3% of tax for education cess.

(b) Tax payable in A.Y. 2012 – 13 (Accounting Year ending 31.3.2012)

Income (Rs. In Lacs)	Very Senior Citizens (80 years and above) (Tax Rs.) (Residents)	Senior Citizens (60 years and above) (Tax Rs.) (Residents)	Women (Below 60 years) (Tax Rs.) (Residents)	Others (Tax Rs.)
3.00	Nil	5,000	11,000	12,000
5.00	Nil	25,000	31,000	32,000
8.00	60,000	85,000	91,000	92,000
10.00	1,20,000	1,45,000	1,51,000	1,52,000
15.00	2,70,000	2,95,000	3,01,000	3,02,000
25.00	5,70,000	5,95,000	6,01,000	6,02,000

The above tax is to be increased by 3% of tax for education cess.

(iii) Other Assessees

There are no changes in the rates of taxes so far as other assessees are concerned. Therefore, they will have to pay taxes in A.Y. 2012-13 at the same rates as applicable in A.Y. 2011 – 12.

(iv) Rate of Tax u/s 115 JB (MAT)

The rate of tax on book profits u/s 115 JB i.e. MAT has been increased from 18 % in A.Y. 2011- 12 to 18.5 % in A.Y. 2012-13. This is to be increased by surcharge of 5% of tax if the Book Profit is more than Rs.1 cr. Education cess at 3% of tax is also payable.

(v) Rate of Tax on Dividends from Foreign Companies

A new section 115 BBD is inserted for A.Y. 2012-13. This section provides for concessional rate of tax payable by an Indian company on dividend received by it from any Foreign company in which the Indian company holds 26% or more of the equity capital. The rate of tax on such dividend income will be 15% plus applicable surcharge and education cess. This concessional rate of tax on foreign dividend income is applicable only for one year i.e. dividend received during the year ending 31.3.2012 (A.Y. 2012-13). It is also provided in this section that no expenditure shall be allowed against this dividend income. Therefore, an Indian company which controls a Foreign company by holding 26% or more of equity capital in such a company can consider repatriation of profits accumulated in the Foreign company to avail of this concessional rate of tax during the current year before 31.3.2012.

(vi) Rate of Alternate Minimum Tax on LLP (AMT)

Limited Liability Partnership (LLP) will now have to pay Alternative Minimum Tax (AMT) at the rate of 18.5% on its gross total income as computed under new section 115 JC. No surcharge is payable but education cess is payable @ 3% of tax. This is discussed in para 8 below.

2.2 Surcharge on Income tax : (i) No surcharge is payable by non-corporate assessees i.e. Individuals, HUF, Juridical person, AoP, BoI, Firm, LLP, Co-operative Society and Local Authority. In the case of a Company, if the total income is more than Rs.1 cr. the surcharge on tax payable in A.Y. 2011-12 is 7.5%. This is now reduced to 5% for A.Y. 2012-13. Similarly, rate of surcharge on tax payable by a company u/s 115 JB (MAT) is also reduced to 5% for A.Y. 2012-13 if the Book Profits amount is more than Rs. 1 cr. So far as Dividend Distribution and Income Distribution Tax payable u/s 115 O and 115 R by Companies and Mutual Funds is concerned the rate of surcharge on tax is reduced from 7.5% to 5% w.e.f. 1.4.2011.

(ii) In the case of a Foreign company the rate of surcharge on tax is also reduced from 2.5% to 2% w.e.f. A.Y. 2012 – 13 if the taxable income of such a company is more than Rs.1 cr. Similarly, for deduction of tax at source u/s 195 from the income of a Foreign company the Income tax has to be increased by surcharge at the rate of 2% (instead of 2.5%) w.e.f. 1.4.2011 if the income from which tax is deducted at source is more than Rs.1 cr.

(iii) It may be noted that no surcharge on tax is required to be charged on tax deducted at source from payments to resident assessees.

2.3 Education cess : As in earlier years, Education cess of 3% (including 1% for higher education cess) of Income tax and Surcharge (if applicable) is payable by all assessees (Residents and Non-residents). No Education cess is to be deducted or collected from TDS or TCS from payments to all resident assessees, including companies. However, if the tax is deducted from payments made to (a) Foreign Companies, (b) Non-Residents or (c) on Salary payments, Education cess at 3% of tax and surcharge (if applicable) is to be applied.

2.4 TDS on Interest : New section 194 LB is inserted in the Income tax Act w.e.f. 1.6.2011. It provides that interest payable to a non-resident (corporate or non-corporate body) by an "Infrastructure Debt Fund", as referred to in the new section 10 (47), shall be liable to deduction of tax at source at the rate of 5 % only. This is to be increased by applicable surcharge and education cess. Further, if PAN is not supplied by the Investor the rate for TDS u/s 206 AA will be 20%, plus applicable surcharge and education cess.

3. Exemptions

3.1 Charitable Trusts : Section 2 (15) of the Income tax Act (ITA) gives definition of "Charitable Purpose". Under this section, apart from other charitable activities, "advancement of any other object of general public utility" is also considered as "charitable purpose". At present, it is provided in this section that an activity which involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade,

commerce or business, for any cess or fee or any consideration will not be considered as charitable purpose if the receipts from such activities is more than Rs.10 lacs in the relevant accounting year. By an amendment of this section, w.e.f. A.Y. 2012 – 13, the above limit of Rs. 10 lacs is increased to Rs. 25 lacs. Therefore, during the F.Y. 2011 – 12 and onwards, if receipts from such activities are Rs. 25 lacs or less, the exemption to such a public trust will not be denied u/s 11 to 13 of the Income tax Act.

3.2 Section 10 (45) : Sub-section(45) is inserted in section10 with retrospective effect, from A.Y. 2008 – 09. It provides that certain allowances and perquisites paid to the chairman/retired chairman or any member/ retired member of the Union Public Service Commission shall be exempt from taxation. Similar exemption has already been given to the Chief Election Commissioner, Election Commissioners and Judges of the Supreme Court under the respective Acts governing their service conditions.

3.3 Section 10 (46) : This sub-section is also added in section 10 w.e.f. 1.6.2011. Exemption is granted to the income, to be specified by the Central Government, accruing or arising to a Body, Authority, Board, Trust or Commission (by whatever named called). This is subject to the condition that (a) the body, authority, board, trust or commission is notified for this purpose, (b) such entity is not engaged in any commercial activity and (c) such entity is established or constituted by the Central, State or Provincial Act with the object of regulating or administering any activity for the benefit of general public. It may be noted that such entity will be liable to file its return of income every year u/s 139 (4C).

3.4 Infrastructure Debt Fund : (i) Income of any Infrastructure Debt Fund, set up in accordance with the guidelines to be notified by the Central Government, will be exempt under the newly introduced section 10 (47) w.e.f. 1.6.2011. This is a new provision which is being introduced to support the initiative of the Government to augment long term, low cost funds from abroad for the Infrastructure Sector. This will enable any Non-Resident, including a Foreign company, to invest in such a fund in foreign currency.

(ii) Section 115 A is also amended w.e.f. 1.6.2011 to provide that interest received from such a fund by a Non-resident, including a Foreign company, will be liable to tax at the rate of 5% plus applicable surcharge and education cess. No expenditure relating to this interest income is allowable to the non-resident assessee.

(iii) Section 194 LB is also inserted w.e.f 1.6.2011 to provide that tax on such interest income in the hands of the Non-Resident, including a Foreign company, shall be deducted at source at the rate of 5% plus applicable surcharge and education cess. If the investor does not furnish his PAN, the rate for deduction of tax at source will be 20% plus applicable surcharge and education cess u/s 206 AA.

(iv) The Infrastructure Debt Fund will be liable to furnish its return of income u/s 139 (4 C) every year.

4. Deductions

4.1 Section 35 (2AA) : Section 35 deals with deduction for expenditure on Scientific Research while computing income from business or profession. Under section 35 (2AA) it is provided that any donation to National Laboratory, University, IIT or such person as approved by the prescribed authority, with a specific direction that the amount shall be used for a programme approved by the prescribed authority , will be entitled to weighted deduction of 175% of the amount donated. This provision is now amended w.e.f. A.Y. 2012-13 and the weighted deduction for such donation is increased from 175% to 200%.

4.2 Section 35 AD : (i) This section was inserted by the Finance (No.2) Act, 2009 effective from A.Y. 2010-11. Under this section, deduction is allowed in respect of whole of the specified capital expenditure in the year in which it is incurred subject to certain conditions. This deduction is allowed to certain specified businesses listed in section 35 AD (5). By amendment of this provision, effective from A.Y. 2012-13, it is now provided that the following businesses, which commence their operations on or after 1.4.2011, will now be eligible for deduction of the whole of the specified capital expenditure.

(a) Business in the nature of developing and building a housing project under a scheme for affordable housing framed by the Central / State Government and notified by CBDT.

(b) Capital expenditure for a new plant or newly installed capacity in any existing plant for production of Fertilizer and

(ii) In section 35 AD (8), in the existing definition of specified businesses, it is provided that any activity for building and operating, any where in India, a new hotel of two –star and above category as classified by the Central Government or for building and operating, any where in India, a new hospital with atleast 100 beds for patients will be considered a specified business w.e.f. A.Y. 2011-12. The words 'new hotel' or 'new hospital' in the above section

are now changed to "hotel" or "hospital" with retrospective effect from A.Y. 2011-12. The effect of this amendment, which is effective from A.Y. 2011-12, will enable an assessee who currently operates a hotel or hospital to set off the profits of such business against the losses of a new hotel or new hospital u/s 73 A, if such new hotel or new hospital begins to operate on or after 1.4.2010 and which is eligible for deduction of 100% of specified capital expenditure u/s 35 AD.

4.3 Section 36, 40 A and 80 CCE : (i) These sections are amended w.e.f. A.Y. 2012-13. In section 36 (1) a new clause (iv a) is added to provide that any sum paid by the assessee as an employer by way of contribution towards a Pension scheme, as referred to in section 80 CCD (2), on account of an employee shall be allowed as a deduction for computation of income from business or profession. This deduction will be subject to the limit of 10% of the salary of the employee. At present, contribution to recognised P.F. or an approved Super Annuation Fund/Gratuity Fund by the employer is allowed as deduction u/s 36, subject to certain limits. Now, such contribution to Pension Scheme as specified in section 80 CCD (2) will be eligible for such deduction subject to the limit of 10% of salary of the employee. Consequential amendment is made u/s 40 A (9) also.

(ii) Section 80 CCE is also amended w.e.f. A.Y. 2012 – 13. At present, contribution to the Pension Scheme, as specified in section 80 CCD (2) by the employer as well as employee is included in the limit of Rs.100000/- allowed as deduction to the employee u/s 80 C, 80 CCC and 80 CCD. In order to provide relief to the employee, the amendment of section 80 CCE now states that, w.e.f. A.Y. 2012-13, contribution made by the employer to such specified Pension Scheme will not be included within the limit of Rs.1 lac specified in section 80 C, 80 CCC and 80 CCD.

4.4 Section 80 CCF : This section is amended for A.Y. 2012-13. At present, this section provides that investment upto Rs.20,000/- (over and above the existing limit of Rs. 1 lac for tax free investment u/s 80 C, 80 CCC and 80 CCD) by an Individual or HUF, in notified long term infrastructure bonds, is allowable. This relief for deduction upto Rs.20,000/- in such bonds is extended for one more year for A.Y. 2012-13.

4.5 Section 80 IA (4) : Section 80 IA (4) is amended w.e.f. A.Y. 2012-13. At present, an undertaking which is set up for the generation or generation and distribution of power or transmission or distribution by laying a net work of new lines or for substantial renovation and modernization of such network on or before 31.3.2011 is entitled to tax holiday as specified in section 80 IA. By amendment of this section, the time limit for setting up such an undertaking is extended to 31.3.2012.

4.6 Section 80 IB (9) : This section is amended w.e.f. A.Y. 2012-13. At present, u/s 80 IB (9) is provided that 100% of profit of certain undertakings engaged in commercial production of mineral oil is exempt from tax. One such undertaking is that located in any part of India and has begun or begins commercial production of mineral oil on or after 1.4.1997. By this amendment it is provided that this deduction will not be available for blocks licensed under a contract awarded after 31.3.2011 under the New Exploration Licensing Policy announced by GR No. O-19018/22/95 ONG.DO.VL. dated 10.2.1999 or in pursuance of any law enacted by the Central/ State Government in any other manner.

5. Settlement Commission

5.1 Section 245 C : (i) This section is amended w.e.f. 1.6.2011. At present, section 245 (1) allows a person in whose case proceedings have been initiated u/s 153 A or 153 C as a result of search or a requisition of books of account to make an application to the Settlement Commission. This is subject to the condition that the additional Income tax payable on the disclosed income exceeds Rs.50 lacs. Where no such proceedings are started, application can be made to the Settlement Commission if the additional amount of Income tax payable on the disclosed income exceeds Rs.10 lacs.

(ii) The scope for approaching the Settlement Commission has now been extended w.e.f. 1.6.2011. The amendment to this section provides that any person who is related to the person against whom proceedings have been initiated on account of the search, as stated above, can also make an application to the Settlement Commission. if the additional Income tax payable on the income disclosed exceeds Rs.10 lacs.

(iii) New Explanation added in the section explains as to who will be considered as a related person for this purpose.

5.2 Section 245 D : By amendment of this section, the Settlement Commission is now given a specific power to rectify mistakes apparent from the record in an order passed by it within 6 months from the date of the order. Similar amendment is made in section 22 D of the Wealth tax Act. The Settlement Commission will have to give opportunity of hearing to the parties before passing such rectification order. This amendment comes into force w.e.f. 1.6.2011.

❖❖❖

(TO BE CONTINUED TO NEXT ISSUE)

ARTICLE...

PRESUMPTIVE INCOME : SEC. 44AD : I.T. ACT

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Concept of presumptive income had been introduced in I.T. Act, 1961, long back. First time the same was introduced vide Finance Act 1988, with effect from 01-04-1989 by enacting Sec. 44AC. The same was in respect of business in liquor, timber and any other forest product.

The scope was widened by further enacting sections 44AD, 44AE and 44AF, in respect of civil construction business, plying or hiring goods carriage business and retail trade respectively.

As per the amendments through Finance (No. 2) Act 2009 with effect from 01-04-2011, i.e. I.T.A.Y. 2011-12, the scope is yet widened and a large number of assessees are covered under the net of presumptive income. As per this Act, Sec. 44AF is deleted and Sec. 44AD has been amended and is recast.

In the Memorandum Explaining the Provisions of the Finance (No.2) Bill, 2009, while amending provisions of Sec. 44AD, it has been stated as under :-

(a) There has been a substantial increase in small business.

(b) A large number of business and service providers in rural and urban areas who earn substantial income are outside tax net.

(c) Introduction of presumptive tax provisions would help a number of small business to comply with the taxation provisions.

(d) A presumptive income scheme lowers the compliance cost and also reduces the burden on the tax machinery.

The salient features in the above are mentioned as under:-

(i) The scheme shall be applicable to individuals, HUFs and Partnership Firms excluding Limited Liability Partnership Firms. It shall also not be applicable to assessees who are availing deductions u/s 10A, 10AA, 10B, 10BA or deductions under the provisions of Chepter VIA -"C" i.e. deductions in respect of incomes mentioned in Sec. 80HH to 80RRB. Companies are not included.

(ii) The scheme shall be applicable to any business (Except covered u/s 44AE- Transporters) which has maximum turnover/gross receipts Rs. 40 Lacs (Now Rs. 60 Lacs).

(iii) Presumptive rate of income is 8%.

(iv) Assessees covered under presumptive income have not to pay Advance Tax.

(v) Such assessees are exempted from maintenance of books as provided in Sec. 44AA of the I.T. Act.

(vi) If an assessee chooses to show income below presumptive income, he/it shall have to :

(a) Maintain books of account, and

(b) Get such books audited u/s. 44AB of the I.T. Act, 1961.

In the above background, it will be interesting to examine the new provisions of Sec. 44AD, which are applicable for and from I.T.A.Y. 2011-12.

ASSESSEE AND SEVERAL BUSINESSES

Provision of Sec. 44AD applies to an 'Assessee'. Hence when a person carries on several businesses, viz. wholesale and/or retail and or manufacture, the turnover or gross receipts of all the businesses are to be considered for the purposes of this section. Whether separate books or combined books are maintained by the assessee is not material. Combined turnover or gross receipts of all the businesses would form the basis for calculation of presumptive income.

ELIGIBLE ASSESSEE

Provisions of Sec. 44AD applies to eligible assessee. The term is defined in the explanation to the section. The same enumerates as under :-

(A) It applies to Residents only,

(B) It applies to Individuals, HUF and Partnership Firms only (AOP & BOI are not mentioned in eligible or not eligible entities).

ELIGIBLE BUSINESS :

Eligible business is defined as any business except plying, hiring or leasing goods carriage referred to in Sec. 44AE.

Above term means every type of business, including Manufacturing, Wholesale and Retail shall be included. Even Share Trading business shall be included. The income which is shown under the head "Business" (and not profession)

shall be included, viz. Commission Income. Professional Income is out side the ambit of this provision.

In the Memorandum to the Bill mention is made of service provider. Which assessees providing services and are not professionals is to be decided while interpreting the word "service". Presumably, categories like commission agents, adatiyas and the like who are not rendering professional services may be covered.

BUSINESS V/S PROFESSION :

The word business is defined in sec 2(13) of the I.T. Act as under :

"Business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

The word "profession" is defined as under vide Sec 2(36):-

"Profession" includes vocation.

From the above it transpires that the word business is defined in details, while the word profession has been defined in such a way so as any guidance can not be obtained.

However, it would be necessary to distinguish business from profession as the section applies to the business and not to the profession.

TURNOVER OR GROSS RECEIPTS

(a) In the section it is provided that the percentage of income is to be calculated with reference to turnover or gross receipts. Turnover or gross receipts are not defined in the Act. Under section 80HHC wherein vide explanation for the purpose of that section total turnover has been defined as under:

"Total turnover shall not include freight or insurance attributable to the transport of the goods or merchandise beyond the custom station as defined in Customs Act 1962"

This definition is for section 80HHC only and is not relevant, in my opinion, for Section 44AD.

(b) In section 44AB there is mention of "turnover or gross receipts". But the same is not defined in the section and hence no guidance can be obtained from the same.

(c) Hence the words turnover or gross receipts shall have to be considered with the aid of relevant provisions and how they are interpreted. Most relevant would be the term as used in Sec. 44AB for fixing liability under that section.

(i) **Views of The Institute of Chartered Accountants of India :**

(A) **GUIDE TO COMPANY AUDIT**

(Page 53 of 4th Edition, 1980)

The term "turnover" would mean the total sales after deducting there from goods returned, price adjustments, trade discount and cancellation of bills.

(B) **STATEMENT ON THE AMENDMENTS TO SCHEDULE VI TO THE COMPANIES ACT. 1956.**

(Page 14 of 1976 edition)

The invoices may involve various charges viz. packing, freight, forwarding, interest, commission etc. It is suggested that ordinarily the value of turnover should be disclosed exclusive of such charges except in cases where separate demarcation is not possible.

In the case of invoice containing composite charges, it would not be ordinarily proper to attempt a demarcation of ancillary charges on a proportionate or estimated basis.

(C) **GUIDANCE NOTE ON TAX AUDIT U/S 44AB**

(Revised 2005 Edition)(@ Page 12,13,14,15)

(1) The "turnover" may be interpreted to mean the aggregate amount for which sales is effected. If sales tax and excise duty are included in the sale price no adjustment in respect thereof should be made for considering the quantum of turnover. If sales tax and excise duty recovered are credited separately to respective account and payments are debited to such accounts, they would not be included in the turnover.

(2) Following are to be deducted from turnover :

Trade discount, Turnover discount, Special rebate.

(3) Following are not to be deducted from turnover:

Cash discount, sale price of Fixed Assets, Sale proceeds of investments.

(4) Total of differences, both positive and negative in share speculation business is to be considered as turnover. (@ Page 14).

(ii) **TAX AUDIT MANUAL BY BOMBAY CHARTERED ACCOUNTANTS SOCIETY :**

Above contains opinion of Shri N.A. Palkhivala and Shri B.A. Palkhiwala in respect of Sales, Turnover and Gross Receipts. Following are the points covered in the said opinion.

(A) The words sales, turnover and gross receipts are commercial terms and they should be construed in a commercial sense and in accordance with the normal rules of accountancy. (Chellapalli Sugars Ltd. v/s. CIT 98 ITR 167)(SC).

(B) The same should be in business of the assessee.

(C) A particular item may or may not form part of the assessee's sales turnover and gross receipts, depending upon the manner in which he maintains his books of account.

(D) Trade discount and special discount does not form part of sales, turnover and gross receipt. However cash discount would continue part of the same.

(E) In the case of money lender, share broker and insurance agent gross receipts are the interest, brokerage and commission earned respectively.

(F) Sale proceeds of capital assets are not the gross receipts.

(G) Interest / Dividend out of investments of surplus money not connected with business does not form part of gross receipts.

(D) **SUMMARY**

It can be said in short that the turnover would depend upon the manner by which the bill is prepared – whether composite including taxes and charges OR whether all other charges are mentioned separately and what is the treatment given to such charges in Books of Account.

RECEIPTS OTHER THAN FROM BUSINESS :

The following words in the section require to be taken note of:

"Total turnover or gross receipts of the assessee on account of such business".

Above clearly suggests that the receipts in respect of business only are to be considered for the purpose of the section. Other receipts viz Dividend, FD interest etc. which are not in respect of part of business activity are not to be considered for the purpose of calculating the figure of total turnover or gross receipts. As far as the interest income is concerned, if it is out of the business activity or during the course of business which is required to be included in the business income are to be considered for the purpose of gross receipts. However, the interest income out of the investment can be considered to be outside the ambit of turnover or receipts.

IN THE PREVIOUS YEAR :

The turnover and receipts are linked with the "Previous year". This means that the figures are to be considered if they pertain to the relevant previous year. The inclusion of any amount in the turnover or receipts shall be dependent on the method of accounting followed by the assessee viz, "mercantile or cash". The figure would change according to the method of accounting adopted by the assessee.

HIGHER THAN AFORESAID SUM CLAIMED TO HAVE BEEN EARNED :

Though not specifically mentioned, it seems that the above phrase means the taxable income worked out as per the provisions of the Income Tax Act.

Hence, the comparison is to be made between the taxable income computed as per the provisions of the Income Tax Act AND eight percent of turnover or gross receipts.

SECTION 28 TO 43C NOT APPLICABLE :

It has been specifically provided that if the taxable income is to be calculated at eight percent of turnover or gross receipts, then in that case provisions of section 28 to 43C are not to be taken into consideration for the purpose of computing taxable income.

It is pertinent to note whether any adverse inference can be drawn by which any amount that would have been added, while calculating taxable income, such amount can be added while calculating income on presumptive basis. By exclusion clause in respect of section 28 to 43C it seems that no disturbance can be made on account of provisions of sec 28 to 43C if the total income is arrived at on the presumptive basis. To mention some examples (1) disallowance u/s 40A(3) or (2) 40A(2b) or 36(1)(iii) etc.

AMOUNTS U/S 30 TO 38 :

It has been provided that while computing the income on presumptive basis all the expenditure incurred as mentioned in section 30 to 38 are deemed to have been allowed and considered. The same would include depreciation.

When depreciation is presumed to have been allowed while calculating income on presumptive basis, it will be imperative to work out the depreciation and determine the closing WDV. This is because depreciation is deemed to have been allowed and hence the WDV of the assets shall be determined as if the depreciation is allowed. This has been specifically provided in sub-section (3).

FIRM : INTEREST AND REMUNERATION TO PARTNERS:

It has been provided vide proviso to sub-section (2) that if the eligible assessee is a firm, the salary and interest paid to partners shall be deducted from the income arrived at on the presumptive basis. Such interest and remuneration is to be worked out as per the provisions of section 40(b).

The words "payment" of remuneration and interest to the partner are used in the proviso. The meaning of "payment" shall have to be considered as per the method of accounting employed by the assessee, whether mercantile or cash.

ADVANCE TAX :

Sub-section (4) of section 44AD specifically provides that

(Contd. on page no. 84)

GLIMPSES OF SUPREME COURT RULINGS

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4 APPEAL – PRIOR DEPOSIT FOR ENTERTAINING- DEBT RECOVERY TRIBUNAL :

Sec. 18(1) of the Act confers a statutory right on a person aggrieved by any order made by the Debts Recovery Tribunal under Sec.17 of the Act to prefer an appeal to the Appellate Tribunal. However, the right conferred under Sec.18 (1) is subject to the condition laid down in the second proviso thereto.

It is well-settled that when a statute confers a right of appeal, while granting the right, the legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the condition hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Sec.18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Sec.18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the statute. We have no hesitation in holding that deposit under the second proviso to Sec.18(1) of the Act being a condition precedent for preferring an appeal under the said section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement.

[Narayan Chandra Ghosh vs. UCO Bank & Others (4 SCC 548)]

5 PRECEDENT – OBITER DICTA -

When this court dismisses a special leave petition by giving some reasons, however meagre (it can be even of just one sentence), there will be a merger of the judgment of the High Court into the order of the Supreme Court dismissing the special leave petition. According to the doctrine of merger, the judgment of the lower court merges into the judgment of the higher court. Hence, if some reasons, however meagre, are given by this Court while dismissing the special leave petition, then by the doctrine of merger, the judgment of the High Court merges into the judgment of this Court and after merger there is no judgment of the High Court. Hence, obviously, there can be no review of a judgment which does not even exist.

The situation is totally different where a special leave petition is dismissed without giving any reasons whatsoever. It is well settled that special leave under Article 136 of the Constitution of India is a discretionary remedy, and hence a special leave petition can be dismissed for a variety of reasons and not necessarily on merits. We cannot say what was in the mind of the Court while dismissing the special leave petition without giving any reasons. Hence, when a special leave petition is dismissed without giving any reasons, there is no merger of the judgment of the High Court with the order of this Court. Hence, the judgment of the High Court can be reviewed since it continues to exist, though the scope of the review petition is limited to errors apparent on the face of the record. If, on the other hand, a special leave petition is dismissed with reasons, however meagre (it can be even of just one sentence), there is a merger of the judgment of the High court in the order of the Supreme Court.

Gangadhar Palo Vs/. Revenue DO (2011) 4 SCC 602

6 READING DOWN RULE –SCOPE AND PURPOSE-

A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency. In support of the same we may refer to the decision of this Court in CST v. Modi Sugar Mills Ltd. wherein this Court at para 11 has observed as follows: (AIR p. 1051)

"11 ….In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."

UOI Vs. Ind –Swift Laboratories Limited. – (2011) 4 SCC 635

7 NON COMPETITION FEES – CAPITAL RECEIPTS

If a contract is entered into in the ordinary course of business, any compensation received for its termination (loss of agency) would be a revenue receipt. Whereas compensation received for refraining from carrying on competitive business was a capital receipt. It became taxable only with effect from April 1, 2003. It is well settled that a liability cannot be created retrospectively.

Guffic Chem. P. Ltd. Vs. CIT (332 ITR 602)

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FROM THE COURTS

8 SEC. 32 : DEPRECIATION : DEFACTO OWNER : CIT V/S. VARANASI AUTO SALES (P) LTD.

(2010) 190 TAXMAN 60 (ALL), (2010) 326 ITR 182 (ALL)

Issue :

When asset was held in the name of the Director, whether depreciation can be allowed to the company ?

Held :

In the instant case, the Tribunal had found that the trucks had been purchased in the names of the directors just for the convenience and the funds had been invested by the assessee company and the hire rents received on such trucks had been credited by the company in its account and such receipts had been taxed by the department and the company was the defacto owner of such trucks. The aforesaid finding of the Tribunal is not challenged by the department. Hence Tribunal had rightly allowed depreciation.

In the matter High Court quoted from Mysore Minerals Ltd. v. CIT (1999) 239 ITR 775 (SC) as under :-

"In our opinion the term "owned" as occurring in section 32(1) must be assigned a wider meaning. Any one in possession of property in his own title exercising such dominion over the property as would enable others being excluded therefore and having right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the buildings, though a formal deed of title may not have been executed and registered as contemplated by the Transfer of Property Act, the Registration Act, etc. Building owned by the assessee, the expression as occurring in section 32(1) means the person who having acquired possession over the building in his own right uses the same for the purposes of the business or profession, though a legal title has not been conveyed to him consistently with the requirements of laws such as the Transfer of Property Act and the Registration Act etc. but, nevertheless he is entitled to hold the property to the exclusion of others.

The very concept of depreciation suggests that the tax benefit on account of depreciation legitimately belongs to one who has invested in the capital asset is utilizing the capital asset and thereby losing gradually investment, caused by wear and tear, and would need to replace the same by having lost its value fully over a period of time.

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It is well settled that there cannot be two owners of the property simultaneously and in the same sense of the term, the intention of the Legislature in enacting Sec. 32 would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time being vests the dominion over the building and who is entitled to use it in his own right and is using the same for the purposes of his business or profession. Assigning any different meaning would not sub serve the legislative intent".

9 REOPENING U/S 147 VALID EVEN THOUGH NO ORDER PASSED U/S 143(1) OR U/S 143(3) : CIT V/S. CHANRASHEKHAR BALAGOPAL

(2010) 190 TAXMAN 82 (KER), 328 ITR 619 (KER).

Issue :

Whether assessment can be reopened u/s 147 even though assessment based on original return is not completed ?

Held :

By virtue of clause (b) of the explanation 2 to section 147, if the A.O. in the course of scrutiny of return finds that the assessee has understated the income or has claimed excessive loss, deduction, allowance or other relief in return, he is free to initiate income escaping assessment u/s 147, no matter assessment based on original return is not completed either through proceedings u/s 143(1) (a) or through a regular assessment under 143(3). In view of the above finding, income escaping assessment can be made under provisions of the Act based on the return filed by the assessee pending assessment.

10 CHARITABLE TRUST : CAPITAL EXPENDITURE ALLOWABLE

CIT V/S. MOOLCHAND SHARBATIDEVI HOSPITAL TRUST (2010)

190 TAXMAN 338 (ALL), 234 CTR (ALL) 197.

Issue :

Amount spent on construction of hospital building by a medical trust is allowable ?

Held :

The assessee trust was registered u/s 12A. The genuineness of trust is not disputed. Object of trust was primarily to run the hospital, nursing home etc. for medical aid to general public. Such object fell within the purview of charitable purposes defined u/s 2(15). Construction of a building for running a hospital or dispensary was the basic necessity. Without the building, hospital could not run and the medical facility could not be provided to the public at large. Therefore, any expenditure incurred for the construction of the building was the expenditure incurred for charitable purposes.

11 KEYMEN INSURANCE PREMIUM OF A PARTNER ALLOWABLE :

CIT V/S. B.M. EXPORTS

(2010) 190 TAXMAN 325 (BOM), 323 ITR 178 (BOM).

Issue :

Whether keyman insurance premium of a partner is allowable?

Held :

There was a finding of fact by the Tribunal that the firm had not taken insurance for the personal benefit of the partner but for the benefit of the firm in order to protect itself against the set back that might be caused on account of the death of a partner. The object and purpose of Keyman Insurance Policy is to protect the business against a financial set back which may occur, as a result of premature death, to the business or professional organization. The insurance premium was allowed as a deduction.

12 GENUINE TRANSACTION : MOTIVE TO AVOID TAX : IS NOT COLOURABLE :

PORRITS AND SPENCER (ASIA) LTD. V/S CIT

(2010) 190 TAXMAN 174 (P & H), 329 ITR 0222 (P & H)

Issue :

If the transaction is genuine, merely the same is with a motive to avoid tax can be considered to be colourable ?

Held :

The Tribunal had recorded finding that the transactions of purchase and sale of units between the parties were genuine. It further held that the same were not bonafide on the basis that the assessee was aware the prices of the units were high in the month of May and lowest in the month of July. Tribunal recorded that there was planning in the purchase and sale of units within 60 days.

The Supreme Court in the case viz. Apollo Tyers Ltd. v/s CIT (2002) 255 ITR 273 has considered a similar question and rejected the contention of the revenue that the business of purchase and sale of units by the assessee would amount to business of speculation.

In view of decisions in various cases, once the transaction is genuine, merely because it has been entered into with a motive to avoid tax, it would not become a colourable device and, consequently, earn a disqualification. The Supreme Court in Union of India v/s. Azadi Bachao Andolan (2002) 263 ITR 706 has held that an act, which is otherwise valid, in law, cannot be treated as non est merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interest as per the perception of the revenue. The aforesaid view looks to be the correct view.

13 DEPRECIATION ON GOODWILL

R. RAVEENDRAN PILLAI V/S. CIT

(2010) 194 TAXMAN 477 (KER), (2011) 237 CTR (KER) 80

Issue :

Whether depreciation is allowable on Goodwill ?

Held :

Assessee had purchased a hospital with its land, building, equipments, staff, name, trade mark and goodwill as a going concern. Assessee claimed depreciation on goodwill. Department negatived the claim. High Court allowed the claim and observed as under :-

In the instant appeal it was to be only considered whether goodwill was covered by Sec. 32(1)(ii) entitling the assessee to depreciation on goodwill. Depreciation, though it is an allowance to take care of loss or erosion in the value of the asset in the course of time on account of use, yet such consequence need not actually take place for the purpose of entitling the assessee to the relief in terms of the statutory provision. In fact, it is common knowledge that on account of the inflation even tangible asset such as building, machinery, plant or furniture will fetch higher price in latter years, though in the assessee's books, value eroded on

account of depreciation is written off. The Act vide sec. 41(2)and Sec. 50 also takes into account the possibility of appreciation in the value of depreciable assets on which depreciation is allowed.

Assessee's claim of depreciation on assets including intangible assets cannot be negatived on the ground that no erosion has taken place in the value of assets.

From Schedule B of the sale deed which gave the value of the goodwill, it was noticed that the trade mark or the logo and the name of the hospital were specifically covered by it. In fact, without resorting to the residuary entry, the assessee was entitled to claim depreciation on the name, trade mark and logo under the specific head provided u/s 32(1) (ii) which cover trade mark and franchise. It is common knowledge that trade mark and franchise cover name, logo etc, the value of which is included in the value of the goodwill for the purpose of depreciation by the assessee.

When the goodwill amount paid was for ensuring retention and continued business in the hospital, it was certainly for acquiring business and commerce rights and it was certainly comparable with trade mark, franchise, copy right etc. refereed to in the first part of clause (ii) of Sec. 32(1) and so much so, it was to be opined that goodwill was covered by the above provision of the Act, entitling assessee to depreciation.

14 RULING IN OWN CASE TO BE FOLLOWED AGAINST RULING IN ANOTHER CASE : PRUDENTIAL ASSURANCE CO. LTD. V/S. DIR. OF INCOME TAX (2010) 324 ITR 381 (BOM)

Issue :

Whether help of ruling in another case can be taken for reopening assessment when the ruling in assessee's case is not overruled?

Held :

Invocation of the jurisdiction u/s 263 was improper. The CIT had ex-facie made a determination contrary to the plain language of Sec. 245-S when he held that the ruling of the AAR in the case of Fidelity North Star Fund (2007) 288 ITR 641 (AAR) would apply to the case of the assessee. Unless the binding ruling in the case of the assessee was displaced by pursuing requisite procedure under the law, that ruling must continue to operate and be binding between the assessee and the Revenue. In any event, the CIT could not have possibly come to the conclusion that the view of the A.O. was erroneous or that it was prejudicial to the interest of the Revenue when the AO had followed the binding ruling of AAR.

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(Contd. from page no. 80)

the provisions in respect of advance tax payment shall not be applicable if the income is computed as per the provisions of section 44AD. This means interest u/s 234C would not be payable.

However, provision of section 234A, that is interest payment in case of late submission of return and section 234B, that is interest payment on tax payable as per return of income, shall be payable.

BOOKS OF ACCOUNT :

As provided in section (5) of 44AD the eligible assessee who claims to be taxed on presumptive basis is not required to maintain books of account as provided in section 44AA. If the turnover is below Rs. Sixty Lacs, audit u/s 44AB is not required. However, if the turnover is exceeding Rs. Sixty lacs, the assessee is outside the ambit of section 44AD, as provided in explanation (b) (ii) to section 44AD .

It will be interesting to note that the presumption of income is to work on the basis of the turnover or gross receipts. The question would be if the books are not maintained how the turnover would be proved?

Therefore, when the income is computed as per the provisions of section 44AD, it would be necessary to prove for the assessee the figure of turnover or gross receipts. Which records are to be maintained will depend upon the type of the business of the eligible assessee. Figures adopted under VAT Act provisions would be a good evidence.

If the correct turnover or gross receipts is not ascertainable from the records maintained, it is likely that the same may be estimated by the Assessing Officer in absence of proper records of turnover or gross receipts.

Therefore it would be necessary for the eligible assessee to maintain such records with evidences so that the turnover or gross receipts can be conclusively proved.

DEDUCTION U/S 80

Deduction u/s 80 viz. Investments in L.I.P., P.P.F., School Fees, N.S.C., Eligible bonds and like as provided in Sec. 80, including donations as applicable to the entity, would be allowed from the income worked out u/s 44AD.

CONCLUSION :

For and from I.T.A.Y. 2011-12 almost all the categories of traders, either retailer or wholesaler and also manufacturer whose turnover is below Rs. 60 lakhs are covered under presumptive income. The Return of Income shall have to be prepared accordingly taking into consideration different aspects as discussed above.

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TRIBUNAL NEWS

8 TATA AIG GENERAL INSURANCE CO. LTD. Vs. ITO(OSD) 43 SOT 215 (MUM).

Asst. Year 2005-06 to 2008-09, Order Dated: 29th October 2010

BASIC FACTS

The assessee is a general insurance company and it entered into an arrangement with various parties for hiring of cars. The cars were hired from time to time for transportation of employees and visitors for the purpose of business. The assessee deducted tax as per provisions of section 194C. Assessing Officer held that the payments were in nature of rental of plant and machinery and therefore tax was deductible at a higher rate as per provisions of section 194I. On appeal, CIT (A) held in favor of assessee and aggrieved of the same, revenue went into appeal before ITAT.

ISSUE

Whether tax was deductible as per provisions of section 194C or 194I when cars were taken on hire for transportation of employees and visitors for the purpose of business?

HELD

After hearing the contentions of both the parties, it was held that CIT(A) found that the cars were not made available at the disposal of the assessee and the vendors were required to provide any car of a particular category for transportation of employees as per the requirement of assessee. The payment was not made for a particular car but for any car as per the requirement. This fact was not rejected by the AO during the course of hearing. Also the bench gone through the relevant contracts and found that there was no contract for any specific car but for any car as per the choice of the assessee of a particular category and hence the assessee was right in deducting tax as per section 194C and the appeal of the revenue was rejected.

9 DCIT Vs.ANKIT DIAMONDS, 43 SOT 523 (MUM),

Asst. Year 2002-03, Order Dated:26th November 2010

BASIC FACTS

The assessee is a manufacturer, importer and exporter of diamonds. It is assessed in the status of a partnership firm.

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The firm filed its return of income on 31/10/2002 declaring total income of Rs.8,04,363. The assessee declared the sales of polished diamonds to the tune of Rs.18,86,66,709 and showed gross total income of Rs.28,22,788 and claimed deduction u/s 80HHC to the tune of Rs.19,76,092. The assessee filed audit report in form 3CB. The assessing officer referred the case to the Transfer Pricing Officer (TPO) for determination of arm's length price in terms of special provisions of avoiding tax under chapter 10 of the Income Tax Act, 1961. Vide his letter dated 14/03/2005 AO intimated the enhancement of Total Income of the assessee of Rs.61,84,483 on account of adjustments to the value of international transactions entered into by the assessee. Assessee submitted detailed submission before CIT(A) and highlighted that TPO has taken those companies as comparables whose data are not available in public domain and hence they can't be considered as comparable. Also the comparables selected were not identical as turnover ranges from zero to various crores.CIT(A) gave the decision in favor of the assessee but without adjudicating the submissions of the assessee. Aggrieved of the same, department went into appeal before ITAT.

ISSUE

Whether while using TNMM as most appropriate method for benchmarking, margin for an international transaction is to be compared with the margin of comparable international transaction or operating margins at entity level has to be compared?

HELD

(i) TPO has compared the operating margins at the entity level and suggested the said addition which was wrong as what is to be compared is margin of an international transaction with the margin of a comparable international transaction.

(ii) As regards contention of representative of the assessee that when TPO had done an error in computing margins and on the basis of the same, CIT(A) has granted the relief, assessee should not be penalized and in view of that, the TP study submitted by the assessee should have been considered as the one complying with law, the ITAT set aside the matter back to the files of the AO for fresh adjudication as the said TP study was not presented before the ITAT.

10 ITO VS. SACHIN NOTIFIED AREA, (2011) 43 SOT 411 (AHD)

Asst. Year 2003-04, Order Dated: 16th July 2010.

BASIC FACTS

The assessee was a notified area in Surat for the industrial development. It filed return of income at NIL by claiming exemption under section 10(20). It was claimed by the assessee that it was a local authority notified by the state government under the Gujarat Industrial Development Act,1962 (GIDA). Its work is to collect tax under the notification, dated 21/11/1997, instituted under the Gujarat Municipalities Act, 1963.The assessee claimed that it was a local authority as it was a deemed municipality because it had been created under the GIDA, 1962 and under that act, all the provisions of the Municipalities Act, 1963 had been made applicable. However, the Assessing Officer was of the view that with the deletion of section 10(20A), the assessee was no longer a local authority and it was also not a municipality as defined under section 10(20). He, therefore, disallowed the payment made by the assessee to District Rural Development Agency (DRDA) which was paid at the direction of the State Government and also added amount of interest earned by the assessee on FDRs to its taxable income. On appeal, the Commissioner (Appeals), however, allowed the claim of the assessee. Aggrieved of the same, revenue went into appeal before ITAT.

ISSUE

As the assessee had been entrusted with the work of collection of tax under a notification by Gujarat Municipalities Act, 1963, whether, assessee was to be regarded as a 'Municipality' under Section 10(20) and, therefore, its income was exempt under the said section?

HELD

A combined reading of Sections 264A, 264B and 264C of the Gujarat Municipalities Act and Section 16 of the GIDA, 1962 indicates that the State Govt. can create, by notification in Official Gazette, a notified area and provisions of the Gujarat Municipalities Act would be applicable to such areas under Section 16 of the GIDA. Notified areas created under section 264B of the Municipalities Act and notified areas declared under section 16 of GIDA would be treated at par as there is no conflict between the two provisions. It is also applicable with equal force upon the assessee functioning under demarcated and separate areas called Notified areas which are independent of any Nagar Panchayat, Municipal Council or Municipal Corporation. The power to constitute such notified areas or Municipal Council or Nagar Panchayat or Municipal Corporation is derived from article 243Q of the Constitution and, therefore, one cannot see any distinction as to how notified areas would not be a self- governing institution like other three bodies. Thus, the order of the Commissioner (Appeals) that the assessee was a municipality under section 10(20) was to be upheld and, therefore, its income was exempt under that section. As a result, appeal of the revenue was dismissed.

11 DDIT (INTERNATIONAL TAXATION)-1(1), VS. AVAYA GLOBAL CONNECT LTD. 43 SOT 439(MUM)

Asst. Year 2006-07, Order Dated: 3rd December 2010

BASIC FACTS

The assessee was engaged in the business of selling Converged Communication Solution to its customers. It had entered into agreement with AISL, Ireland. Under the terms of the agreement, assessee purchased Converged Communication Solution from AISL and sold the same to its customers in India. The communication solution comprised of hardware which was EPABX and standard software loaded on the hardware. Also the software consists of certain features, all of which are not activated at the time of supply of hardware. Those features are activated as per the requirements of the customer. The assessee also explained that these are part and parcel of the hardware and just require activation. The assessee made application u/s 195 for remittance of activation charges without deduction of tax to AISL. The AO held that the same was fee for technical services and the same would be chargeable to tax. The assessing officer thus directed the assessee to deduct tax at source at the rate of 10% as per article 12 of the DTAA between India and Ireland. On appeal, the commissioner (appeals) held that the same is neither fee for technical services nor royalty and hence not chargeable to tax. Aggrieved of the same,revenue went into appeal before ITAT.

ISSUE

Whether activation charges paid by an assessee for

activating certain features of hardware are chargeable to tax and TDS provisions will be applicable or not?

HELD

Assessee imported certain hardware and sold the same to the customers. The said hardware consists of certain features which need to be activated when the customer wants. ITAT held that today's life is full of gadgets and machines. Each and every human being is using products of science and technology every day. On that footing, it can't be said that provider of such facilities always provides technical service. The expression 'technical service' should not be understood in general sense but in narrower sense as construed by the expression 'managerial service' and 'consultancy service' appearing in Explanation 2 to section 9(1)(vii). The expression 'technical service' would have reference to only technical service provided by human. It would not include any service provided by machines or robots. Hence in the view of the same it was held that CIT (A) was right in holding the same as part and parcel of purchased hardware and therefore not chargeable to tax. Finally the appeal of the revenue was dismissed.

12 ADIT (INTERNATIONAL TAXATION) VS. WIZCRAFT INTERNATIONAL ENTERTAINMENT (P.) LTD. 43 SOT 470(MUM).

Order Dated: 19th November 2010

BASIC FACTS

The assessee company was engaged in the business of entertainment event management and marketing. It had organized the events for known and famous foreign artists and groups in India. For various events of international artists to perform in India, the assessee entered into an agreement with one C having registered office in U.K. and appointed him as its agent to act on its behalf with limited authority. C was in the business of acting as an agent for providing artists management services around the world. For performance of artistes in India, assessee paid remuneration to them and also paid commission to C for acting as an agent in procuring the presence and performance of artistes in India. It also made payments towards reimbursement of expenses incurred in connection with the visit of artistes in India. Assessee deducted tax on payment made to artiste, however it did not deduct tax on commission paid to C on the plea that commission income of C is not taxable in India. Also payments are of reimbursement nature and does not constitute income element, hence it did not deduct taxes on that as well. AO held that all the payments were chargeable to tax in India including payment made to C as commission and reimburse payments also and in the view of the same held assessee as an assessee in default. On appeal, CIT (A) held that reimbursement payment and commission paid to C were not chargeable to tax in India and assessee was right in doing so. Aggrieved of the same, revenue went into appeal before ITAT.

ISSUE

Whether payments made towards reimbursement of expenses is chargeable to tax in India and does TDS provisions apply on the same? Whether commission paid to an agent for providing service of getting the performance of a known artiste in India having its registered office in U.K is chargeable to tax in India and whether TDS provisions will be applicable on the same or not?

HELD

As per the agreement entered into by the assessee with C, it was clear that C was entitled to enter into agreement with artistes on behalf of the assessee. The agreement clarifies about the quantum of fee and commission payable by the assessee. Various agreements were entered into by assessee with C for various performances and the terms and conditions of the contracts can't be ignored. All the artistes were of international repute and convincing them to perform in India was not an easy job. Hence assessee took help of a person who specializes in the same and paid him commission as decided in the agreement. Therefore considering the commission paid as fee payable to artiste by the AO was not correct and this was rightly held by CIT (A). Also it was held that C had never taken part in the performances of artistes and also commission paid to him will not be covered by article 18 of DTAA between India and U.K. Further as C does not have any P.E in India, the commission will be chargeable in U.K and hence there was no obligation on part of assessee to deduct tax u/s 195. As far as reimbursement payment was concerned, it was held that as the same does not include income element, its chargeability doesn't arise and no tax was deductible.

13 RAJEEV SURESHBHAI GAJWANI VS. ACIT, 129 ITD 145 (AHD)(SPL BENCH)

Asst. Year 2002-03 to 2004-05, Order Dated: 4th March 2011

Basic Facts

The appellant, a citizen of USA and a non-resident, was engaged in the business of export of software out of India. He had been carrying on this business as a proprietary concern and thus has a permanent establishment ("PE") in

India. The appellant claimed deduction under section 80HHE of the Income-tax Act, 1961 ("the Act"), in respect of profits earned from export of computer software by invoking the provisions of Article 26(2) of the Tax Treaty between India and USA ("India-USA DTAA"). The appellant claimed that in view of the provisions of Article 26(2) of India-USA DTAA, he should not be treated less favorably than a person resident in India and the deduction under section 80HHE should be allowed. The Assessing Officer ("AO") denied the claim of deduction under section 80HHE on the ground that the language employed in section 80HHE is very clear to the effect that the said deduction is not admissible to a non-resident. The Commissioner (Appeals) upheld the decision of the AO.

ISSUE

Whether on the facts and circumstances of the case, the deduction under section 80HHE of the Act is to be allowed in respect of export of software out of India to an assessee who is resident of USA?

HELD

Deduction under section 80HHE of the Act is available only to an Indian Company or a person who is a resident of India and who is engaged inter alia in the business of export of computer software out of India or its transmission from India to a place outside India by any means. From the plain reading of the section, the appellant being a non-resident would not have been entitled to this deduction under the Act. In respect of a person to whom a Tax Treaty applies, section 90(2) of the Act provides that provisions of the Act shall apply to the extent they are more beneficial. Article 26(2) of India-USA DTAA provides that the taxation of a PE of an enterprise of a contracting State in the other contracting State shall not be less favorably levied in that other contracting State than the tax levied on enterprises of that other contracting State carrying on the same activities. Consequently, Article 26 on non-discrimination will have precedence over Article 7 to the extent of deductions of a general nature. The OECD commentary was quoted extensively by the appellant and the Tribunal held that the commentary on OECD Model Convention does not lay down any binding precedent. The commentary contains the views of the authors of the Model Convention. This view can be taken as an argument but finally, it will be for the courts or the quasi judicial authorities in India to decide as to whether the views expressed by the author are in conformity with the intent and purpose of the Tax Treaty or not. The language employed in paragraph (2) of Article 26 of India-USA DTAA means that the taxation of a PE of a person resident in USA shall not be less favorable than the taxation of resident carrying on the same activities.

The dispute is with regard to the words "shall not be less favourably levied", and the words "same activities". It was observed by the Special Bench that the question as to whether the provisions contained in Article 26(2) will override the distinction made between the resident person on one hand and a non-resident on the other. On the facts of this case, such a distinction could not have been made due to the reason that the wording of Article 26(2) is to the effect that if a US enterprise is carrying on a business in India, it shall not be treated less favorably than an Indian enterprise carrying on the same business for the purpose of taxation. It follows automatically that exemptions and deductions available to Indian enterprises would also be granted to US enterprises if they are carrying on the same activities. The provisions contained in section 80HHE are industry specific and the assessee is not precluded in any manner from conducting this business in India. Hence deduction under section 80HHE of the Act is available to the appellant. In doing so the Tribunal also differed with the decision of the Pune Tribunal in the case of Automated Security Clearance Inc. vs. ITO (2008) 118 TTJ 619 (Pune) on the ground that no distinction can be made between a resident and a non-resident carrying on the same business by virtue of provisions of Article 26(2).

Finally the Tribunal held that a non-resident is eligible for deduction under section 80HHE of Act in view of non-discrimination clause in the India-USA DTAA despite the fact that as per section 80HHE of the Act, deduction is available only to an Indian Company or a person who is a resident in India who is engaged in the business of export of computer software out of India.

❖ ❖ ❖

Word

A word is a symbol of some idea. There are three different aspects of a word: its existence, its content and its meaning. The meaning aspect of a word is most important since a word is such only because of the meaning it symbolizes.

UNREPORTED JUDGEMENTS

In this issue we are giving full texts of two judgments of Hon'ble High Court of Gujarat. The one in respect of 1-Up Clothing Co. in Tax Appeal No. 1382 of 2009 is for refusing to admit the question of law proposed by the department against the order of Ahmedabad Tribunal in the case of the assessee whereby Tribunal granted benefit of deduction u/s 80-IB to the assessee in respect of the profit worked out after including therein the disallowance made u/s 40(a)(ia) of the Act.

The next judgment is in Writ Petition being Special Civil Application No. 41 of 2011 in the case of Pankaj Extrusion Ltd. whereby the Hon'ble High Court of Gujarat interpreted the phrase "eligible assessee" u/s 144C of the Act in the context of provisions of Section 92CA of the Act.

We hope the readers would find them useful.

CA. Sanjay R. Shah

The author is the past President of CAA, practising since 1981. He can be reached at sarshah@deloitte.com

3 **IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

TAX APPEAL NO. 1382 OF 2009

COMMISSIONER OF INCOME TAX - Appellant (s)

Versus

1-UP CLOTHING CO - OPPONENT (S)

Appearance :

MR. M.R. BHATT, SR. ADV. WITH MRS. MAUNA M. BHATT for Appellant (s) : 1

None for Opponent (s) : 1

CORAM : HONOURABLE MR. JUSTICE AKIL KURESHI

and

HONOURABLE MS. JUSTICE SONIA GOKANI

Date : 01/03/2011

ORAL ORDER

(Per : HONOURABLE MR. JUSTICE AKIL KURESHI)

Revenue is in appeal against the judgment of the tribunal dated 12.12.08 raising following questions :

"A. Whether on the facts and circumstances of the case and in law, the Appellate Tribunal was right in holding that the income from duty draw back of Rs.4,18,744/- is eligible for deduction u/s. 80IB of the Act?

B. Whether on the facts and circumstances of the case and in law, the Hon'ble Tribunal was right in holding that the assessee is eligible for deduction u/s. 80 IB of the Act on the disallowance of Rs.24,45,367/- made u/s. 40(a) (ia) though such disallowance is technical in nature and that the assessee is eligible for deduction of such amount in the next year as per the proviso to section 40(a)(ia) ?

With respect to second question, we find that the tribunal dealt with the issue in following manner:

"We have heard the learned representatives of both the parties at length. The learned DR supported the order of the AO and he further submitted that the decision of the CIT(A) is not acceptable for the reason that deduction u/s 80-IB was not allowed as the disallowance was made on technical ground because this does not form part of business profit as the profit has already been determined as per P& L Account. On the other hand, the learned counsel for the assessee reiterated the submissions made before the lower authorities. He also relied on the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT v. Bawa Skin Company (2007) 294 ITR 537 (P&H). He has also referred to the decisions cited before the CIT(A). The conclusion derived by the CIT(A) is correct and also in accordance with law. He has correctly directed the AO to grant deduction u/s 80-IB on the computed income derived from the industrial undertaking. In our view the AO has wrongly disallowed the deduction u/s 80-IB stating that deduction u/s 80-IB was not allowable as the disallowance was made on technical ground because this does not form part of the business profits as the profit has already been determined as per P&L Account. In our considered view the assessee was eligible for deduction u/s 80-IB on the profits worked out after including therein the

disallowance of Rs.24,45,367/- made by the AO u/s40(a)(ia) of the Act."

Having perused the order under challenge with the assistance of the learned counsel for the Revenue, we do not find that the tribunal committed any error in respect of question No.2. The claim of the assessee for deduction on commission or brokerage was disallowed placing reliance on section 40(a)(ia) of the Income Tax Act, 1961 on the ground that the assessee had failed to deduct the tax at source. Revenue also desired that such expenditure be excluded for the purpose of section 80-IB of the Act. We are in broad agreement with the view expressed by the Tribunal. Such question therefore is not required to be referred.

In the result, with respect to question No.1 which is in following terms tax appeal is admitted :

* * *

4 "Whether on the facts and circumstances of the case and in law, the Appellate tribunal was right in holding that the income from duty draw back of Rs.4,18,744/- is eligible for deduction u/s 80-IB of the Act?"

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 41 OF 2011

PANKAJ EXTRUSION LTD. - Petitioner (s)
Versus
ASSISTANT COMMISSIONER OF INCOME TAX (OSD) OR HIS
SUCCESSOR & 2 - Respondent (s)

Appearance :
MR. R.K. PATEL for Petitioner (s) : 1
NOTICE SERVED BY DS for Respondent (s) : 1- 3.
MRS. MAUNA M. BHATT for Respondent (s) : 1- 3.

CORAM : HONOURABLE MR. JUSTICE AKIL KURESHI

and

HONOURABLE MS. JUSTICE SONIA GOKANI

Date : 21/02/2011

ORAL ORDER

(Per : HONOURABLE MR. JUSTICE AKIL KURESHI)

1. Heard learned advocates for the parties for final disposal.

2. Petitioner has challenged a communication dated 30.12.2010 which reads as under :-

"Please find enclosed herewith a draft assessment order u/s. 143(3) r/w/s/ 92CA(3) of the I.T. Act in your case for the A.Y. 2007-08. Please acknowledge the receipt thereof."

Along with the communication, the Assessing Officer had forwarded to the petitioner an order titled as "Assessment Order".

3. Main challenge of the petitioner to the said communication is that he not being an "eligible assessee" as defined in Section 144C (15) of the Income Tax Act, 1961, procedure for issuance of draft order and inviting objections from the petitioner would not apply. Counsel for the petitioner drew our attention to the provisions contained in Section 92 C as well as under different clauses of Section 144C of the Act to contend that case on hand is not covered under Section 144C and hence issuance of notice and draft order itself is without jurisdiction.

4. Counsel for the department however, vehemently contended that in response to the impugned communication, the petitioner raised no objection. He could have raised all objections including that he is not an eligible assessee and therefore, procedure under Section 144C would not apply. He further contended that opportunity available under Section 144C is an additional opportunity of making representation against a draft order. If an assessee is not inclined to avail of such an opportunity on any ground, it may be open for him to do so, however, impugned communication should not be interfered with.

5. Short question that calls for consideration in the present petition is whether the petitioner is an "eligible assessee".

6. Section 144C provides for a detailed procedure to be followed in cases where any variation in income or loss returned which is prejudicial to the interest of an assessee occurs on account of reference made in Section 92CA of the Act. Relevant portion of Section 144C is reproduced here-in-below:

"144C. Reference to Dispute resolution Panel.-(1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

(Contd. on page no. 120

CONTROVERSIES

When there is no agricultural Income from an agricultural land, then whether such agricultural land is capital asset liable to capital gain tax ?

CA. Kaushik D. Shah
The author is the past President of CAA, practising since 1976. He can be reached at dshahco@gmail.com.

Issue :

The assessee was the owner of agricultural land. But land was not actually used for agriculture in as much as no income was derived from this land and was not shown by the assessee in the return of income.

When such land was sold, the assessee claimed that what is sold is agricultural land and hence not liable to Capital gains. However, Assessing Officer is of the view that since no agricultural income is derived from such land, and hence no agricultural operations have been carried out and so the land is not an agricultural land and hence Capital Gain from such land is liable to Capital Gain Tax.

Proposition :

When agricultural income is not shown it does not mean that agricultural operation is not carried out. If the land is shown in the revenue record as agricultural land and if no permission has been obtained for non-agricultural use, then the land is an agricultural land and is not liable to Capital Gain.

View Against the Proposition :

If no agricultural income has been disclosed then the prima facie conclusion is that no agricultural operations are carried out. If neither expenditure nor income is disclosed by the assessee in respect of such agricultural land, then such so called agricultural land cannot be treated as the agricultural land.

In this context, reference could be made to the case of CWT v. *Officer-in-Charge (Court of Wards)* [1976] 105 ITR 133 (SC) wherein the Constitution Bench of the hon'ble Supreme Court stated that the terms "agriculture" and "agricultural purpose" were not defined in the Indian Income-tax Act and that we must necessarily fall back upon the general sense in which they have been understood in common parlance. The hon'ble Supreme Court observed that the term agriculture is thus understood as comprising within its scope the basic as well as subsequent operations in the process of agriculture and raising on the land all products which have some utility either for someone or for trade and commerce. It will be seen that the term agriculture receives a wider interpretation both in regard to its operation as well as the result of the same. Nevertheless there is present all throughout the basic idea that there must be at the bottom of its cultivation of the land in the sense of tilling of the land, sowing of the seeds, planting and similar work done on the land itself and this basic conception is the essential sine qua non of any operation performed on the land constituting agricultural operation and if the basic operations are there, the rest of the operations found themselves upon the same, but if these basic operations are wanting, the subsequent operations do not acquire the characteristics of agricultural operations.

View in Favour of the Proposition :

The Supreme Court in the case of *Sarifabibi* [1993] 204 ITR 631 has approved the decision of a Division Bench of the Gujarat High Court in the case of CIT v. *Siddharth J. Desai* [1983] 139 ITR 628 and has laid down 13 tests or factors which are required to be considered and upon consideration of which the question whether the land is an agricultural land or not has got to be decided or answered.

We could reproduce the said 13 tests with advantage. They read as follows :

"(1) Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue ?

(2) Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time ?

(3) Whether such user of the land was for a long period or

whether it was of a temporary character or by way of a stopgap arrangement ?

(4) Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land ?

(5) Whether, the permission under section 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land ? If so, when and by whom (the vendor or the vendee) ? Whether such permission was in respect of the whole or a portion of the land ? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?

(6) Whether the land, on the relevant date, had ceased to be put to agricultural use ? If so, whether it was put to an alternative use was a permanent or temporary nature?

(7) Whether the land, though entered in the revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled ? Whether the owner meant or intended to use it for agricultural purposes ?

(8) Whether the land was situated in a developed area ? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural ?

(9) Whether the land itself was developed by plotting and providing roads and other facilities ?

(10) Whether there were any previous sales of portions of the land for non-agricultural use ?

(11) Whether permission under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist ? If so, whether the sale or intended sale to such non-agriculturist was for non-agricultural or agricultural user ?

(12) Whether the land was sold on yardage or on acreage basis ?

(13) Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield ? "

At the same time, the Supreme Court has stated that whether a land is an agricultural land or not is essentially a question of fact. The question has to be answered in each case having regard to the facts and circumstances of that case. There may be factors both for and against a particular point of view.

The court has to answer the question on a consideration of all of them – a process of evaluation and the inference has to be drawn on a cumulative consideration of all the relevant facts. The Supreme Court has further stated that not all these factors or tests would be present or absent in any case and that in each case one or more of those factors may make appearance and that the ultimate decision will have to be reached on a balanced consideration of the totality of the circumstances.

It is submitted that just because no agricultural income is disclosed it can not mean that no agricultural operations have been carried out.

Summation:

It is useful to refer to the decision of **CWT v/s. Shashiben 193 CTR 140** which held as under:

I] Land used for agricultural purposes- Intention of the assessee was to keep the land in the condition in which it was and it was not intended to be converted into non agricultural land – Tribunal held that the fact the land was surrounded by buildings sites, etc. was not within the control of the assessee and these factors would not change the character of the land - It also found that the land has the history of agricultural use even after the relevant valuation dates and that the land was shown as agricultural land in the revenue records.

II] Agricultural land is normally taken to be land from which agricultural income is derived.

What constitutes agricultural land has been subject-matter of consideration in a number of judicial decisions. In CWT v Officer-in-charge, Court of Wards (1976) 105 ITR 133 (SC) the Supreme Court, observed that what is really required to be shown is the connection with an agricultural purpose and user and not mere possibility of land being used by some possible future owner or possessor for an agricultural purpose.

Temporary non-user for agricultural purpose would not affect the character of the land as agricultural land [Shiv Shankar Lal v CIT (1974) 94 ITR 433 (Del.)]

III. The entries in the revenue records is a material evidence to show the nature of the land but it is not conclusive. Further evidence is required to show that the lands in question at the material time have not lost the character of agricultural land. The onus is on the assessee to establish the nature of the land. When once the assessee discharges the onus, the onus shifts to the department to prove the land is not agricultural. [CWT v. Officer-in-charge, (Court of Wards) (1976) 105 ITR 133 (SC)].

Where on the date of purchase, the land in question was an agricultural land and on the date of acquisition, the character of the land continued to be agricultural. When those two clear findings had been returned, if was apparent that in the transitional period, that was, between purchase and acquisition, the nature and character of the land did not change. The fact that the assessee intended to use the land for industrial purposes did not alter the nature and character of the land in any way. The further fact that the assessee did not carry out any agricultural operations also did not result in conversion of the agricultural land into an industrial land.

It was held that having come to such a conclusion, the Tribunal ought not to have gone into the question of intention of the assessee and definitely not into the question of intention of the land acquiring authority, the latter being a wholly irrelevant consideration.

The Tribunal was not justified in holding that the land acquired from ownership of the assessee was not an agricultural land [Hindustan Industrial Resources Ltd. v. Asstt. CIT (Del) (2009) 180 Taxman 114 (Del)].

If the land was put to agricultural use for a long period and the agricultural operations were temporarily suspended, the land does not cease to be agricultural. [Ranganatha Sastri (M) v CIT (1979) 119 ITR 488 (Mad)].

Let me now refer to the recent decision of Bombay High Court in CIT Vs. Smt. Debbie Alemao 331 ITR 59. In this case the assessee had not shown any agricultural income for two years before the date of sale. The Assessing Officer took the view that when no agricultural income is shown the land is not an agricultural land and hence, the capital gain liability arises on sale of Agricultural land.

The Assessing Officer also held that the said land had non-agricultural potential and the fact that it was sold at a price which was nearly 10 times the purchase price within two years from its purchase and purchaser purchased such land for a beach resort and the fact that after the land is purchased and sold after two years no agricultural income was disclosed clearly shows that the profit arising out of the sale of the said land was liable to Capital Gain. However, their lordships of Bombay High Court held as under:

"In our opinion, if an agricultural operation does not result into generation of surplus that cannot be a ground to say that the land was not used for agricultural purpose. It is not disputed that the land was shown in the revenue record to be used for agricultural purpose and no permission was ever obtained for non-agricultural use by the respondents. Section 30 of the Goa, Daman and Diu Land Revenue Code, 1968, provides that no land used for agriculture shall be used for any non-agricultural purpose and no land assessed for one non- agricultural purpose shall be used for any other non-agricultural purpose except with the permission of Collector. Section 32 of Goa, Daman and Diu Land Revenue Code prescribes the procedure for conversion of use of land from one purpose to another including conversion of use of agricultural purpose to non-agricultural purpose. The permission for non-agricultural use was obtained for the first time by the Varca Holiday Beach Resort Private Limited the purchaser after it purchased the land. Thus, the finding recorded by the two authorities below that the land was used for the purpose of agricultural is based on appreciation of evidence and by application of correct principles of law."

Thus it is submitted that if no agricultural income is disclosed from the agricultural land since no income was derived it does not mean that the land is not an agriculture land.

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If you learn methods only, You get stuck with those methods. But if you learn principles you can devise your "OWN METHODS".

JUDICIAL ANALYSIS

Proportionate deduction u/s 80IB(10) when only some of the residential units exceed maximum built-up area prescribed

Part I

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SJR Builders v.ACIT [2010] 3 ITR(TRIB.) 569 (BANG.)

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10. In the premises of the above facts the assessee's representative further submitted briefly as under. Section 80-IB(10) provides for deducting from the total income the profit and gains derived from a housing project, if the conditions prescribed in clauses (a) to (d) are fulfilled. He submitted that even according to the Revenue authorities the assessee has fulfilled all the .conditions specified in the said clauses including the one in clause (c) to the extent of built-up area as defined in section 80-IB(14)(a). The premises was inspected by the DVO for measurement purposes on July 5, 2007 after more than one year from the date of issue of occupancy certificate on October 16, 2006. There could be every possibility of the occupants themselves making certain changes which is not attributable to the assessee at all. He further submitted that while sanctioning the plan it was evident that the assessee never envisaged any unit with a built-up area of more than 1500 sq.ft. The fact that the occupancy certificate was issued in the month of June, 2006 indicates that the assessee had adhered to the plan. A perusal of the occupancy certificate shows that it relates to 152 residential apartments of which 38 are duplex units. The total area of the duplex units may exceed 1500 sq.ft. The total area of each of the duplex apartment may exceed 1500 sq.ft but the area of such apartment when viewed within the meaning of the definition of "built-up area within the ambit of section 80-IB(14)(a) does not exceed 1500 sq.ft. Actually the DVO has not physically measured any of the apartment discussed in the assessment order. The DVO's conclusion that each of the unit exceeds 1500 sq.ft is based on the assumption that they are penthouses and hence must have exceeded the prescribed area of 1500 sq.ft. The only unit measured by the DVO in the Redwood project does not fit into the definition of built-up area as defined in the section. He argued that it is pertinent to note that the inspection was made only after the passing of the assessment order. The DVO has considered the total area of the duplex apartment and not at the floor level which is required to be considered for the purposes of section 80-IB(14)(a). A reconciliation statement has been enclosed at page 14 of the paper book No. 1. The assessee also brought our attention to the decision of the Tribunal in I.T.A. Nos. 668 and 669/Bang/2006 in the case of M/s. G.R. Developers which was decided in the assessee's favour on similar set of facts. The assessee's representative submitted that none of the residential apartments had, therefore, contravened the provisions of section 80-IB(10). Therefore, he submitted that the claim for deduction amounting to Rs. 2,02,08,690 should be allowed.

11. The learned representative further submitted that alternatively, even if some of the residential units exceeded 1500 sq.ft. then the deduction permissible must be residential unit-wise deduction and, therefore, proportionate deduction should be allowed. As per clause (c) of section 80-IB(10), the residential unit should have a maximum built up area of 1500 sq.ft. The assessee's representative reiterated that clause (c) of section 80-IB(10) refers to area of "the residential unit". The residential unit means deduction should operate and be computed unit-wise and, therefore, a particular unit satisfied the condition of section 80-IB, deduction should be automatically allowed in respect of that unit. It is only in respect of those units which have not fulfilled the stipulated condition the deduction is to be denied. He further submitted that if the law had wanted all the units to be within the specified limits, it would have stated that "all the residential units" should have a maximum built-up area of 1500 sq.ft. In the absence of such an all

pervasive condition, deduction should be allowed in respect of profits for the units that fulfil the condition. Law prescribes maximum permissible size with reference to each residential unit. It does not do so qua the commercial units. Instead, it provides for the maximum overall size and all such commercial area together. This differentiation in stipulation indicates that exemption for residential apartment should be computed unit-wise. For the above proposition, he relied on the decision of the Bangalore Bench of the Tribunal in the case of Brigade Enterprises (P.) Ltd., in I.T.A. No. 1198/Bang/07, dated August 29, 2008, particularly to paragraph 5.1. He also relied on the decision of the Special Bench of the Income-tax Appellate Tribunal, Pune in the case of Brahma Associates v. Joint CIT in I.T.A. 1417/PN/06, dated April 6, 2009 [2009] 315 ITR (AT) 268, wherein the Tribunal held that the tax incentives by way of deduction under section 80-IB(10) is predominantly for the purpose of augmenting affordable dwelling units and it must be interpreted in that light only. The assessee's representative submitted that profits from units are to be allowed on the basis of method of accounting employed by the assessee. Accounting principles mandate recognition of profits from each unit separately and deduction should be allowed as such.

12. In support of the above, the assessee's representative submitted that the provisions relating to exemption, allowance and deduction, rebate or relief should be interpreted liberally and broadly. For the above proposition he relied on the case of Union of India v. Wood Papers Ltd. [1991] 83 STC 251 ; AIR 1991 SC 2049. The assessee's representative particularly relied on the following observation (page 254 of STC) :

"Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective, etc. That is why its construction, unlike charging provision, has to be tested on a different touchstone. In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augument State revenue. But once exception or exemption becomes applicable, no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provisions are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction."

13. For the above proposition he relied further on the case CIT v. Gwalior Rayon Silk Manufacturing Co. Ltd., AIR 1992 SC 1782. In Bajaj Tempo Ltd. v. CIT [1992] 196 ITR 188 (SC) and also on the case of Controller of Estate Duty v. R. Kanakasabai [1973] 89 ITR 251 (SC). The assessee's representative summed up that where there is a partial noncompliance of the requirements of the law, there should not be complete disallowance of the deductions. Disallowance, if any, the assessee's representative submitted will have to be restricted to the extent of non-compliance of the provisions. This rule of proportionality is well founded in the income-tax law and is recognised under various sections of the Act. For e.g., the assessee's representative submitted that sections 10A(4), 10B(4), 10BA(4), 80HHC(3)(c)(i), 80HHD(3), 80HHE(3) and 80HHF(3), allow deduction in proportion of the export turnover to the total turnover. Further, under section 54EA, 54EB, 54EC, 54ED and 54F, exemption towards capital gains and under section 115F(1)(b), the benefit is available in proportion of the net consideration utilised to acquire new consideration arising out of transfer of old assets. In the present case, the profits attributable to the eligible residential units out of 152 residential units should be allowed as a deduction.

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16. Considering the rival submissions, we are of the view that the appeal by the assessee is to be allowed to the extent of the flats the built-up area of the flat is not more than 1500 sq.ft. We agree with the submission of the learned representative for the assessee that while considering the built-up area of 1500 sq.ft. for the purpose of exemption under section 80-IB(10), the mezzanine floor and common areas are to be excluded. The Assessing Officer is directed accordingly. We hold that in respect of the penthouses the built-up area of which is more than 1500 sq.ft. they may be excluded for exemption. However, in the light of the decision of the Special Bench in the case of Brahma Associates v. Joint CIT [2009] 315 ITR (AT) 268 (Pune), merely

because some flats are larger than 1500 sq.ft, the assessee will not lose the benefit in its entirety. Only with reference to the flats which have more than the prescribed area, the assessee will lose the benefit.

ITO v Air Developers [2009] 123 TTJ 959(NAG.)

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5. We have carefully considered the arguments of both the sides and perused the materials before us. The only dispute, in this appeal, is whether the assessee is entitled to deduction under Section 80-IB(10). At the relevant time Section 80-IB(I) read as under :

"(10) The amount of profits in case of an undertaking developing and building housing projects approved before the 31st day of March, 2005 by a local authority, shall be hundred per cent of the profits derived in any previous year relevant to any assessment year from such housing project if,—

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998;

(b) the project is on the size of a plot of land which has a minimum area of one acre; and

(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the cities of Delhi or Mumbai or within twenty-five kilometers from the municipal limits of these cities and one thousand and five hundred square feet at any other place."

Let us examine whether the assessee has fulfilled the conditions prescribed by Section 80-IB(10). There is no dispute about the fulfillment of the conditions prescribed under clause (a) of Section 80-IB(10) i.e., the project was commenced after the first day of October, 1998.

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5.6. The next question is whether the built-up area of the residential unit constructed by the assessee exceeded 1,500 sq. ft.

5.7. From the perusal of the assessment order, it is evident that the AO has worked out the built-up area after including the area of the balcony. The CIT(A) has also agreed with the above view of the AO that the area of the balcony is to be included in the built-up area. The IT Act did not define the term "built-up" area till the Finance (No. 2) Act, 2004 inserted clause (a) in the Section 80-IB(14). This clause defines the built-up area as under :

(a) "built-up area" means the inner measurements of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls but does not include the common areas shared with other residential units;

5.8. The learned CIT(A) is of the opinion that this definition of built-up area is clarificatory in nature and therefore would be retrospective in operation. He has, therefore, applied the same to the assessment year under consideration. We are unable to agree with the above view of the CIT(A) because the Finance (No. 2) Act of 2004 itself has made the provision effective from 1st April, 2005, i.e., from asst. yr. 2005-06. The legislature has the power to give retrospective effect to any provision and wherever the legislature intends to make any provision effective from back date, a specific mention is made in the Act with regard to the date from which the provision is intended to be effective. In respect of the definition of the built-up area, we find that the provision is made effective from 1st April, 2005. We find that the Hon'ble apex Court in the case of Virtual Soft Systems Ltd. v. CIT [2007] 207 CTR (SC) 733 : [2007] 289 ITR 83 (SC) held as under :

"It is a well-settled legal position that an amendment can be considered to be declaratory and clarificatory only if the statute itself expressly and unequivocally states that it is a declaratory and clarificatory provision. If there is no such clear statement in the statute itself, the amendment will not be considered to be merely declaratory or clarificatory. Even if the statute does contain a statement to the effect that the amendment is declaratory or clarificatory, that is not the end of the matter. The Court will not regard itself as being bound by the said statement made in the statute but will proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is an amendment which is intended to change the law and which applies to future periods. It is only in the Notes on Clauses relating to the 2002 amendment that it has been stated that the said amendment is clarificatory. There is no such mention of the said amendment being clarificatory, anywhere in the statute itself. Such a statement in the Notes on Clauses cannot possibly bind the Court when even a statement in the statute itself is not regarded as binding or conclusive. The statute expressly states that the amendment would take effect only from 1st April, 2003."

5.9. Applying the ratio of the above decision of the Hon'ble apex Court, we find that sub-clause (a) of Section 80-IB(14) has been made effective by the legislature from 1st April, 2005. There is no mention in the Act that the insertion of the definition of the built-up area as above is clarificatory or declaratory. In view of above, we, relying up the decision of the Hon'ble apex Court in the case of Virtual Soft Systems Ltd. (supra) hold that the above definition would be applicable from 1st April, 2005 i.e., for the asst. yr. 2005-06 onwards.

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6.5. In the case of Bengal Ambuja Housing Development Ltd. (supra), the Tribunal, Kolkata Bench held as under:

"It is apparent from the perusal of Section 80-IB(10) that this section has been enacted with a view to provide incentive for businessmen to undertake construction of residential accommodation for smaller residential units and the deduction is intended to be restricted to the profit derived from the construction of smaller units and not from larger residential units. Though the AO has denied the claim of the assessee observing that larger units were also constructed by the assessee, at the same time, it is also a fact on record that the assessee had claimed deduction only on account of smaller residential units which were fulfilling all the conditions as contained in Section 80-IB(10) and the same has not been disputed by the AO also. We have also noted down the fact that even the provision as laid down in Section 80-IB(10) does not speak regarding such denial of deduction in case of profit from a housing complex containing both the smaller and large residential units and since the assessee has only claimed deduction on account of smaller qualifying units by fulfilling all the conditions as laid down under Section 80-IB(10), the denial of claim by the assessee is on account of rather restricted and narrow interpretation of provisions of clause (c) of Section 80-IB(10) while coming to such conclusion, we also find support from the order of the Hon'ble Supreme Court in case of Bajaj Tempo Ltd. v. CIT (supra), wherein it was held that provisions should be interpreted liberally and since in the present case also, the assessee by claiming pro rota income on qualifying units has complied with all the provisions as contained in the said section, in our considered opinion, such claim of the assessee was rightly allowed by the learned CIT(A) by reversing the order of AO."

6.6. The above decision of the Tribunal, Kolkata Bench is also upheld by the Hon'ble Tribunal, Calcutta High Court in IT Appeal No. 453 of 2006 wherein the Hon'ble High Court vide order dt. 5th Jan., 2007 held as under:

'The appeal is now taken up for hearing and after hearing the learned counsel for the parties and perusing the order passed by the Tribunal, we find that no substantial question of law is involved in this matter. Hence we dismiss the appeal."

6.7. The ratio of the above decision of the Tribunal, Kolkata Bench would be squarely applicable to the case under consideration before us because the facts are identical. Moreover, even if it is held that in view of the above two decisions of the Tribunal, two views are possible with regard to interpretation of Section 80-IB(10), it is a settled law that the view favourable to the assessee should be adopted. Sec. 80-IB(10) is a beneficial provision and it has been held by the Hon'ble apex Court in the case of Bajaj Tempo Ltd. v. CIT [1992] 104 CTR (SC) 116 : [1992] 196 ITR 188 (SC) that a beneficial provision should be interpreted liberally. If an assessee has developed a housing project, wherein the majority of the residential units has a built-up area of less than 1, 500 sq. ft. i.e., the limit prescribed by Section 80-IB(10) and only a few residential units are exceeding the built-up area of 1,500 sq. ft., there would be no justification to disallow the entire deduction under Section 80-IB(10). It would be fair and reasonable to allow the deduction on proportionate basis i.e. on the profit derived from the construction of the residential unit which has a built-up area of less than 1,500 sq. ft. i.e. the limit prescribed under Section 80-IB(10). In view of the above, we direct the AO that if he finds that the built-up area of some of the residential units is exceeding 1,500 sq. ft., he will allow the proportionate deduction under Section 80-IB(10). Accordingly, the appeal of the Revenue is dismissed and cross-objection of the assessee is deemed to be partly allowed as above.

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ACIT v. Bengal Ambuja Housing Development Ltd. ITA No. 1735/Kol./2005 (Cross appeal ITA No. 1595/Kol./2005)

Facts :

The assessee was engaged in the business of development and construction of residential apartments. One of its projects consisted of 261 residential units and the individual flat size varied between 800 sq.ft. to 3,000 sq.ft. It had claimed deduction u/s.80IB(10) of the Act with reference to the profit

attributable to the built-up area, which was occupied by the residential units having individual flat size of less than 1,500 sq.ft. The profit was computed on a proportionate basis — based on the ratio of the built-up area of the eligible sized flats to the total area of the project. Similar deduction was also claimed with reference to the income earned on account of the forfeited amount on cancellation of the agreement by the prospective buyers and on the sale of scrap ('other income').

According to the AO, the deduction was allowable only where each and every residential unit comprised in the project had maximum built-up area of 1,500 sq.ft. Further, in respect of the other income, since the said income was not derived directly from the project itself, according to him, no deduction could be allowed. Thus, the assessee's claim was rejected. On appeal, the CIT(A) gave partial relief by allowing deduction in respect of the profit derived on sale of flats. However, in respect of the other income, he upheld the order of the AO. So both the parties filed appeal before the Tribunal.

Held :

The Tribunal noted that the provisions of S. 80IB(10) do not provide for denial of deduction, if a housing complex contains both, the smaller and larger residential units. Following the decision in the case of Bajaj Tempo Ltd., where the Supreme Court had observed that such provisions should be interpreted liberally, it upheld the order of the CIT(A) qua the deduction claimed with reference to the profit on sale of residential units.

In respect of the income earned on account of the forfeited amount on cancellation of the agreement by the prospective buyers, the Tribunal found that the said receipts by the assessee were directly related to the construction and development of the housing complex, and hence, eligible for deduction u/s.80IB(10). As regards the income from scrap, it was noted that it was not the case of the Revenue that such scrap was from the business, other than the business of construction and development of residential complex. Thus, according to it, the scrap was generated from the construction and development activity only. Thus, according to the Tribunal, the CIT(A)'s action in denying the deduction was not correct, accordingly, the assessee's cross appeal on the point was allowed.

(Contents taken from BCA website)

ACIT v.Sheth Developers (P.) Ltd. [2009] 33 SOT 277 (MUM.)

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22. Coming to the last of the three projects, namely, Aishwariya, apart from the common reasonings for rejecting assessee's work out of the built-up area, Assessing Officer has also noted that in the workings submitted, assessee itself showed a built-up area exceeding 1000 sq. ft. in one flat each of first to eighth floors of Wing 'A'. We have already ruled against considering any part of the balcony area for calculating the built-up area and also held that measurement based data furnished by the assessee with regard to the built-up area, is in accordance with commonly understood meaning of the term 'built-up area'. In the case of Aishwariya project, no doubt assessee's own workout show that some of the flats had built-up area exceeding 1000 sq. ft. Even the DVO's work-out show that built-up area of flats in Block A and built-up area of eight flats out of sixteen flats in respect Block B exceeded 1000 sq. ft. However in blocks C to E which consisted of 96 flats, the built-up area were less than 1000 sq. ft. in each of the case. Thus, without doubt by assessee's own admission, at least in a few cases, the built-up area exceeded 1000 sq. ft. Now the question is whether the benefit of section 80-IB(10) can be given to a project even where some of the units exceeded 1000 sq.ft. of built-up area. As aforesaid assessee was denied deduction under section 80-IB(10) only for a reason that it failed the test of limit in 1000 sq. ft. In the case of Bengal Ambuja Housing Development Ltd. (supra), we find that a similar issue had arisen. The question referred by the revenue before the Tribunal, was as under :

"(i) That on the facts and in the circumstances of the case, the ld. CIT(A) has erred in directing the Assessing Officer to allow deduction of Rs. 1,85,81,905 under section 80-IB(10) in respect of the profits of housing project Udita-III in spite of the fact that built up area of 111 residential units of the said project are above 11500 sq. ft."

The Tribunal at para 22 after considering various arguments put forward by both the parties held as under:

"It is apparent from the perusal of section 80-IB(10) that this section has been enacted with a views to provide incentive for businessmen to undertake construction of residential accommodation for smaller residential units and the deduction is intended to be restricted to the profit derived from the construction of smaller units and not from larger residential units. Though the Assessing Officer has denied the claim of the assessee observing that larger units were also constructed by the assessee,

at the same time, it is also a fact on record that the assessee had claimed deduction only on account of smaller residential units which were fulfilling all the conditions as contained in section 80-IB(10) and the same has not been disputed by the Assessing Officer also. We have also noted down the fact that even the provisions as laid down in section 80-IB(10) does not speak regarding such denial of deduction in case of profit from a housing complex containing both the smaller and large residential units and since the assessee has only claimed deduction on account of smaller qualifying units by fulfilling all the conditions as laid down under section 80-IB(10), the denial of claim by the assessee is on account of rather restricted and narrow interpretation of provisions of clause (c) of section 80-IB(10). While coming to such conclusion, we also find support from the order of the Hon'ble Supreme Court in case of Bajaj Tempo Ltd. (supra), wherein it was held that provisions should be interpreted liberally and since in the present case also, the assessee by claiming pro rata income on qualifying units has complied with all the provisions as contained in the said section, in our considered opinion, such claim of the assessee was rightly allowed by the ld. CIT(A) by reversing the order of the Assessing Officer."

Again in the case of Brigade Enterprises (P.) Ltd. (supra) decided by the Bangalore Bench of this Tribunal, it was held that where some of the residential units in a bigger housing project if treated independently were eligible for relief under section 80-IB(10), then relief should be given pro rata and should not be denied by treating the bigger project as a single unit. Again we find that a similar issue had come up before the Nagpur Bench of this Tribunal in the case of ITO v. AIR Developers [IT Appeal No. 447 (Nag.) of 2007, dated 21-5-2008]. After referring to the decision in Bengal Ambuja Housing Development Ltd.'s case (supra), it was held by the Tribunal at para 6.7 of its decision dated 21-5-2008 as under :

"The ratio of the above decision of the ITAT, Kolkata Bench would be squarely applicable to the case under consideration before us because the facts are identical. Moreover, even if it is held that in view of the above two decisions of the ITAT, two views are possible with regard to interpretation of section 80-IB(10), it is a settled law that the view favourable to the assessee should be adopted. Section 80-IB(10) is a beneficial provision and it has been held by the Hon'ble Apex Court in the case of Bajaj Tempo Ltd. 196 ITR 188 that a beneficial provision should be interpreted liberally. If an assessee has developed a housing project, wherein the majority of the residential units has a built-up area of less than 1500 sq.ft. i.e., the limit prescribed by section 80-IB(10) and only a few residential units are exceeding the built-up area of 1500 sq. ft., there would be no justification to disallow the entire deduction under section 80-IB(10). It would be fair and reasonable to allow the deduction on proportionate basis i.e., on the profit derived from the construction of the residential unit which has a built-up area of less than 1500 sq.ft. i.e., the limit prescribed under section 80-IB(10). In view of the above, we direct the Assessing Officer that if he finds that the built-up area of some of the residential units is exceeding 1500 sq.ft., he will allow the proportionate deduction under section 80-IB(10). Accordingly, the appeal of the revenue is dismissed and cross objection of the assessee is deemed to be partly allowed."

Here, the learned Assessing Officer as well as the CIT(A) had declined to give the assessee the benefit of section 80-IB(10) for the Aishwariya project for the sole reason that some of the units exceeded 1000 sq. ft. and therefore the stipulation contained in clause (c) of sub-section (10) of section 80-IB of the Act was not satisfied. However, as aforesaid the Kolkata, Bangalore and Nagpur Benches of this Tribunal had clearly held even where some of the units exceeded the area limit relief had to be given on pro rata basis. We also find that Special Bench of the Tribunal in the case of Brahma Associates (supra) allowed pro rata relief, even where assessee had utilized space for commercial purpose up to the extent of 10 per cent in an approved housing project. Following these, we are of the opinion that assessee is eligible for relief on pro rata basis in respect of the flats which did not have a built up area exceeding 1000 sq.ft. in respect of Aishwariya project. Thus, the quantum of deduction under section 80-IB(10) in respect of the Aiswariya project for the flats which have built-up area less than 1000 sq. ft., has to be worked out on pro rata basis in line with our discussion in the preceding paras.

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COMMERCIAL ASPECTS OF CIVIL CONSTRUCTION

COMPLIANCE AND GOVERNANCE ISSUES IN A CIVIL CONSTRUCTION BUSINESS

Series on Construction was started in March, 2011 with following topics:-

a. Accounting policies and Standard for construction industry.

b. Tendering and Budgeting

c. Direct Tax Aspects

d. Service Tax Aspects for Civil Contractors

e. Service Tax Aspects for Builders

f. Gujarat and Inter-state VAT on works contract

g. Glimpse of VAT on Works contract across the country

h. Structuring of sales invoice

i. Applicability of Labour Laws to the sector

j. Internal Controls at Construction Site

   1. Engineering
   2. Stores
   3. HR
   4. Commercial Procurement
   5. Account

k. Designing MIS Systems for a civil construction company

l. Project Completion

m. Relevance of Information Technology to the construction sector

n. Banking requirement of the sector

o. Insurance needs of the sector

p. ISO Implementation and Process Documentation

q. Planning Internal Audit of a construction site

This month's topic is -

Service Tax Aspects for Civil Contractors

We have bifurcated the parties to whom service tax is applicable in two major categories :-

a) Civil Contractor

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b) Builders and Developers

In this column we shall be touching upon the applicable points for civil contractors. It is to be noted that primarily the service tax is on construction of a building or structure for commerce or industry. Such constructions which are of use for education, religious, charitable, sanitation and philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. It may be noted that scheme for construction of residential complex having more than 12 units is covered under service tax by a separate heading, even though the end use is not commercial in nature.

We can broadly classify the points as below :-

- Various Chapters under which registration can be sought for
- Relevance of Centralised registration for Civil Contractors
- Options available for discharge of Service Tax Liability
- Impact on CENVAT
- Sold vs Consumed
- Relevance of Works Contract Service and related judgements
- Budget amendments 2011
- Impact of Point of Taxation Rules, 2011
- Basics of CENVAT Credit
- Exemptions available
- Controversy on Road repairs and Maintenance

Various Chapters under which registration can be sought for

Following is a list of chapters under which the parties dealing with the construction services need to register themselves:-

Category	Section 65(105)	Applicable Date
Consultant Engineer	(g)	7-7-1997
Architect	(p)	16-10-1998
Interior Decorator	(d)	16-10-1998
Real Estate Brokers	(v)	16-10-1999
Erection, Commissioning and Installation services.	(zzd)	1-7-2003
Commercial and Industrial Construction	(zzq)	10-9-2004
Construction of Complex	(zzh)	16-6-2005
Management, Repair and Maintenance	(zzg)	16-6-2005
Site Formation	(zzza)	16-6-2005
Work Contract Service	(zzzza)	1-6-2007
Survey and Map making	(zzzc)	16-6-2005

Section 65A of the act defines the principles of classification of a taxable service. When for any reason a taxable service is classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected:-

a) Specific description to be preferred over a general description

b) Classification as per essential character in case of composite services

c) If the confusion still prevails, then the service shall be classified under the sub-clause which occurs first among the other sub-clauses.

Centralised Registration

Although the construction sites at which the civil contractors normally work are temporary locations and are not required to be registered as branches under the centralized registration scheme. But if invoices of materials / services where excise/ service tax is being charged are received at those sites, without a mention of the Head office address then the same may not be an eligible document for claiming the cenvat credit against the service tax liability. If the discipline in these regards can-not be maintained for the major sites, then it is advisable to get these sites registered as branches.

One more point to be noted is to intimate the department about the closure of the construction site, if the same has been registered as a branch under the centralized registration scheme.

Options for discharge of the service tax liability

Following are the basic options available for discharge of service tax liability for a civil contractor:-

I. Registered under Industrial and Commercial Construction :-

a) Paying service tax at the rate of 10.30% on the gross bill value

b) Paying service tax at the rate of 10.30% after deduction of the cost of material sold in the course of the contract –

Under this scheme, deduction may be taken of only those material which are sold in the course of execution and not for those materials which are consumed. For e.g. various tools and consumables, where the property is not transferred to the contractee, can-not be claimed as a deduction.

c) Taking an abatement of 67% on the gross bill value and paying service tax at 10.30% on the net bill value

II Registered under Industrial and Commercial Construction :-

a) Paying Service tax at the rate of 4.12% on the gross bill value.

It may be noted that option at I (c) and II (a) above can be exercised only after adding the value of Free Issue material supplied by the contractee in the course of the contract.

Further for option exercised at I (c) above, no Cenvat credit can be availed for the inputs / input service/ Capital Goods used for the project.

Also for option exercised at II(a), no Cenvat credit for the inputs used in the project can be taken. And this option can be exercised only if the contractor is registered under the service category of Works Contract Services.

Relevance of Works Contract Service and related judgements

Further lot of controversies have prevailed the day a new category of works contract service has been introduced w.e.f 1-6-2007. We can take note of some of the judgements which have said that works contracts whether for construction / installation did not fall within the ambit of service tax till 1-6-2007. The specific chapters dealing with industrial construction, erection and installation were only meant to cover pure labour contracts. Some of these are:-

a) Decision by Tribunal in Daelim Ind Co. Ltd vs CCE, 2006 (3)STR 12 (Tribunal); 2003 (155) ELT 457 (Tribunal). Against this ruling the department went in appeal to the Hon'ble Supreme Court, and the same was dismissed vide 2004 (170) ELT A181(SC)

b) CCE v. Shapoorji Pollamji & Co. Ltd. 2006 (1) STR 164

c) CCE v. L&T Ltd, 2006 (4) STR 63

However in a recent ruling by Honourable New Delhi Bench, CESTAT in the case of Instrumentation Ltd v. CCE, Jaipur-I

which has been ruled in favour of the revenue stating that even for periods prior to 1-6-2007, when the levy of service tax on works contracts came into force if the works contract is indivisible, the same would still attract service tax as the question of vivisection of an indivisible work contract is relevant only in the context of charging sales tax on the transfer of property in goods involved in providing of service, for which by 46th Constitutional amendment Article 366 (29A) containing extended definition of "Tax on sale or purchase of goods" was introduced. But there is no need to invoke the legal fiction of Article 366 (29A) for charging service tax on a work contract.

Another question that arose was whether the benefit of composition scheme under works contract service is available for ongoing works contract as on 1-6-2007 wherein it was held that in the case of M.B. Chitale Constructions' 2008 (11) STR 583 (Commr. Appeals) that the appellant who is holder of service tax registration under 'commercial and industrial construction services', had already started paying service tax under the provisions of Notification No.1/2006 read with Section 66. Besides the same Rules speak that the option has to be exercised for the entire works contract.
In the instant case the appellant himself has accepted that they have provided some services and paying service tax on the running bills. Therefore, a part of service has already been completed and service tax has been paid under Sec. 66. Therefore, the appellant cannot exercise option under Rule 3(1) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007.

Amendments in Budget 2011 impacting Civil Contractors

- Any goods / services used for construction of a civil structure unless it is provided by a sub-contractor to the main contractor shall be excluded from the definition of Input / Input services.
- 38.1 A tariff rate of 5% excise duty is being prescribed on Ready-mix concrete (RMC). However these goods would attract the concessional 1% duty without CENVAT credit facility. Thus even if RMC is captively consumed and the value of such RMC exceeds Rs. 1.50 cr as per Excise Valuation rules, the civil contractor would have to apply for excise registration.
- The Works Contract Rules, 2007 have been amended to provide for restriction in availment of CENVAT credit to 40% of service tax paid on services relating to erection, commissioning and installation services, commercial or industrial construction services and construction of residential complex services in case service tax has been paid, without availing the abatement benefit under notification 1/2006.
- Point of Taxation rules have been implemented, stating that the point of taxation shall be as follows:-
  - Date of invoice or payment, whichever is earlier, if the invoice is issued within the prescribed period of 14 days from the date of completion of the provision of service.
  - Date of completion of the provision of service or payment, if the invoice is not issued within the prescribed period as above.
  - No provision for Bad Debt – It only mentions if amount is refunded when service is not provided.
  - Cenvat Credit shall be allowed on booking basis, provided payment is made in 90 days.
  - Concept of Continuous Supply of Service if the Contract duration Exceeds 90 Days.
  - Point of Taxation shall be the date of completion of the specified event stated in the contract which obligates payment. For example, in the case of construction services if the payments are linked to stage-by-stage completion of construction, the provision of service shall be deemed to be completed in part when each such stage of construction is completed.
  - Existing contracts to be covered under POT Rules from 1st July, 2011.
- Small Scale Sector Benefits
  - Individual and sole proprietor assessees with a turnover upto Rs. 60 Lakhs shall not be subject to audit;
  - Interest rate for all assessees (including firms and corporate) upto a turnover of Rs. 60 Lakhs shall be 3% less than the prescribed rate of 18% (w.e.f. 01-04-2011).
  - The period for making the payment in order to avail the benefit of reduced penalty under the second proviso to Section 78 shall be 90 days for assesses (including firms and corporate) having turnover upto Rs. 60 Lakhs.
- Penal Provisions
  - Interest on delayed payment of Service tax is 18% & 15%
  - For failure to furnish return

    Rs.500 – Rs.2,000 per return

    The maximum penalty for delay in filing Service Tax return U/s. 70 is proposed to be enhanced from Rs. 2,000/- to Rs. 20,000/-; existing rate of penalty under rule 7C of the Service Tax Rules, 1994 to be retained.
  - Prosecution Provisions for offences like -

    o rendition of services without raising invoices,

- o availment of Cenvat credit without receipt of inputs/ input services, etc.
- o Non-payment of service tax collected but not deposited for more than 6 months.

Availability of Cenvat Credit when both taxable and exempt services are provided

Either Maintain Separate Books of Accounts for taxable and exempt services.

OR

Pay 5% of value of exempted services

OR

Pay an amount equivalent to Cenvat Credit attributable to input services used in relation to providing exempt services.

Once an option is exercised it shall remain so during the year. If you wish to avail the option in red, you need to intimate the same to the dept. in specified format.

Also as per latest budget amendment, the definition of exempted services shall include taxable services which are partially exempted with the condition that no credit of input and input service shall be availed. Moreover it has been clarified that exempted service will include trading service.

Exemptions under Service tax for the construction sector

Exemptions are mainly available for providing services to

- SEZ
- Export of services
- Road
- Airport
- Port
- Bridges, Tunnels, Railways
- Services to government

However it is interesting to note that a *recent circular in response to representation made by Jaiprakash Associates issued in May, 2011*

Representation Made:-

The Works Contract service (WCS) in respect of construction of Dams, Tunnels, Road, Bridges etc. is exempt from service tax. WCS providers engage sub-contractors who provide services such as Architect's Service, Consulting Engineer's Service, Construction of Complex Service, Design Services, Erection Commissioning or Installation Service, Management, Maintenance or Repair Service etc. The representation by Jaiprakash Associates Limited seeks to extend the benefit of such exemption to the sub contractors providing various services to the WCS provider by arguing that the service provided by the sub contractors are 'in relation to' the exempted works contract service and hence they deserve classification under WCS itself.

Gist of the circular issued:-

The Revenue Department noted in a circular that the services provided by sub-contractors of WCS providers are classifiable under the respective heads and not under WCS. When a descriptive sub-clause is available for classification, the service cannot be in another sub-clause which is generic in nature, the Department said.

"By this circular, the Revenue Department has reinforced the principle that input services need not be necessarily service tax exempt just because the output service is service tax exempt. Input services will have to be taxable under the individual heading they belong to. A contractor will have to factor in this service tax on input services in his project cost

Construction vs Repair of Road

Chronology of events:-

- 16/6/2005 - Services relating to maintenance or management of immovable property covered under the purview of service tax.
- Several demands were raised on contractors involved in road repair work.
- In the latest Circular - No. 110/4/2009-ST Dated: February 23, 2009, the Board had clarified that repair of roads' is taxable.
- Exemption to maintenance of roads was finally given vide notification no. 24/2009 - service tax, dated 27-7-2009

  However we strongly believe that repair of road was exempt from the very beginning. To elaborate let us have a closer look at the definition Commercial and Industrial construction includes-

  a)construction, b) completion and c) finishing and d) repair, alteration, renovation or restoration. The definition itself specifically excludes such services provided in respect of roads.

  From the above it is evident that not only construction services but also repair services provided in respect of roads are exempted from tax. Though the same may also fall under management, maintenance or repair service in terms of Section 65(64) of the Finance Act, 1994, In view of specific exclusion of repair services provided in respect of roads under Section 65(25b) of the Finance Act, 1994 the same can not be subjected to any tax. To support the view we even have a Judgement from Honourable Commissioner, Vizag vide appeal no.5/2008(v-i) s.tax dated: 16.03.2009, order-in-appeal no.27/2009(v- i) ST passed by Shri P.J.R. SEKHAR, I.R.S., COMMISSIONER (APPEALS), VISAKHAPATNAM].

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INTERNATIONAL TAXATION

Employee Secondment arrangements – recent ruling creates a furore

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The robust growth of the Indian economy in the past decade has prompted many foreign companies to set-up their shop in India. Foreign multinational companies are entering Indian markets solo (by incorporating subsidiaries) or through joint ventures to tap into the Indian markets. To support their Indian operations in the initial stage many of these multinationals second their technical/ managerial people to the new projects in India.

Secondment Arrangement – an insight

Managerial/ technical level employees from within a group entity of the multinational company are generally seconded to the Indian entity for a longish period of time, say 2-5 years. Due to such longish secondment assignment, employment of such foreign employees/ expatriates is also transferred from the foreign company ('FCo') to the Indian company ('ICo'). Expatriates become employees of ICo and they are responsible for their work to the management of ICo and not to FCo. ICo is responsible for payment of their salary and undertaking the necessary compliances from tax and regulatory perspective.

However, most of the expatriates have subscribed to the social security benefits (similar to Provident Fund & pension in India) in their home country. Shifting of employment completely outside their home country would result in lapsing of their social security benefits in their home country; something that generally expatriates do not agree to. To take care of the same, most of the expatriates continue to remain on payrolls of FCo in their home country for the limited purpose of social security contribution while their economic employment has shifted to ICo. FCo in such cases pays a part/ complete salary of expatriates in their foreign bank account and also contributes to the social security fund on behalf of the expatriate. FCo then recharges the salary to the ICo to whom the expatriate is seconded on a cost to cost basis.

As in the above case, expatriates' salary is recharged on a cost to cost basis without any element of profit, most foreign companies adopted a position that the same is only reimbursement of costs and not liable to tax in India. The same, subject to the observations laid down in various cases, has also been largely a settled position from an income-tax perspective.

However, a recent ruling of the Authority for Advance Ruling ('AAR') in the case of Verizon Data Services India Private Limited ('Verizon India') has rocked this settled position and is likely to make many multinationals rethink their secondment structure.

In this article, we have analysed the said ruling of the AAR and its implications on the secondment structures in India.

Facts of the case

- Verizon India is a wholly-owned subsidiary of Verizon Data Services LLC, USA ('Verizon USA'). Verizon India is engaged in providing services relating to development and maintenance of telecom software solutions and certain information technology-enabled services exclusively to Verizon USA.
- GTE Overseas Corporation ('GTE') is a US based group concern of Verizon India engaged in business activity similar to Verizon India. Verizon India entered into an agreement with GTE for secondment of its employments.
- Under the said secondment agreement, GTE would send three of its employees to Verizon India. One of the three employees was made the Managing Director of Verizon India while the other two employees liaised between Verizon India and Verizon USA as well as to supervise and provide directions on the manner in which activities of Verizon India should be carried out.
- Salient features of the secondment agreement are as under:
    - o The expatriate employees would function and act exclusively under the direction, control and supervision of Verizon India;

- GTE will not be responsible for the work performed by its employees while seconded to Verizon India neither would it be responsible for the quality of results produced from such work performed by such expatriate employees;
- GTE shall not be held responsible for any claim, liability etc arising from the actions of the expatriate employees;
- The expatriate employees would continue to remain on the payrolls of GTE;
- GTE would disburse the salary of the seconded employees and get the same reimbursed from Verizon India on a cost to cost basis without any mark-up;
- The obligation to deduct tax at source on the salary paid to the seconded employees is on Verizon India and Verizon India would remit the amount of salary to GTE on a 'net of tax' basis;

- The issue raised before the AAR was whether the reimbursement of salary paid to GTE be considered as income and taxable in India. Consequently, if the same were to be held as taxable, whether Verizon India would be required to deduct tax at source on the same.
- The Income-tax Act, 1961 ('Act') provides for deduction of tax at source under section 192 of the Act on salary payments and under section 195 of the Act on other payments made to non-residents which are chargeable to tax in India.
- Under the Act, payment of fees for technical services ('FTS') by a resident is taxable in India. FTS has been defined under the Act to mean consideration for rendering any 'managerial, technical or consultancy' services.

  Correspondingly, the India-USA Double Taxation Avoidance Agreement ('DTAA') also provides for taxation of Fees for Included Services ('FIS') in the country of source. Therefore, FIS paid by an Indian resident would be taxable in India. FIS has been defined under the India-USA DTAA to mean payments in consideration for rendering of any 'technical or consultancy' services if such services, inter alia, 'make available' technical knowledge, experience, skill, know-how or process.

Arguments raised by the Verizon India

- As per the secondment agreement, Verizon India becomes the 'economic employer' of the expatriate employees during their secondment period.
- The payment made to GTE was purely a reimbursement of the salary of the expatriate employees without any mark-up or profit element.
- The expatriate employees were seconded to Verizon India at its request and the expatriate employees worked under the supervision and control of Verizon India only. GTE has not rendered any services to Verizon India.
- Verizon India had paid taxes under section 192 of the Act on the salary paid to the expatriate employees and therefore, no further taxes are required to be deducted under section 195 while making payment to GTE.
- Further, disbursing of salary by GTE and subsequent reimbursement of the same by Verizon India was largely for an administrative convenience and therefore should not qualify as FIS under the India-US DTAA. Apart from seconding employees to Verizon India, GTE has not rendered any services to Verizon India.

  Article 12 of the India-US DTAA provides that any payment of FIS would be taxable where such services make available technical knowledge, experience, skill etc to the recipient of such services enabling the recipient to independently apply the same.

  In the present case, managerial services rendered by the seconded employees, being consultancy in nature, do not satisfy the requirement of 'make available' and hence, the reimbursement paid to GTE should not qualify as FIS under the India-US DTAA.

Arguments raised by Departmental Representative

- Verizon India, Verizon USA and GTE are a part of the same multinational group. In view of the same, the seconded employees in substance represented Verizon USA only. Hence, the contention of Verizon India that it is the economic employer does not hold good.
- Further, merely because Verizon India has complied with the provisions of Chapter XVII and deducted and deposited taxes under section 192 of the Act would not confer the status of 'employer' upon Verizon India. To support this argument, the Departmental Representative ('DR') relied on an earlier decision of the AAR in the case of AT&S which stated that merely deducting tax under section 192 of the Act was of no consequence.
- It was further submitted that the expatriate employees themselves claimed to be a part of Verizon USA. The DR provided details of the relevant expatriates from the website of Verizon USA which stated that one of the expatriate employees was the group Vice-President for European region.
- Further, it was submitted that as per the secondment agreement, the expatriate employees would continue to remain employees of GTE and only GTE has the authority to terminate the employment of such employees. Further, in case of any dispute, reference

was to be made to Verizon USA for arriving at a resolution.

- Responding to the contention of Verizon India that since the services rendered by the expatriate employees were managerial in nature and therefore, do not 'make available' technical knowledge, skill etc, the DR argued that it would be incorrect to say that persons occupying managerial position cease to be technical personnel or do not render technical service any more. In fact, the employees had been given leadership positions to render only technical advice/guidance to the team. Hence, the payments qualify as FIS even under the US DTAA.

The DR, to support his arguments, relied on the case of AT&S India (supra) which held that reimbursement of salary of seconded employee was in nature of FTS.

Ruling of the AAR

The AAR held that the seconded employees are employees of GTE and are rendering managerial services to Verizon India. Hence, the payments made would be in nature of income and would be regarded as FIS under the India-USA DTAA and as FTS under the Act. Further, the AAR ruled that the 'make available' criteria under the India-US DTAA is not required to be satisfied in case of managerial services. While arriving at the said conclusion, the AAR provided the following reasoning:

- Managerial services performed by the seconded employees were performed on behalf of GTE and not as employees of Verizon India. To arrive at the said conclusion, AAR observed the following:
  - o Preamble of the secondment agreement states that to perform certain managerial services, Verizon India had procured the services of GTE's employees.
  - o It is a matter of common knowledge that the managing director of a company is in charge of the day-to-day affairs of the company. The control and superintendence of the company vest with the MD.
  - o Further, the expatriate employees together constituted a team. While these personnel provided services to Verizon India, they continue to remain employees of GTE and their employment could only be terminated by GTE.

    Thus, the AAR presumed that the managerial services performed by the seconded employees were performed on behalf of GTE and not as employees of Verizon India.
- Further, the AAR made a distinction between the reimbursement of salary received by GTE and the salary paid to the seconded employees. It ruled that both the payments spring from different sources and are of different character and represents different species of income.

  With regard to the same, it was observed by the AAR that the amount received by GTE is income in its hands whereas the salary which accrues to the seconded employees is on account of their employment with GTE and is an application of the income received by GTE.

  The AAR further observed that correlating the two payments ie payment of salary to seconded employees and getting the same reimbursed from Verizon India would not change the nature or substance of the transaction nor would it give it a character of reimbursement of expenses.
- Further, the AAR ruled that the requirement of 'make available' under Article 12 of the India-US DTAA is required for technical services and not required to be satisfied for managerial services. As in the instant case, the service fell under the category of managerial, one need not see whether the same 'made available' technical knowledge, experience, skill etc and would fall under the ambit of FIS under the India-US DTAA as well as FTS under the Act.

Way forward

Secondment of personnel by a foreign company to an Indian affiliate/ group company is a common practice among many multinational groups. The personnel could typically continue to remain on the payroll of the foreign company while they work under the supervision, direction and control of the Indian affiliate during the period of secondment. Consequently, the foreign company may pay the salary of the seconded personnel and get the same reimbursed from the Indian affiliate/ group company.

The tax consequences of such arrangements have been a subject matter of dispute with tax officers. Many decisions in the past have accepted that there should not be deduction of tax at source on such payments made to the foreign company towards reimbursement of salary of seconded employee. However, this ruling seems to have taken a different view.

This may require many multinational groups with similar secondment arrangements to study the impact of this ruling on their arrangements and rework their current arrangements, if required.

Having said so, one may draw comfort from the fact that a ruling by the AAR is binding only on the Applicant having sought the ruling, in respect of transaction in relation to which the ruling is sought and on the income-tax officer in respect of the said Applicant and the said transaction. However, persuasive value may be drawn in other similar cases.

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Issue of Irrevocable Payment Commitment (IPCs) to Stock Exchanges on behalf of Mutual Funds (MFs) and Foreign Institutional Investors (FIIs)

Ref.: A.P. (DIR Series) Circular No. 54 dated April 29, 2011

Attention is invited to Regulation 5(2) and Schedule 2 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time, in terms of which Foreign Institutional Investors (FIIs) registered with SEBI may purchase shares or convertible debentures of an Indian company under the Portfolio Investment Scheme (PIS). Further, attention of AD Category – I banks is also invited to the Foreign Exchange Management (Guarantee) Regulations, notified vide Notification No. FEMA 8/2000-RB dated May 3, 2000, as amended from time to time, in terms of which, no fund based / non-fund based facilities are permitted to the FIIs.

2. It has now been decided to allow custodian banks to issue Irrevocable Payment Commitments (IPCs) in favour of the Stock Exchanges / Clearing Corporations of the Stock Exchanges, on behalf of their FII clients for purchase of shares under the PIS. Issue of IPCs should be in accordance with the Reserve Bank regulations on banks' exposure to the capital market issued by the Reserve Bank from time to time. Further, AD Category – I banks may also comply with the instructions issued by Reserve Banks' Department of Banking Operations and Development (DBOD) vide circular no. DBOD Dir. BC.46/13.03.00/2010-11 dated September 30, 2010.

3. Necessary amendments to the Foreign Exchange Management (Guarantee) Regulations, 2000, notified vide Notification No. FEMA 8/2000-RB dated May 3, 2000 will be issued separately.

Foreign investments in India by SEBI registered FIIs in other securities

Ref.: A.P. (DIR Series) Circular No. 55 dated April 29, 2011

Attention is invited to paragraph 1 of Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20 / 2000 -RB dated May 3, 2000 as amended from time to time, in terms of which, a SEBI registered Foreign Institutional Investor (FII) may purchase, on repatriation basis, listed non-convertible debentures / bonds issued by an Indian company, subject to such terms and conditions mentioned therein and limits as prescribed for the same by the RBI & the SEBI from time to time. The present limits for such investments is USD 15 billion for FII investment in corporate debt with an additional limit of USD 5 billion for FII investment in bonds with a residual maturity of over five years, issued by Indian companies which are in the infrastructure sector, where "infrastructure" is defined in terms of the extant guidelines on External Commercial Borrowings (ECB).

2. It has now been decided, in consultation with the Government, to enhance the FII investment limit in listed non-convertible debentures / bonds, with a residual maturity of five years and above, and issued by Indian companies in the infrastructure sector, where 'infrastructure' is defined in terms of the extant ECB guidelines, by an additional limit of USD 20 billion taking this limit from USD 5 billion to USD 25 billion (with this the total limit available to FIIs for investment in listed non convertible debentures / bonds would be USD 40 billion with a sub limit of USD 25 billion for investment in listed non-convertible debentures / bonds issued by corporates in the infrastructure sector). Further, such investment by FIIs in listed non-convertible debentures / bonds would have a minimum lock-in period of three years. However, FIIs are allowed to trade amongst themselves during the lock-in period. It has also been decided to allow SEBI registered FIIs to invest in unlisted non-convertible debentures / bonds issued by corporates in the infrastructure sector, provided that such investment is as per the aforementioned terms and conditions.

3. Necessary amendments to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated May 3, 2000) are being notified separately.

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Foreign Exchange Management Act, 1999- Advance Remittance for Import of Goods - Liberalisation

Ref.: A.P. (DIR Series) Circular No. 56 dated April 29, 2011

Attention is invited to A. P. (DIR Series) Circular No.106 dated June 19, 2003, A. P. (DIR Series) Circular No.15 dated September 17, 2003 and A.P. (DIR Series) Circular No.09 dated August 21, 2008 in terms of which AD Category – I banks are required to obtain an unconditional, irrevocable standby Letter of Credit (LC) or a guarantee from an international bank of repute situated outside India or a guarantee of an AD Category – I bank in India, if such a guarantee is issued against the counter guarantee of an international bank of repute situated outside India, for an advance remittance exceeding USD 100,000 or its equivalent.

2. With a view to liberalising the procedure, it has been decided to enhance the aforesaid limit of USD 100,000 to USD 200,000 or its equivalent, with immediate effect for importers (other than a Public Sector Company or a Department/Undertaking of Central/State Governments where the requirement of bank guarantee is to be specifically waived by the Ministry of Finance, Government of India for advance remittances exceeding USD 100,000 or its equivalent).

3. All the other instructions including the facility to waive the requirement of the standby LC/ bank guarantee for advance remittance up to USD 5,000,000 or its equivalent, where the AD Category – I bank is satisfied about the track record and bonafides of the importer based on their internal Board approved policy, contained in A.P. (DIR Series) Circular No. 09 dated August 21, 2008, shall remain unchanged.

Pledge of shares for business purposes

Ref.: A.P. (DIR Series) Circular No. 57 dated May 02, 2011

Under the extant FEMA regulations, powers have been delegated to the Authorised Dealer Category – I (AD Category – I) banks to convey 'no objection' to the resident eligible borrowers under the extant External Commercial Borrowings (ECB) guidelines for pledge of shares held by the promoters, in accordance with the Foreign Direct Investment (FDI) policy, in the borrowing company / domestic associate company of the borrowing company as security for the ECB, subject to certain conditions [c.f. A. P. (DIR Series) Circular No. 1 dated July 11, 2008]. Pledge of shares in respect of all other FDI related transactions requires the prior permission of the Reserve Bank.

2. The extant FEMA regulations have since been reviewed and it has been decided to further liberalise, rationalise and simplify the processes associated with FDI flows to India and reduce the transaction time. Accordingly, it has been decided to delegate powers to the AD Category – I banks to allow pledge of shares of an Indian company held by non-resident investor/s in accordance with the FDI policy in the following cases subject to compliance with the conditions indicated below:

   (i) Shares of an Indian company held by the non-resident investor can be pledged in favour of an Indian bank in India to secure the credit facilities being extended to the resident investee company for bonafide business purposes subject to the following conditions:

      (a) in case of invocation of pledge, transfer of shares should be in accordance with the FDI policy in vogue at the time of creation of pledge;

      (b) submission of a declaration/ annual certificate from the statutory auditor of the investee company that the loan proceeds will be / have been utilized for the declared purpose;

      (c) the Indian company has to follow the relevant SEBI disclosure norms; and

      (d) pledge of shares in favour of the lender (bank) would be subject to compliance with the Section 19 of the Banking Regulation Act, 1949.

   (ii) Shares of the Indian company held by the non-resident investor can be pledged in favour of an overseas bank to secure the credit facilities being extended to the non-resident investor / non-resident promoter of the Indian company or its overseas group company, subject to the following conditions:

      (a) loan is availed of only from an overseas bank;

      (b) loan is utilized for genuine business purposes overseas and not for any investments either directly or indirectly in India;

      (c) overseas investment should not result in any capital inflow into India;

      (d) in case of invocation of pledge, transfer should be in accordance with the FDI policy in vogue at the time of creation of pledge; and

      (e) submission of a declaration/ annual certificate from a Chartered Accountant/ Certified Public Accountant of the non-resident borrower that the loan proceeds will be / have been utilized for the declared purpose.

2. Necessary amendments to the Notification No. FEMA 20/2000-RB dated May 3, 2000, are being issued separately.

Opening of Escrow Accounts for FDI transactions

Ref.: A.P. (DIR Series) Circular No. 58 dated May 02, 2011

Attention is invited to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, notified vide Notification No. FEMA. 20/2000-RB dated May 3, 2000, as amended from time to time, and A.P. (DIR Series) Circular No. 62 dated May 24, 2007, permitting AD Category – I banks to open Escrow account and Special account on behalf of non-resident corporates for acquisition/transfer of shares/ convertible debentures of an Indian company through open offers/ delisting/ exit offers, subject to compliance with the relevant SEBI [Substantial Acquisition of Shares and Takeovers (SAST)] Regulations, 1997 and other applicable SEBI regulations. In all other cases of opening/maintaining of Escrow accounts for FDI related transactions, prior approval from the Reserve Bank is necessary.

2. It is observed that the Escrow mechanism facilitates FDI transactions in cases where parties to the share purchase agreement desire to complete the due diligence process before they finalize the agreement for the same and accordingly, there is a time lag between payment of purchase consideration and the receipt of the shares. To provide operational flexibility and ease the procedure for such transactions, it has been decided to permit AD Category – I banks to open and maintain, without prior approval of the Reserve Bank, non-interest bearing Escrow accounts in Indian Rupees in India on behalf of residents and/or non-residents, towards payment of share purchase consideration and / or provide Escrow facilities for keeping securities to facilitate FDI transactions subject to the terms and conditions as given in Annex to A.P. (DIR Series) Circular No. 57 dated May 02, 2011. It has also been decided to permit SEBI authorised Depository Participants, to open and maintain, without prior approval of the Reserve Bank, Escrow accounts for securities subject to the terms and conditions as given in Annex. In both cases, the Escrow agent shall necessarily be an AD Category- I bank or SEBI authorised Depository Participant (in case of securities' accounts). These facilities will be applicable for both issue of fresh shares to the non- residents as well as transfer of shares from / to the non- residents.

3. Necessary amendments to Notification No. FEMA 5/ 2000-RB dated May 3, 2000 [Foreign Exchange Management (Deposit) Regulations, 2000] are being notified separately.

Foreign Exchange Management Act, 1999 – Import of rough, cut and polished diamonds

Ref.: A.P. (DIR Series) Circular No. 59 dated May 06, 2011

Attention is invited to the A.P.(DIR Series) Circular No.12 dated August 28 ,2008, in terms of which AD Category – I banks were permitted to approve Suppliers' and Buyers' credit (trade credit), including the usance period of Letters of Credit for import of platinum, palladium, rhodium and silver for a period not exceeding 90 days from the date of shipment .

2. In the context of recent developments, it has been decided that Suppliers' and Buyers' credit (trade credit) including the usance period of Letters of Credit opened for import of rough, cut and polished diamonds should not exceed 90 days from the date of shipment. The revised directions will come into force with immediate effect.

3. AD Category – I banks should ensure that due diligence is undertaken and Know-Your-Customer (KYC) norms and Anti-Money Laundering (AML) standards, issued by the Reserve Bank are adhered to while undertaking the import transactions. Further, any large or abnormal increase in the volume of business should be closely examined to ensure that the transactions are bonafide and are not intended for interest / currency arbitrage. All other instructions relating to imports of rough, cut and polished diamonds shall continue.

4. The earlier instructions issued for direct import of gold vide A.P.(DIR Series) Circular No.2 dated July 9,2004, import of platinum / palladium/ rhodium /silver vide A.P.(DIR Series) Circular No.12 dated August 28,2008 and advance remittance for import of rough diamonds, vide A.P.(DIR Series) Circular No.21 dated December 29,2009 shall remain unchanged.

Comprehensive Guidelines on Over the Counter (OTC) Foreign Exchange Derivatives and Overseas Hedging of Commodity Price and Freight Risks

Ref.: A.P. (DIR Series) Circular No. 59 dated May 06, 2011

Attention is invited to Notification No. FEMA 25/2000-RB dated May 3, 2000, as amended from time to time, on the regulations governing foreign exchange derivative contracts. Further, attention is also invited to the comprehensive guidelines on Over-the-Counter (OTC) Foreign Exchange Derivatives and Overseas Hedging of Commodity Price and Freight Risks issued vide A.P. (DIR Series) Circular No. 32 dated December 28, 2010.

2. In view of the representation received from the industry associations and as AS 30/32 standards are yet to be notified by the Ministry of Corporate Affairs, it has been decided to amend the eligibility criteria for the users of cost reduction structures as contained under para B I (1)(v) of A.P. (DIR Series) Circular No. 32 dated December 28, 2010 as indicated below:

A. Existing Provisions

"Users – Listed companies or unlisted companies

with a minimum net worth of Rs. 100 crore (subsidiaries or affiliates of listed companies which follow AS 30/32, having common treasuries and consolidate the accounts with parent companies are exempted from the minimum net worth criteria), which are complying with the following:

- Adoption of Accounting Standards 30 and 32. Companies which are not complying fully with AS 30 and 32 should follow the accounting treatment and disclosure standards on derivative contracts, as envisaged under AS 30/32.
- Having a risk management policy and a specific clause in the policy that allows using the type/s of cost reduction structures. "

B. Amended Provisions

"Users - Listed companies and their subsidiaries/ joint ventures/associates having common treasury and consolidated balance sheet

or

Unlisted companies with a minimum net worth of Rs. 200 crore

provided

- All such products are fair valued on each reporting date;
- The companies follow the Accounting Standards notified under section 211 of the Companies Act, 1956 and other applicable Guidance of the Institute of Chartered Accountants of India (ICAI) for such products/ contracts as also the principle of prudence which requires recognition of expected losses and non-recognition of unrealized gains;
- Disclosures are made in the financial statements as prescribed in ICAI press release dated 2nd December 2005; and
- The companies have a risk management policy with a specific clause in the policy that allows using the type/s of cost reduction structures.

(Note: The above accounting treatment is a transitional arrangement till AS 30 / 32 or equivalent standards are notified.)"

Other provisions of the circular shall remain unchanged.

3. It may also be noted that the above eligibility criteria would also be applicable to the users of OTC option strategies involving a simultaneous purchase and sale of options for overseas commodity hedging.

4. The necessary amendments to Notification No. FEMA.25/ RB-2000 dated May 3, 2000 [Foreign Exchange Management (Foreign Exchange Derivatives Contracts) Regulations, 2000] are being notified separately.

Forward cover for Foreign Institutional Investors – Rebooking of cancelled contracts

Ref: A.P. (DIR Series) Circular No. 67 dated May 20, 2011

Attention is invited to Regulation 5 of Notification No.FEMA.25/RB-2000 dated May 3, 2000, as amended from time to time regarding the permission to a person resident outside India to enter into a foreign exchange derivative contract, read with A. P. (DIR Series) Circular No. 32 dated December 28, 2010 in the matter.

2. Currently, in terms of Section C (i) (d) of the A. P. (DIR Series) Circular No. 32 dated December 28, 2010, Foreign Institutional Investors (FIIs) are permitted to cancel and rebook upto two percent of the market value of the portfolio as at the beginning of the financial year. On a review, it has been decided to enhance the existing limit of two per cent as above to ten per cent with immediate effect. Other operational guidelines as also terms and conditions of the circular shall remain unchanged.

Hedging IPO flows by Foreign Institutional Investors (FIIs) under the ASBA mechanism

Ref: A.P. (DIR Series) Circular No. 68 dated May 20, 2011

Attention is invited to A.P. (DIR Series) Circular No. 32 dated December 28, 2010, which delineates the guidelines governing foreign exchange derivative contracts. As per the extant guidelines, Foreign Institutional Investors (FIIs) are allowed to hedge the currency risk on the market value of entire investment in equity and/or debt in India as on a particular date using forward foreign exchange contracts with rupee as one of the currencies and foreign currency-INR options.

2. On a review it has been decided that for Initial Public Offers(IPO) related transient capital flows under the Application Supported by Blocked Amount(ASBA) mechanism, foreign currency-rupee swaps may be permitted to the FIIs subject to the following terms and conditions:

   i. FIIs can undertake foreign currency- rupee swaps only for hedging the flows relating to the IPO under the ASBA mechanism.

   ii. The amount of the swap should not exceed the amount proposed to be invested in the IPO.

   iii. The tenor of the swap should not exceed 30 days.

   iv. The contracts, once cancelled, cannot be rebooked. Rollovers under this scheme will also not be permitted.

3. The necessary amendments to Notification No. FEMA.25/RB-2000 dated May 3, 2000 [Foreign Exchange Management (Foreign Exchange Derivatives Contracts) Regulations, 2000] are being notified separately.

Review of the policy on Foreign Direct Investment- Allowing FDI in Limited Liability Partnership firms- amendment to paragraphs 2.1, 3.3.5 and 3.3.6 of 'Circular I of 2011-Consolidated FDI Policy'

Ref: Press Note No. 1 (2011 Series) issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion

The Government of India has reviewed the extant policy on FDI and decided to permit FDI in LLP firms, subject to specified conditions.

2.0 Accordingly, the following changes are made in 'Circular 1 of 201 I-Consolidated FDI Policy', which became effective from April 1, 2011:

(A) Insertion of a new paragraph (2.1.41): A new paragraph (2.1.41) is inserted, as below:

"Limited Liability Partnership" means a Limited Liability Partnership firm, formed and registered under the Limited Liability Partnership Act, 2008.

(B) Insertion of a new paragraph 3.3.5, replacing the present paragraph 3.3.5: A new paragraph (3.3.5) is inserted, replacing the present paragraph 3.3.5, as below:

"3.3.5 FDI in Limited Liability Partnerships (LLPs): FDI in LLPs is permitted, subject to the following conditions:

(a) FDI in LLPs will be allowed, through the Government approval route, only for LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance related conditions (such as 'Non-Banking Finance Companies' or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects' etc.).

(b) LLPs with FDI will not be allowed to operate in agricultural/plantation activity, print media or real estate business.

(c) An Indian company, having FDI, will be permitted to make downstream investment in an LLP only if both-the company, as well as the LLP- are operating in sectors where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance related conditions.

(d) LLPs with FDI will not be eligible to make any downstream investments.

(e) Foreign Capital participation in the capital structure of LLPs will be allowed only by way of cash consideration, received by inward remittance, through normal banking channels or by debit to NRE/FCNR account of the person concerned, maintained with an authorized dealer/authorized bank.

(f) Investment in LLPs by Foreign Institutional Investors (FIIs) and Foreign Venture Capital Investors (FVCIs) will not be permitted. LLPs will also not be permitted to avail External Commercial Borrowings (ECBs).

(g) In case the LLP with FDI has a body corporate that is a designated partner or nominates an individual to act as a designated partner in accordance with the provisions of Section 7 of the LLP Act, 2008, such a body corporate should only be a company registered in India under the Companies Act, 1956 and not any other body, such as an LLP or a trust.

(h) For such LLPs, the designated partner *"resident in India"*, as defined under the 'Explanation'to Section 7(1) of the LLP Act, 2008, would also have to satisfy the definition of *"person resident in India"*, as prescribed under Section 2(v)(i) of the Foreign Exchange Management Act, 1999.

(i) The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.

(j) Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations are met and with the prior approval of FIPB/ Government.

(C) Renumbering of the present paragraph 3.3.5, as paragraph 3.3.6: The present paragraph 3.3.5 is renumbered as paragraph 3.3.6, to read as below:

"3.3.6 FDI in other Entities: FDI in resident entities, other than those mentioned above, is not permitted."

3.0 The above decision will take immediate effect.

4.0 The above provisions will be incorporated in the next Circular on Consolidated FDI Policy to be issued on 30.09.2011.

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FINANCIAL REPORTING STANDARDS

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Introduction:

In previous column, we had discussed on some of the differences between converged Indian Accounting Standards put up on the website of Ministry of Corporate Affairs with International Financial Reporting Standards. In this column, we would be discussing some of the features of the new International Financial Reporting Standards specifically IFRS 13, Fair Value Measurement issued in May by IASB.

Introduction:

When we hear the word IFRS, what strikes our mind is fair value. IASB has recently issued a standard on fair value measurement. The new standard is similar to FAS 157 of US GAAP. It changes the definition of fair value to exit price from the two notions prevailing now:

1. Exchange notion for assets
2. Settlement notion for liabilities

The standard is proposed to be effective from 1 January 2013. This standard supersedes all standards that require or permit fair value measurement or disclosures except a few that contain a comprehensive guidance on fair value. This standard can be treated as equivalent to framework. It should be noted that the Framework for the Preparation and Presentation of Financial Statement does not specify fair value as a measurement principle. The Framework is under revision and the IASB is studying the various measurement principles used in IFRS. One question arises what will be the impact on Indian Accounting Standards notified on the website of Ministry of Corporate Affairs? Will the Indian Accounting Standards be revised? It should be noted that IFRS is a moving target. Since Indian Accounting Standards are said to be converged with International Financial Reporting Standards, they will have to be changed in line with IFRS changes. The IASB also issued IFRS 10, "Consolidated Financial Statements", IFRS 11, "Joint Arrangements" and IFRS 12, "Disclosure of Interest in Other Entities". Further to this new standards on Leases and Revenue are in the pipeline. These new standards would make a sea change to International Financial Reporting Standards and consequently Indian Accounting Standards. Ministry of Corporate Affairs has been quiet with respect to the date from which the Indian Accounting Standards are applicable. In author's view, the Ministry of Corporate Affairs might make the converged standards applicable from 1 April 2013 to all listed companies. This standard –

1. Defines fair value
2. Sets out in a single IFRS framework for measuring fair value
3. Requires disclosures about fair value measurements

Need for a Standard on Fair Value Measurement:

Since International Financial Reporting Standards are developed over many years, the requirements for measuring fair value and for disclosing information about fair value measurements are dispersed and in many cases do not provide clear guidance. Inconsistencies in the requirements for measuring fair value and for disclosing information about fair value measurements have contributed to diversity in practice thereby reducing the qualitative characteristic of comparability. The new standard on Fair Value Measurement provides an answer to the above criticisms.

Definition of Fair Value:

Presently, fair value has been defined as under:

"The amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction."

New definition of fair value:

"The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." A fair value measurement requires an entity to determine all of the following:

1. The particular asset or liability that is the subject of the measurement (consistently with its unit of account)

2. For a non-financial asset, the valuation premise that is appropriate for the measurement (consistently with its highest and best use)

3. The principal (or most advantageous) market for the asset or liability

4. The valuation techniques appropriate for the measurement, considering the availability of data with which to develop inputs that represent the assumptions that market participants would use when pricing the asset or liability and the level of the fair value hierarchy within which the inputs are categorized.

The standard defines unit of account as the level at which an asset or a liability is aggregated or disaggregated in an IFRS for recognition purposes.

Scope of IFRS 13:

IFRS 13 applies when another IFRS requires or permits fair value measurements or disclosures about fair value measurements (and measurements such as fair value less costs to sell, based on fair value or disclosures about those measurements), except that the disclosure requirements of IFRS 13 are not applicable to the following:

1. Share-based Payment transactions within the scope of IFRS 2

2. Leasing transactions within the scope of IAS 17

3. Measurements that have some similarities to fair value but are not fair value, such as net realizable value in IAS 2 or value in use in IAS 36

4. Plan assets measured at fair value in accordance with IAS 19

5. Retirement benefit plan investments measured at fair value in accordance with IAS 26

6. Assets for which recoverable amount is fair value less costs to sell in accordance with IAS 36 and IAS 41.

The measurement requirements of IFRS 13 are not applicable to the first three types of transactions mentioned above.

Asset-Liability Approach:

The standard clarifies that the fair value measurement is not transaction specific by asset and liability specific. The asset or liability measured at fair value might be either of the following:

1. A stand-alone asset or liability (eg. a financial instrument); or

2. A group of assets, a group of liabilities or a group of assets and liabilities (eg. Cash Generating Unit)

Whether the asset is a stand-alone asset or liability, a group of assets, a group of liabilities or a group of assets and liabilities for recognition or disclosure purposes depends on its unit of account. The unit of account for the asset or liability shall be determined in accordance with the IFRS that requires or permits the fair value measurement. When measuring fair value, an entity shall take into account those characteristics that a market participant would take when pricing the asset or liability at the measurement date. The standard gives the following characteristics as an example:

1. The condition and location of the asset; and

2. Restrictions, if any, on the sale or use of the asset

Orderly Transaction and Market:

The fair value price is determined for an orderly transaction. The standard defines an orderly transaction as a transaction that assumes exposure to the market for a period before the measurement date to allow for marketing activities that are usual and customary for transactions involving such assets or liabilities; it is not a forced transaction (eg. a forced liquidation or a distress sale). The market in which the orderly transaction is assumed is either the principal market or the most advantageous market. The standard defines principal market as the market with the greatest volume and level of activity for the asset or liability and the most advantageous market is that market which maximizes the amount that would be received to sell an asset or minimizes the amount that would be paid to transfer the liability, after taking into account transaction costs and transport costs. An entity need not undertake an exhaustive search of all possible markets to identify the principal market or, in the absence of a principal market, the most advantageous market. In the absence of evidence to the contrary, the market in which the entity normally enters into a transaction.

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The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew and act anew.

Abraham Lincoln

INDIRECT TAXES CORNER

[I] IMPORTANT NOTIFICATIONS/CIRCULARS:

[1] REMISSION OF TAX ON THE SALE OF OIL CAKES ETC.

Vide Notification dated 1.4.2011, the Gujarat Government has decided to remit whole of the tax payable by a registered dealer on the sales of oil cakes, de-oiled cakes of cotton seeds, subject to following conditions.

[a] The registered dealer shall not issue Tax Invoice for the sale of oil cakes and de-oiled cakes of cotton seeds.

[b] The registered dealer shall not charge the tax from the purchaser on the sale of oil cakes and de-oiled cakes.

[c] The registered dealer shall not be entitled to remission of the tax from the date of contravention of any of the provisions of the Act or the Rules made there under.

[2] ADDITIONAL TAX OF 1% ON DECLARED GOODS:

Vide Notification dated 11.4.2011 the Gujarat Government has decided to levy 1% additional tax on the declared goods and therefore sale of declared goods will be charged @ 5% instead of 4%.

[II] TRIBUNAL JUDGMENTS:

[1] PENALTY LEVIED U/S. 45(6) AFTER A PERIOD OF 8 YEARS – SET ASIDE.

The assessment order in the case of M/s. Prabhat Textile Corporation was passed for the year 1992-1993 on 28.2.1995. At that time the penalty was not levied. After a period of eight years, the penalty proceedings was initiated u/s. 45(6) and the penalty was levied on 30.5.2003. The assessee has gone before the Hon. Tribunal and the Hon Tribunal has observed that –

[a] there is no finding of sales tax authority that the failure was not bona fide.

[b] there is no finding on the order for levying the penalty after a lapse of more than 8 years. It is an in-ordinate delay.

The Tribunal has set aside the Penalty in favour of the assessee.

[2] THE PENALTY LEVIED U/S. 45(6) IS SET ASIDE ON ACCOUNT OF TAX PAID BEFORE PASSING THE ASST. ORDER:

In case of Chemson Ltd. the appellant has paid the tax as soon as it has come to the notice that there was error in the payment of tax while filing the returns. The tax was paid before passing the assessment order .The Hon. Tribunal relying on the judgment of M/s. Bombay Paints , has set aside the penalty.

CA. Bihari B. Shah

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[3] IMPORTANT JUDGEMENT DECIDING WHETHER RTO CHARGES IS A PART OF SALE PRICE OR NOT?

In case of Shradha Automobiles who is a dealer of Hero Honda Motor Cycles, has collected the RTO charges from the customers. The Hon. Tribunal has decided that the RTO charges is not a part of sales price. The full judgment is reproduced hereunder for the benefit of the readers.

The appellant / Registered Dealer is assessed for the year 2003-2004 u/s. 41(3) of the Gujarat Sales Tax Act (in short Act) and Central Sales Tax Act by assessment order dated 30.09.2005, raising additional demand by way of tax, penalty and interest. The appellant challenged the said order by filing First Appeal dated 09.11.2005. The learned First Appellate Officer summarily dismissed the appeal. Therefore the appellant has filed the present second appeal under section 65 of the Gujarat Sales Tax Act.

Appeal was earlier admitted. They are listed for final hearing. The Hon. Tribunal has heard the arguments of the learned Advocate for the appellant and the learned representative for the respondent.

The appellant is a dealer of Hero Honda Motor Cycles for more than 20 years. The appellant is assessed for aforesaid period by the learned Assessing Officer. The learned Assessing Officer held that a sum of Rs. 28,25,285/- received by way of insurance amount by the appellant from customers. It is mentioned in the sale deed. Therefore, it should be considered as sale price. Therefore the learned First Appellate Officer charged tax on that amount. A sum of Rs. 5,64,167/-is found due by way of tax. The learned First Appellate Officer directed to deposit a sum of Rs. 1,41,000/- by way of part payment. The appellant did not pay the said amount. Appellant did not remain present. Therefore, the learned First Appellate Officer dismissed the appeal summarily. Therefore, the appellant has filed present Second Appeal.

Therefore, in this case, disputed question is very short. Admittedly, the appellant has received a sum of Rs. 28,25,285/- by way of insurance from the customers at the time of selling the vehicles. The said amount is paid with the insurance company. It is mentioned in the bill. Therefore the learned Assessing Officer considered it as sale price and charged tax. Appeal is summarily rejected against the said order.

Similar question is considered by the Three Members' Bench of this Tribunal in the case of M/s. The Ahmedabad Motors Pvt. Ltd. v/s. State of Gujarat in Revision Application No. 30 of 1965 decided on 18.10.1968. Considering the definition 'Sale Price' in Bombay Sales Tax Act and various provisions of Motor Vehicles Act, it is held in Para-14 of the judgment as under.

"14. We have considered the provisions of the Motor Vehicles Act, in order to decide whether the payment of registration fee and insurance charges made by the applicant company and then recovered from the purchasers can be considered to be part of the sale price or are amounts spent for and on behalf of the after completion of the sales by way of services rendered to them without any profit motive and, as said by us above, we have come to the conclusion that the facts and circumstances obtaining in the present case establish that the sales of motor vehicles were completed before the applicant company forwarded applications of the purchasers for registration and insurance and that this was done by the applicant company by way of facilities extended by it to the purchasers and in doing so it acted in the capacity of an agent. Therefore, even though the amounts paid by it for registration fee and insurance charges were recovered from the purchasers by including them in bills, it cannot be said that they formed part of the sale price."

Therefore, if sale is complete and the dealer has given service to the customers for getting insurance as well as RTO registration, it cannot be considered within the 'sale price'. This aspect is not considered by the authority below.

The learned Advocate for the appellant reported before the Tribunal that the appellant is running business since last more than 20 years. The Department has never charged tax on the amount collected for the purpose of insurance. This is for the first time tax is charged. In support of his submission, he produced assessment order for the year 2002-03 dated 31.3.2004.

Considering the facts and circumstances, it is necessary to remand the matter to the learned First Appellate Officer for fresh hearing in view of the observation in this judgment as well as earlier judgment in M/s. The Ahmedabad Motors Pvt. Ltd. case. Hence the following order is passed.

Appeal is allowed. Order dated 29.11.2005 passed by the learned First Appellate Officer is hereby set aside. The matter is remanded for fresh and appropriate consideration to the learned First Appellate Officer in view of the observation in the judgment as well as earlier judgment in M/s. The Ahmedabad Motors Pvt. Ltd. Case after providing opportunity to the appellant for producing evidence and providing opportunity of hearing. The learned First Appellate Officer should decide the appeal on merits without insisting for payment. No order as to costs. Order accordingly.

[III] A GOOD JUDGEMENT OF HARYANA HIGH COURT IN RESPECT OF PRODUCTION OF DECLARATION WHICH WAS STOLEN:

PRAKASH INDUSTRIES LTD. V/S. STATE OF HARYANA

The assessee is a dealer registered under the Act. The assessee is engaged in manufacture of PVC Pipes. During Asst. Year 1988-89 the assessee sold goods to registered dealers against Forms ST-15. In the assessment for the said year, the assessee produced Forms ST-15 before the assessing authority. On production of such forms, the assessing authority allowed claim of the assessee for exemption on the sales made against declaration ST-15.

Thereafter, the revisional authority initiated revision proceedings of the said assessment order on the ground that the deductions were wrongly allowed against stolen declarations ST-15. The revisional authority recorded the findings that the declaration forms are not genuinely obtained and the assessee also failed to satisfy that the purchasers were registered dealers as some of the purchasers were found to be non-existent or un-registered. It was also recorded that the assessee procured the declaration forms in clandestine manner and the assessee could not produce the evidences for movement of goods and payment for the impugned sales. The revisional authority accordingly disallowed the claim of the assessee for the sale of goods against declaration form ST-15 that was allowed in original assessment.

The assessee challenged the revision order before the Tribunal. The Tribunal observed that it was beyond doubt that the Forms ST-15 produced by the assessee was stolen property. The information to this effect was circulated to all concerned authorities. Since the present case, the declaration forms were not genuine, the Tribunal confirmed the revision order passed by the revisional authority.

Being aggrieved, the assessee filed a reference to Hon'ble High Court for decision whether the declaration forms ST-15 can be disallowed on the ground that the said forms are stolen and when there is no notification declaring such forms as obsolete and invalid.

The Hon'ble Court observed that in the present case the findings recorded by the revisional authority clearly is that the declaration forms were not genuinely obtained. The assessee had failed to satisfy that the purchasers were registered dealers. The assessee also failed to prove the movement of goods and mode of payment.

With respect to non-compliance of provisions of Rule 21, the Hon'ble Court held the effect of the compliance with rules has to be seen in over-all fact-situation. The assessee was offered to establish the genuineness of the transactions but failed to do so. For this failure, adverse inference can be drawn against him and mere non-compliance of rule cannot be conclusive for upholding the claim.

The Hon'ble High Court accordingly by confirming the revisional order, disposed the reference in favour of the State and against the assessee.

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CST LAW UPDATE

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3. Works Contracts

In the case of ENVIRO CHAMICALS V. STATE OF KERALA AND OTHER REPORTED IN [2011] 39 VST 434 (KER) [FB]

Background of the case :-

The question raised is whether the service rendered by the petitioner in the form of chemical treatment of effluent water for the awarder amounts to sale of goods in the execution of works contract. The petitioner has developed a chemical product by name "envirofloc" which is used as a chemical for effluent treatment. During the year 1988-89 and 1989-90, for which the issue arises, the petitioner carried out pollution control treatment for Madura coats Limited, Koratty, which is known company engaged in manufacture of yarn. There may be massive pollution of water on account of dye-application on yarn. In the course of effluent treatment entrusted to the petitioner, the petitioner applies the chamical envirofloc and it either gets used up in the treatment of effluent water probably by neutralising colour, odour, etc. The petitioner's case is that no transfer or sale has taked place in the execution of works contract. The Department's case is that material is consumed in the process of effluent treatment and it gets transferred in the course of such treatment and there is sale of goods involved in the execution of works contract which under the definition includes processing, preparing, improvement, etc.

HELD THAT, admittedly the chemical in question was goods and the petitioner was the owner of the goods in question, namely, the chemical. The intention of the parties was that the petitioner must use the chemical in the effluent treatment process and the petitioner actually used it. By using the chemical, the petitioner rendered the effluent compliant with the standards. The movement the petitioner poured the chemicals into the effluent, it ceased to be the owner at that point of time Madura Coats Ltd. must be deemed to have taken delivery thereof. The fact that upon its being poured into the effluent, it lost its identity and that it was consumed would not detract from the fact there was delivery thereof to Madura Coats Ltd. the effluent and the treated effluent both belonged to Madura Coats Ltd. It was, thereof, into the property of Madura Coats Ltd., namely the effluent, that the petitioner supplied the chemical. The property in the chemicals passed to Madura Coats Ltd. the moment they were put into the effluent by the petitioner and their subsequent consumption was consumption after sale and did not detract from the factum of sale and consequently exigibility to tax. There was a sale of chemical involved in the execution of works contract as there was delivery of it to the awarder by virtue of the chemical being poured into the effluent.

4. C form cannot be refused to be issued on ground of arrears of Tax.

In the case of SRI RAJESWARI AGENCIES v. ADDITIONAL DEPUTY COMMERCIAL TAX OFFICER II, PUDUCHERRY REPORTED IN [2011] 40 VST 249 (Mad)

Background of the case:-

(a) The petitioner is a dealer of petroleum products and the dealership was granted by the Indian Oil Corporation. The petitioner is regularly assessed to tax and has been paying the same. The assessment orders were passed without furnishing a copy of the statement issued by the Indian Oil Corporation, which formed basis of the order and against which, appeals have been filed before the appellate authority. While so, respondent took steps to stop the supply of fuel from the Indian oil Corporation which made the petitioner to approach court by filing the writ petition in W. P. NO. 6110 of 2009 and the same were allowed by court on April 13,2009 ;

(b) In the meantime, the assessing authority has passed the assessment order dated September 15, 2009, which is now challenged before the appellate authority. Even before an order could be passed in

the appeal, a call notice dated October 27, 2009 was issued calling for an objection. The petitioner sought 15 days time to reply. However, the DCTO, Registration cell cancelled the Registration of the petitioner by its order dated November 9, 2009. The petitioner, therefore, filed the writ petition before this court challenging the said order in W.P.NO. 23940 of 2009. Considering the fact that the petitioner has paid excess amount for the assessment year, the said writ petition was allowed by this court on November 23, 2009 setting aside the proceeding of the respondent dated November 9, 2009. Again an order was passed cancelling the registration of the petitioner and the same was challenged in the writ petition in W.P.NO. 5382 of 2010 and same was admitted by this court and interim stay has been granted ; and

(c) The petitioner approached the respondent for issuance of C form. But, the respondent stopped issuing the same. Further, the respondent passed the impugned order dated March 16, 2010 alleging arrears of tax and proposed to refuse the issuance of statutory form. The petitioner was asked to appear before the respondent for personal hearing and thus, C form licence was refused to the petitioner. The petitioner, therefore, challenging the order of the respondent dated March 16, 2010 has come up with the present writ petition.

HELD THAT, when the respondent could proceed against the petitioner for non-payment of tax or the penalty by attaching the sale proceeds from the properties or even the bank account of the petitioner. The respondent had no power to deny C form licence to the petitioner. Section 9(2) of the Central Sales Tax Act, 1956 did not contemplate refusal of C form licence for non-payment of tax or penalty. Therefore the department (respondent) could not deny the issuance of C form licence to the petitioner.

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(Contd. from page no. 90)

Unreported Judgements

(15) For the purposes of this section, -

(b) "eligible assessee" means, -

(i) Any person in whose case the variation referred to in sub-section (1) arises as consequence of the order of the Transfer Pricing Officer passed under sub-section(3) of section 92CA; and

(ii) any foreign company."

7. Plain reading of clause(b) of Sub-section (15) of section 144C would show that an assessee can be stated to be eligible assessee as referred to in Sub-section(1) of Section 144C in whose case variation referred to in the said sub-section arises as a consequence of order of Transfer Pricing Officer passed under sub-section(3) of Section 92CA. we have been taken through the order passed by the Assistant Commissioner of Income Tax dated 29.9.2010, wherein it is held as under :

"3. The assessee is engaged in the business of manufacture of Aluminum Profiles. The details of international transactions in terms of Section 92B of the Act between the assessee and its Associate Enterprise are give in Form 3CEB. Relevant details regarding international transactions were produced by the assessee and are kept on record. After discussion and based on records produced, no adjustment is being made to the arm's length price of the transactions." (underline supplied)

8. From the above, it is clear that for assessment year relevant for our purpose, on account of procedure undertaken in Section 92CA of the Act, there was no variation in the income by virtue of order of Transfer Pricing Officer. That being the position, the petitioner cannot be stated to be an eligible assessee as defined in clause (b) of Sub-section(15) of Section 144C of the Act. Procedure for issuance of draft order calling for his objection and taking further steps as laid down under Section 144C therefore, would not apply.

9. We are of the opinion that with above declaration petition can be closed.

10. Counsel for the petitioner however, submitted that even the extended time limit provided in Section 153 of cases under section 92CA would not apply by virtue of above conclusion. On the other hand, counsel for the department contended that if the petitioner does not wish to raise any objections to the draft order, it would be open for the Assessing Officer to treat the assessment order accompanying impugned communication as final order of assessment.

11. We propose to decide neither of these two contentions leaving it open for the parties to take recourse to the remedy as may be available under the law.

12. With above observations, petition is disposed of .

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SERVICE TAX REVIEW

In this issue, judgement on Business Auxiliary Services, Cargo Handling Services and consulting engineers services are reproduced for the benefit of Members.

CA. Ashwin H. Shah
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1) ➠ *Whether imposition of a separate penalty u/s 77 is leviable ?*
   ➠ *If penalty is payable u/s 78 whether provisions of sec 76 shall apply?*

M.S. Shah & Co. v. Commissioner of Service Tax, Ahmedabad [2011] 31 STT 50

Facts:- Assessee was a practising Chartered Accountant. He surrendered his service tax registration by declaring that his gross income for relevant period was below Rs. 4 lakhs and as such he was exempted from taxation in terms of Notification No. 6/2005-ST, dated 1-3-2005 - On investigation, revenue found that assessee' total income exceeded Rs. 4 lakhs - Accordingly, proceedings were initiated against assessee and Assistant Commissioner confirmed demand on assessee along with interest and penalties under sections 76, 77 and 78 - However, Assistant Commissioner gave an option to assessee to pay 25 per cent of penalty imposed under section 78 - Assessee challenged penalty imposed under sections 76 and 77 on ground that he was under bona fide belief that he was not liable to service tax and, therefore, by invoking provisions of section 80 penalty should be set aside - Whether since assessee was aware of fact that taxable income beyond Rs. 4 lakhs was liable to service tax, inasmuch as he was earlier registered with department and aware of law, there was no reason for setting aside penalty imposed under section 76 - Held, yes - Whether, however, since contraventions of assessee attracted penalty imposed under sections 76 and 78, imposition of a separate penalty under section 77 was not warranted - Held, yes

Order :- Penalty of Rs. 500 imposed upon the appellant under section 77 of Finance Act, 1994 is set aside. The demand of duty and interest along with imposition of penalties under sections 76 and 78 are upheld.

Note:- After the amendment in section 78 it is provided that if the penalty is payable under this section , the provisions of section 76 shall not apply.

2) *Whether a particular service would be termed as export of service even if the relevant activities took place in India and benefits are accrued outside India?*

Schott Glass India (P.) Ltd. V. Commissioner of Central Excise*, Vadodara

[2011] 31 STT 111 AHMEDABAD BENCH

Facts :- Assessee was assessed to service tax under category of 'Business Auxiliary Services' in respect of services rendered by it to a foreign manufacturer by procuring orders from Indian customers - It relied upon a Board Circular No. 111/5/2009-ST, dated 24-2-2009, wherein it was clarified that location of service receiver would be an important factor and not its place of performance; that phrase 'used outside India' had to be interpreted to mean that benefit of service should accrue outside India; and that it was possible that export of service might have taken place even when all relevant activities took place in India so long as benefits of these services accrued outside India - Assessee contended that above circular was not available with Commissioner, having been issued recently - Whether, in view of above, impugned order was to be set aside and matter was to be remanded to original authority for fresh decision in light of above circular - Held, yes

3) *Whether interest charged for finance provided could not be considered as liable to service tax under the category of Business auxiliary services?*

Jain Steels v. Commissioner of Central Excise, Rajkot [2011] 31 STT 86 CESTAT, AHMEDABAD BENCH

Facts:- Assessee was engaged in manufacturing of bright bars - It was also holding service tax registration under category of 'goods transport agency' - During course of audit of statutory record of assessee, audit party noticed that assessee was financing to various customers of other manufacturers and was making payment on behalf of such purchasers and, in turn, was charging some amount - Audit party framed an opinion that said charges were nothing but commission received by assessee and, therefore, proposed to levy service tax under category of 'Business Auxiliary Services' - Assessee contended that amount collected by it was only interest for finance provided and such interest was not chargeable to service tax - Whether, on facts, it could be held that assessee was financing purchasers and charging interest for such finance - Held, yes .

(Contd. on page no. 126)

CORPORATE LAWS UPDATE

FROM MCA

CIRCULARS:

(1) **Summary of Guidelines for Fast Track Exit mode for defunct companies under section 560 of the Companies Act, 1956** *: General Circular No.36/2011 dated 7 June 2011 issued by Ministry of Corporate Affairs, Government of India.*

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Background:- There are a number of companies, which are registered under the Companies Act, 1956 (the Act), but due to various reasons they are inoperative since incorporation or commenced business but became inoperative or defunct later on. Such companies may be desirous of getting their names strike off from the Register of Companies maintained by Registrar of Companies (ROC) without going through elaborate liquidation procedure. As per section 560 of the Act, ROC may strike off the name of companies on satisfying the conditions therein. As per present practice, a company desirous of getting its name struck off, has to apply to ROC in e-form 61. All pending statutory returns are required to be filed along with e-form 61.In order to give an opportunity for fast track exit by a defunct company for getting its name struck off from the ROC, the Ministry Corporate Affairs (MCA), Government of India (GOI) has on 7 June 2011 decided vide ***General Circular No.36/2011*** to modify the existing route through e-form – 61 and has prescribed the "Fast Track Exit mode Guidelines" (the FTE Guidelines) for defunct companies under section 560 of the Act.

Effective date of FTE Guidelines- FTE Guidelines will be effective from 3 July 2011

Salient Features of FTE Guidelines- FTE Guidelines are applicable to a defunct company. For the purposes of the FTE Guidelines, any company will be called as "defunct company", which has nil asset and liability and

1. has not commenced any business activity or operation since incorporation; or
2. is not carrying over any business activity or operation for last 1 year before making application under FTE.

Any defunct company which has active status or identified as dormant by the MCA may apply for getting its name struck off from the ROC.

The application received by the ROC pursuant to the FTE Guidelines will be processed by ROC and some of the key steps of the process are as under:

a) The ROC shall examine the application and if found in order, shall give a notice to the company under section 560(3) of the Act giving time of 30 days stating that unless cause is shown to the contrary, its name be struck off from the Register and the company will be dissolved;

b) The name of applicant and date of making the application under the FTE Guidelines shall be displayed on the MCA portal www.mca.gov.in giving time of 30 days for raising objection, if any, by the stakeholders to the concerned ROC;

c) In case of company like Non-Banking Financial Company, Collective Investment Management Company which are regulated by other Regulator namely RBI, SEBI, respectively, the ROC, at the end of every week, shall send intimation of such companies availing of the FTE Guidelines during that period to the concerned Regulator and also an intimation in respect of all companies availing of the FTE Guidelines that period to the office of the Income Tax Department giving time of 30 days for their objection, if any.

The FTE Guidelines are not applicable to the following companies:-

i. listed companies;
ii. companies that have been de-listed due to non-compliance of Listing Agreement or any other statutory Laws;
iii. companies registered under section 25 of the Act;
iv. vanishing companies i.e. a company, registered under the Act and listed with Stock Exchange which, has failed to file its returns with the ROC and Stock

Exchange for a consecutive period of 2 years, and is not maintaining its registered office at the address notified with the ROC or Stock Exchange and none of its Directors are traceable;

v. companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court;

vi. companies where order under section 234 of the Act has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending in the court;

vii. companies against which prosecution for a non-compoundable offence is pending in court;

viii. companies accepted public deposits which are either outstanding or the company is in default in repayment of the same;

ix. company having secured loan;

x. company having management dispute;

xi. company in respect of which filing of documents have been stayed by court or Company Law Board (CLB) or Central Government or any other competent authority;

xii. company having dues towards income tax or sales tax or central excise or banks and financial institutions or any other Central Government or State Government Departments or authorities or any local authorities.

Conclusion – The FTE Guidelines is an improvement over the previous Easy Exit Scheme (EES) and will provide an opportunity to the defunct companies to exit with minimal compliance.

(1) General Circular No. 20/2011 Dated : 02.05.2011

Sub: E-Foam No. 32 – Intimation to Registrar of Companies regarding particulars of appointment of Directors etc. and changes therein in the company pursuant to section 303(2) of the Companies Act, 1956 – filling of conflicting return by contesting parties.

To,
All Regional Directors,
All Registrar of Companies.

The Ministry had earlier clarified vide Circular dated 04.05.1993 that it is neither desirable nor possible for the Registrar to sit in judgment to ascertain the rightful claims of the Directors in case of a dispute and it is for the parties concerned to settle their disputes by approaching the court. In case conflicting documents are filed by the contesting group of Directors, Registrar may take the document on record. If the same are otherwise in order by informing the parties concerned, (contesting group of Directors), in writing, that the documents have been taken on records without prejudice to the rights of the parties to settle the dispute in the court of competent authority.

2. In order to cut timelines and bring more transparency in the working of office of Registrar of Companies, the Form 32 will also be taken on records under Straight Through Process (STP) mode i.e., the information given in the e-form 32 is being taken on file maintained by the Registrar of Companies through electronic mode on the basis of statement of correctness given by the filling company and further verification by the practicing professional i.e., Chartered Accountants, Cost Accountants and Company Secretaries.

3. The above instructions are being hereby revised to the extent that all particulars filed by the companies in e-form 32 are being placed on records of the Registrar of Companies through the STP process as filed by the Company and verified by the practicing professional, without prejudice to the rights of the parties to settle the dispute, if any, in a court of competent jurisdiction.

Yours faithfully,
Sd/-
(Monika gupta),
Assistant Director.

(2) General Circular No. 24 / 2011 Dated: 12th May, 2011.

Subject: Loan to Public Limited Companies under Section 295 of the Companies Act, 1956 – Clarification regarding.

It has come to the notice of the Ministry that some companies are making applications for getting prior approval of Central Government when they propose to make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to a Public Limited company of which any such Director is a Director or a member even when the proposal does not fall under Section 295(d) and Section 295(e) of the Companies Act, 1956.

2. Companies are requested to note that when the beneficiary of the loan / guarantee / security is a Public Limited Company, approval of Central Government should only be sought if the provisions of sub-Section (d) or (e) of Section 295of the Companies Act, 1956 are attached. The application should also clearly bring out the facts in this regard.

Yours faithfully,
Sd/-
(Dr. T.V.Somanathan)
Joint Secretary.

(3) CIRCULAR No. HQ/9/2002-Computerization. Date: 27.05.2011

Sub: Payment of MCA Fees Electronic mode-regarding...

In partial modification of Circular even number dated 09.03.2011 regarding acceptance of payment of value above Rs.50,000/- for MCA services, only in electronic mode w. e. f. 27th March, 2011.

With effect from 29.05.2011, in the following cases Challan mode for payment is allowed for amount less than Rs.50,000/-.

a. Payment to "Investor Education and protection Fund" through 'Pay Misc. Fee' functionality.

b. Any payment made by user having category as "Official liquidator (OL) Office.

c. Any payment made by user having category as 'MCA' employee'.

This has been issued with the approval of competent authority.

Yours faithfully,
Sd/-
(Anil Kumar Bhardwaj),
Director.

(4) General Circular No. 30A / 2011 Dated 26.05.2011

Sub: Clarification regarding "Body Corporate" for the purpose of Section 226(3)(a) Of the Companies Act, 1956.

The Ministry of corporate Affairs has received representation from the Institute of Chartered Accountants of India wherein they have stated that under Section 226(3)(a) of the Companies Act, 1956 a body corporate is disqualified from appointment as auditor by a company. Since LLP is a body corporate as per Section 3(1) of the Limited Liability Partnership Act, 2008. LLP among Chartered Accountants will not be qualified for appointment as auditor under Section 226(3)(a) of the Companies Act, 1956.

2. It is hereby clarified that Limited Liability Partnership of Chartered Accountants will not be treated as body corporate for the limited purpose of Section 226(3)(a) of the Companies Act, 1956 and notification in this respect has been sent for publication in the Gazette of India (copy enclosed).

Yours faithfully,
Sd/-
(Kamna Sharma),
Assistant Director.

Verification issued vide S.O. No.1152(E), dtd. 23.05.2011 (copy enclosed).

NOTIFICATION

S.O.1152(E) – In exercise of the powers conferred by clause (c) of Sub-section (7) of Section 2 of the Companies Act, 1956 (1 of 1956), the Central government hereby specifies, a body corporate, incorporated under clause (1) of Section 3 of Limited Liability Partnership Act, 2008 (6 of 2009), for the limited purpose of clause (a) of Sub-sect8ion (3) of Section 226 of the Companies Act, 1956.

(F.NO.2/2/2011-CL. V)
J.N.TIKKU, Jt. Director.

(5) General Circular No. 32 / 2011 Date : 31st May, 2011.

Sub: Allotment of Director Identification Number (DIN) under Companies Act,1956.

The Ministry of Corporate Affairs vide its General Circular No. 11/2011, dated 07.04.2011 has already informed that the Ministry is considering to allot or DIN applications online and to examined the DIN-1 and DIN-4 e-form through the system, following fields in the DIN e-form will be mandatory –

(i) Name of Applicant.

(ii) Father's name of the Applicant

(iii) Date of Birth

(iv) Income Tax Permanent Account Number (PAN) in case of all Indian Nationals.

2. It has been decided that with effect from 12th June, 2011, all DIN-1 & DIN-4 applications has to be digitally signed by the practicing Chartered Accountants, Company Secretaries or Cost Accountants who shall also verify the particulars of the applicant given in the application. All these applications will be approved online.

3. At present, the PAN of the applicant is not a mandatory field in DIN eform-1. In order to examine DIN e-forms through the system and to avoid duplicate DIN, it has been decided that all existing DIN holders who have not furnished their PAN earlier at the time of obtaining DIN, are required to furnish their PAN by filling DIN-4 e-form by 30th September, 2011, failing which their DIN will be disabled and they shall also be liable for heavy penalty.

Yours faithfully,
Sd/-
(J.N.TIKKU),
Joint Director.

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FROM PUBLISHED ACCOUNTS

Accounting Standard 20 On Earning Per Share

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GLODYNE TECHNOSERVE LIMITED - Annual Report-2009-2010

Schedule L: Significant Accounting Policies and Notes to Consolidated Accounts

A. Significant Accounting Policies

20. Earning Per Share (EPS)

The earning considered in ascertaining the group's EPS comprises the net profit after tax. The number of shares used in Computing Basic EPS is the weighted average number of shares outstanding during the year duly adjusted for additional shares issued during the year, if any.

The number of shares used in computing diluted EPS comprises the weighted average number of equity shares considered for deriving basic EPS and also the weighted average number of equity shares that could have been issued on the conversion of all dilutive potential equity shares.

Dilutive potential equity shares are deemed to be converted as of the beginning of the period, unless issued at a later date. The number of shares and potentially dilutive equity shares are adjusted for stock splits and bonus shares issued, if any.

The EPS for the previous year is restated after adjustment for issue of bonus share during the year.

ON MOBILE GLOBAL LIMITED-Annual Report-2009-2010

Schedule 17: Significant Accounting Policies and Notes to Accounts

A. Significant Accounting Policies

15. Earning Per Share (EPS)

In determining the Earning per share, the company considers the net profit after tax. The number of shares used in computing basic earning per share is the weighted average number of equity shares outstanding during the year. The number of shares used in computing Diluted Earning per share comprises the weighted average number of equity shares considered for deriving basic earning per share and also the weighted average number of equity shares that could have been issued on the conversion of all dilutive potential equity shares. Dilutive potential equity shares are deemed converted as of the beginning of the year unless issued at a later date.

CMC LIMITED-Annual Report-2010-2011

Schedule 15: Notes forming part of the Accounts

3. Significant Accounting Policies

p. Earning Per Share (EPS)

The company reports basic and diluted Earnings per equity share in accordance with Accounting Standard 20 'Earning per share'. Basic earning per equity share is computed by dividing the net profit after tax by the weighted average number of equity shares outstanding during the year. Diluted earning per share is computed by dividing the net profit for the year by the weighted average number of equity shares during the year as adjusted to the effects of all dilutive potential equity shares, except where results are anti dilutive.

ALLSEC TECHNOLOGIES LIMITED-Annual Report-2010-2011

Schedule 18: Notes to Accounts

18.2 Statement on Significant Accounting Policies

p. Earning Per Share (EPS)

The earning considered in ascertaining the Group's earning per share comprise the net profit after tax attributable to equity share holders. The number of shares used in computing basic earning per share is the weighted average number of shares outstanding during the year. The number of shares used in computing diluted earning per share comprises the weighted average number of shares considered for deriving basic earning per share and also the weighted average number of shares, if any, which would have been issued on the conversion of all dilutive potential equity shares.

GODREJ REALTY PRIVATE LIMITED -Annual Report-2009-2010

Schedule 12: Notes to Accounts and Accounting Policies

1 Accounting Policies

g. Earning Per Share

The basic earning per share is computed using the weighted average number of common shares outstanding during the period. Diluted earning per share is computed using the weighted average number of common and dilutive common equivalent shares outstanding during the period, except where the results would be anti-dilutive.

Particulars	Current Year (RS.)	Previous Year (RS.)
Profit for the year as per profit & Loss Account	55,37,443	27,74,711
Weighted average no. of Equity Shares outstanding	10,00,000	10,00,000
Weighted average no. of potential Equity Share outstanding	1,60,00,000	1,60,00,000
Basic Earning per Share (Rs.)	5.54	2.77
Diluted Earning per Share (RS.)	0.41	0.65
Nominal value of Shares	10	10

IVRCL ASSETS & HOLDING LTD. -Annual Report-2009-2010

Schedule 20: Notes to Accounts

22. Earnings Per Share

Particulars	For the year ended March 31, 2010	For the year ended March March 31, 2009
Profit/loss available for equity shareholders	(6,39,85,635)	8,58,56,395
Weighted average number of equity shares outstanding	18,54,20,358	12,59,56,786
Earning per share (Basic and Diluted) (Rs)	0.35	0.68
Nominal Value of shares	10	10

Subsequent to the balance sheet date, the Company has issued 61,806,786 bonus shares of face value of Rs.10 each. These bonus shares have been considered in computation of weighted average number of equity shares for the current and pervious year.

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(Contd. from page no. 121)

Service Tax Review

4) *Whether services are performed in India? And if not whether receiver of service is liable to service tax ?*

Haldor Topsoe v. Commissioner of Central Excise, Vadodara [2011] 30 STT 196 CESTAT, AHMEDABAD BENCH

Facts :- Appellant was a company incorporated outside India - Its principal office was situated outside India - It had entered into an agreement with IOCL, an Indian company, under which it had to supply know-how, PSA Unit know-how, Process Package, PSA Unit Process Package, Services for Hydrogen Plant and detailed Engineering of Reformer Package to IOCL in form of technical documentation - Appellant had provided technical information to officials of IOCL at their office, which was outside India - A show-cause notice was issued to appellant proposing levy of service tax along with interest and penalty on ground that appellant had rendered services under category of 'Consulting engineer's service' - Appellant contended that under agreement, liability to pay service tax was on IOCL and since appellant did not have any office in India, it was not required to pay tax in view of decision of Supreme Court in Kerala State Electricity Board v. CCE [2007] 11 STT 487 - It was further contended that since services had been rendered by it outside India, it was not liable to pay tax on those services in view of decision of Supreme Court in All India Federation of Tax Practitioners v. Union of India [2007] 10 STT 166 - Revenue, on other hand, relied upon decision of Tribunal in B.E. Gelb Consultancy Services v. CCE [2009] 19 STT 61 (Chennai - CESTAT) in support of its contention that transfer of technical know-how and training of staff by foreign service provider and know-how transfer to Indian client by e-mail would amount to providing of services in India - Whether since decisions relied upon by appellant and by revenue were not available during relevant period, question as to whether issues arising in instant case were covered by those decisions or not and who should be liable to pay service tax were matters, which were to be reconsidered - Held, yes - Whether, therefore, impugned order was to be set aside and matter remanded to Commissioner (Appeals) for fresh adjudication after giving concerned parties a fresh opportunity to present their case - Held, yes

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BITS & BYTES

Understanding XBRL.

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There is a saying that "Necessity is Mother of Invention". Hardship in life leads to innovative thinking toward the problems and one who succeeds doing thing differently becomes the trend settler. It is equally true that one who understands the problem better can understand the invented tool better. XBRL is an invention and to understand the XBRL one must first look at the requirements or the issues which are sought to be resolved through XBRL.

From the turn of the century, a new era began. "Information Era". With the widespread use of internet and its increasing speed day by day has made several unbelievable things possible. Video conferencing, for example saves crores of rupees travelling cost and unnecessary wastage of valuable times of business executives. Almost every type of information can be exchanged through internet and in fact majority of them is already available on the internet. Search any meaningful word on net and there will be at least ten thousand links to the websites containing information on that word.

Take an example of financial statement of listed companies, now there is no need to purchase shares in listed companies to have an easy access to their financial results.

However, internet cannot help beyond that. The financial results of thousands of companies would be available on internet and one can download with few clicks. Problem starts now. Some companies publish their financial results in PDF format, some uses word processors or spreadsheet software and put them on their website in same format. Preparation of financial statement is standardized so far it is concerned with the measurement and disclosure of the financial items, but not in term of format of presentation financial.

Financial statements are always in form of a dump of information and not in format of database. In sort, it is not possible to start analysis of those downloaded financial statements directly. Information is required to be re-arranged in such a format that it become easy to perform comparison and summation of those numbers horizontally and vertically.

It requires an extensive exercise of picking up of individual data and putting them in other software. Problem does not end here. Let's assume that someone has carried out that extensive exercise and created a database for analysis of the financial result of the companies, still there are two more issues to be addressed.

1. Because, the computer files containing the financial results cannot be directly read by the analysis software it needs to be updated manually for each company and that even for each year.
2. The database will be useful only to those who use same analysis software.

A mechanism which can transport the information from preparers of financial statement to user of financial statement in such a way that it can be directly used to update the use's database can solve this issue.

Answer is XBRL. XBRL uses pre-defined nomenclature. Each piece of the information is labeled with its pre-defined identification mark. XBRL holds information in plain text and hence it is platform independent. All type of analysis and spreadsheet software can read and use it.

The idea of XBRL is simple. Every piece of the information is labeled with pre-defined indicator. The pre-defined labels (indicators) are made available to all but neither preparer nor user of information is allowed to change it.

The preparer of the information (financial statements) have to pick up the relevant data and assign it to the pre-defined label. Say for example.

"netProfitLossbeforeTax" is a pre-defined label in XML schema published by the MCA. You can easily understand that what type of data will be assigned (tagged) to this label. What is XML schema is not a subject of discussion here. That we will discuss later on.

The same set of the labels will reside in the computer of users of the financial statement. User's computer will simply search for the label and pick up the data associated to that label and update its own database.

The things are not that easy. There are so many questions attached to it. Say,

1. Who will make out the list of pre-defined labels?
2. How to assign values to those pre-defined labels?
3. How to ensure that the preparers have selected right labels while preparation?

Answers are not in XBRL. But it is in the manner in which the XBRL is used.

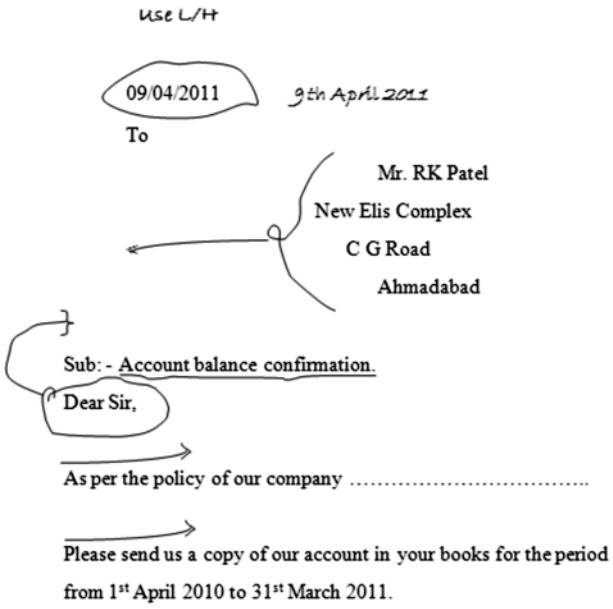
Let us move on technical part of it.

XBRL stands for Extensible Business Reporting Language. Basically a variant of XML (Extensible Markup Language). XBRL is designed to exchange the accounting information and financial statement in the XML tags. In short, XBRL is basically XML. XML has borrowed its concept of marking up from HTML (Hypertext Markup Language). There is one more XHTML (improved version of HTML).

It is necessary to know HTML and XML both for improved understanding of XBRL. These languages revolve around something called "Marking Up"

What is marking up?

Following picture shows a manual marking up.



Marking up basically refers to the task of putting some indemnification mark or putting some short of instruction on a page itself (off course containing a draft writing on something) so that the typing clerk can make the final print as desired.

The above piece of paper contains certain marking up.

1. There is an instruction to use letter head of the company.
2. Date format should be changed to dd-mmm-yyy so that it can convey same meaning even if at a place where common date formatting is different from India.
3. Salutation should be placed above the subject line.
4. The subject line should be underlined.
5. First line indent should be greater than the hanging lines of paragraph.

HTML is nothing but instructions as to how a string of text should appear on the screen. You can compare a browser (MS Internet, Google chrome, Opera, Firefox, Safari, Mozilla etc. are browsers) with a typist. An electronic document requires a standardized set of instructions and additional information. An HTML document contains three things.

1. Text to be displayed.
2. Tags assigned to the text. Tags pre-defined instructions for the display of text in the browser. Tags are technically known as elements.
3. Additional information such as font size, font colour, hyperlink, image etc. technically known as attributes.

Type following sentences in notepad and save it with .html extension (notepad allows saving text files with .html extension though it does not show html type in "Save Type" drop down box in Save As dialog box)

<h1> h1 is a mark of 1st level heading</h1>

<h2>h2 is a mark of 2nd level heading</h2>

It should look in browser as given in following picture

Note the pattern of < > </>. Opening and closing tags some time called start and end tags. Text between opening and closing tags will be displayed based on the label/tags.

There is one more dimension here. Say for example, what if you wanted to display the second line "h2 is a mark of 2nd level heading" in red colour? It requires some additional information with the text to be displayed. Reference to such additional information is called attribute. So an element can have an attribute such as color, font size, image, image size, hyperlink, etc. basically these are additional information.

Now type following sentence in a notepad and save it as .html file. Open it with a browser.

<h2>h2 is a mark of 2nd level heading</h2>

There are certain rules relating to elements and its attributes.

1. An HTML element starts with a start tag / opening tag. e.g. <a>
2. An HTML element ends with an end tag / closing tag. E.g.
3. The element content is everything between the start and the end tag. E.g. Paragraph
4. Some HTML elements have empty content
5. Empty elements are closed in the start tag.
6. Most HTML elements can have attributes

There are thousands of defined elements in HTML. It is not possible to discuss those here and our purpose of discussion is not to master on HTML but to have an idea of marking up in an electronic document.

Unlike the HTML, XML is designed to carry data and not to display data. However, concept lies in HTML. However, marking up in XML is not about display of information but about the identification of information. How? We will discuss it next time.

XBRL

In our last time discussion we have cleared following things.

1. XBRL is basically XML.
2. It belongs to Marking-up Language family.
3. Basic objective of XBRL is to transport data to the user in such a way that it can be used directly for different type of analysis.
4. XML is not an improved version of HTML it is different from HTML.

Though the concept of marking up is used in XML, it is not an improved version of HTML, it is different from HTML. Let's see what makes XML different from HTML.

1. The purpose of HTML is to transport data and to display it in a browser. Whereas the purpose of XML is to transport and store data.
2. Marking up in HTML is designed to give instructions to browser and it carries information as to how the text will be displayed on the screen whereas in XML marking up carries information as to what the data is.
3. Tags (Elements) and additional information (attributes) are inbuilt in the software itself in HTML and user can not add new elements and attributes. In XML user can define new elements and attributes. In fact this feature of XML makes it Extensible and whole magnificence lies in this feature of XML.

Before we go into technical details of XML, lets clear some terminology used in XML.

1. Tag/Label is called "Elements". In XML the purpose is to carry information as to "what the data is", the element carries identification of the data. Say for example "netProfitLossbeforeTax".
2. Additional information attached to an element is called "Attributes". Here in XML referrers to characteristics of an element. Say for example, "netProfitLossbeforeTax" can have following attributes.
   a. It can be both debit and credit.
   b. It represent's results for a period and not a position as on a particular date.
   c. It may have a NIL value.
3. If everybody using XML defines elements in their own way and then publishes their results, it will not work and therefore a standardized set of elements and its attributes are defined by regulatory bodies. A set of standardized elements is called "XML Schema". It is termed as "Taxonomy" when it refers to XBRL. The MCA has recently issued taxonomy for the schedule VI to the companies Act 1956.
4. Value assigned to an element can be validated against its attributes. Basically it is a verification to see that a value assigned to an element conform to the characteristics defined for that elements. You are aware of validation of tax return xml files and reasons of validation failure.

   Xml do not do anything with the data. Basically xml is designed to transport the data. The basic is data sharing. Xml simplifies the data sharing.

   Platform independent. Upgrading to new systems (hardware or software platforms), is always time consuming. Large amounts of data must be converted and incompatible data is often lost.

   XML data is stored in text format. This makes it easier to expand or upgrade to new operating systems, new applications, or new browsers, without losing data.

   XML documents form a tree structure that starts at "the root" and branches to "the leaves".

   An Example XML Document

   XML documents use a self-describing and simple syntax:

```
<?xml version="1.0" encoding="ISO-8859-1"?>
<note>
<to>Tove</to>
<from>Jani</from>
<heading>Reminder</heading>
<body>Don't forget me this weekend!</body>
</note>
```

The first line is the XML declaration. It defines the XML version (1.0) and the encoding used (ISO-8859-1 = Latin-1/West European character set).

The next line describes the root element of the document (like saying: "this document is a note"):

```
<note>
```

The next 4 lines describe 4 child elements of the root (to, from, heading, and body):

The next 4 lines describe 4 **child elements** of the root (to, from, heading, and body):

```
<to>Tove</to>
<from>Jani</from>
<heading>Reminder</heading>
<body>Don't forget me this weekend!</body>
```

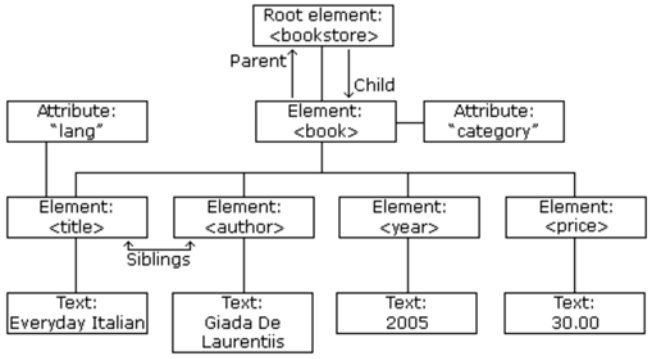
And finally the last line defines the end of the root element:

```
</note>
```

You can assume, from this example, that the XML document contains a note to Tove from Jani.

Don't you agree that XML is pretty self-descriptive?

Example:



The image above represents one book in the XML below:

The syntax rules of XML are very simple and logical. The rules are easy to learn, and easy to use

All XML Elements Must Have a Closing Tag

In HTML, some elements do not have to have a closing tag:

XML Tags are Case Sensitive

XML tags are case sensitive. The tag <Letter> is different from the tag <letter>.

Opening and closing tags must be written with the same case:

XML Elements Must be Properly Nested

In HTML, you might see improperly nested elements:

```
<b><i>This text is bold and italic</b></i>
```

In XML, all elements **must** be properly nested within each other:

```
<b><i>This text is bold and italic</i></b>
```

In the example above, "Properly nested" simply means that since the <i> element is opened inside the <b> element, it must be closed inside the <b> element.

XML Documents Must Have a Root Element

XML documents must contain one element that is the **parent** of all other elements. This element is called the **root** element.

```
<root>
<child>
<subchild>.....</subchild>
</child>
</root>
```

XML Attribute Values Must be Quoted

XML elements can have attributes in name/value pairs just like in HTML.

In XML, the attribute values must always be quoted.

Study the two XML documents below. The first one is incorrect, the second is correct:

```
<note date=12/11/2007>
<to>Tove</to>
<from>Jani</from>
</note>
```

```
<note date="12/11/2007">
<to>Tove</to>
<from>Jani</from>
</note>
```

The error in the first document is that the date attribute in the note element is not quoted.

What is an XML Element?

An XML element is everything from (including) the element's start tag to (including) the element's end tag.

An element can contain:

- other elements
- text
- attributes
- or a mix of all of the above...

```
<bookstore>
<book category="CHILDREN">
<title>Harry Potter</title>
<author>J K. Rowling</author>
<year>2005</year>
<price>29.99</price>
</book>
<book category="WEB">
<title>Learning XML</title>
<author>Erik T. Ray</author>
<year>2003</year>
<price>39.95</price>
</book>
</bookstore>
```

In the example above, <bookstore> and <book> have **element contents**, because they contain other elements. <book> also has an **attribute** (category="CHILDREN"). <title>, <author>, <year>, and <price> have **text content** because they contain text.

XML Naming Rules

XML elements must follow these naming rules:

- Names can contain letters, numbers, and other characters
- Names cannot start with a number or punctuation character
- Names cannot start with the letters xml (or XML, or Xml, etc)
- Names cannot contain spaces

Any name can be used, no words are reserved.

Best Naming Practices

Make names descriptive. Names with an underscore separator are nice: <first_name>, <last_name>.

Names should be short and simple, like this: <book_title> not like this: <the_title_of_the_book>.

Avoid "-" characters. If you name something "first-name," some software may think you want to subtract name from first.

Avoid "." characters. If you name something "first.name," some software may think that "name" is a property of the object "first."

Avoid ":" characters. Colons are reserved to be used for something called namespaces (more later).

XML documents often have a corresponding database. A good practice is to use the naming rules of your database for the elements in the XML documents.

Non-English letters like éòá are perfectly legal in XML, but watch out for problems if your software vendor doesn't support them.

XML Elements are Extensible

XML elements can be extended to carry more information.

Look at the following XML example:

```
<note>
<to>Tove</to>
<from>Jani</from>
<body>Don't forget me this weekend!</body>
</note>
```

Let's imagine that we created an application that extracted the <to>, <from>, and <body> elements from the XML document to produce this output:

MESSAGE

To: Tove
From: Jani

Don't forget me this weekend!

Imagine that the author of the XML document added some extra information to it:

```
<note>
<date>2008-01-10</date>
<to>Tove</to>
<from>Jani</from>
<heading>Reminder</heading>
<body>Don't forget me this weekend!</body>
</note>
```

Should the application break or crash?

No. The application should still be able to find the <to>, <from>, and <body> elements in the XML document and produce the same output.

One of the beauties of XML, is that it can be extended without breaking applications.

XML Attributes

In HTML, attributes provide additional information about elements:

```
<img src="computer.gif">
<a href="demo.asp">
```

Attributes often provide information that is not a part of the data. In the example below, the file type is irrelevant to the data, but can be important to the software that wants to manipulate the element:

```
<file type="gif">computer.gif</file>
```

XML Attributes Must be Quoted

Attribute values must always be quoted. Either single or double quotes can be used. For a person's sex, the person element can be written like this:

```
<person sex="female">
```

or like this:

```
<person sex='female'>
```

If the attribute value itself contains double quotes you can use single quotes, like in this example:

```
<gangster name='George "Shotgun" Ziegler'>
```

or you can use character entities:

```
<gangster name="George &quot;Shotgun&quot; Ziegler">
```

XML Elements vs. Attributes

Take a look at these examples:

```
<person sex="female">
<firstname>Anna</firstname>
<lastname>Smith</lastname>
</person>
```

```
<person>
<sex>female</sex>
<firstname>Anna</firstname>
<lastname>Smith</lastname>
</person>
```

In the first example sex is an attribute. In the last, sex is an element. Both examples provide the same information.

There are no rules about when to use attributes or when to use elements. Attributes are handy in HTML. In XML my advice is to avoid them. Use elements instead.

My Favorite Way

The following three XML documents contain exactly the same information:

A date attribute is used in the first example:

```
<note date="10/01/2008">
<to>Tove</to>
<from>Jani</from>
<heading>Reminder</heading>
<body>Don't forget me this weekend!</body>
</note>
```

A date element is used in the second example:

```
<note>
<date>10/01/2008</date>
<to>Tove</to>
<from>Jani</from>
<heading>Reminder</heading>
<body>Don't forget me this weekend!</body>
</note>
```

An expanded date element is used in the third: (THIS IS MY FAVORITE):

```
<note>
<date>
<day>10</day>
<month>01</month>
<year>2008</year>
</date>
<to>Tove</to>
<from>Jani</from>
<heading>Reminder</heading>
<body>Don't forget me this weekend!</body>
</note>
```

Avoid XML Attributes?

Some of the problems with using attributes are:

- attributes cannot contain multiple values (elements can)
- attributes cannot contain tree structures (elements can)
- attributes are not easily expandable (for future changes)

Attributes are difficult to read and maintain. Use elements for data. Use attributes for information that is not relevant to the data.

Don't end up like this:

```
<note day="10" month="01" year="2008"
to="Tove" from="Jani" heading="Reminder"
body="Don't forget me this weekend!">
</note>
```

XML Attributes for Metadata

Sometimes ID references are assigned to elements. These IDs can be used to identify XML elements in much the same way as the id attribute in HTML. This example demonstrates this:

```
<messages>
<note id="501">
<to>Tove</to>
<from>Jani</from>
<heading>Reminder</heading>
<body>Don't forget me this weekend!</body>
</note>
<note id="502">
<to>Jani</to>
<from>Tove</from>
<heading>Re: Reminder</heading>
<body>I will not</body>
</note>
</messages>
```

The id attributes above are for identifying the different notes. It is not a part of the note itself.

What I'm trying to say here is that metadata (data about data) should be stored as attributes, and the data itself should be stored as elements.

Well Formed XML Documents

A "Well Formed" XML document has correct XML syntax.

The syntax rules were described in the previous chapters:

- XML documents must have a root element
- XML elements must have a closing tag
- XML tags are case sensitive
- XML elements must be properly nested
- XML attribute values must be quoted

```
<?xml version="1.0" encoding="ISO-8859-1"?>
<note>
<to>Tove</to>
<from>Jani</from>
<heading>Reminder</heading>
<body>Don't forget me this weekend!</body>
</note>
```

Valid XML Documents

A "Valid" XML document is a "Well Formed" XML document, which also conforms to the rules of a Document Type Definition (DTD):

```
<?xml version="1.0" encoding="ISO-8859-1"?>
<!DOCTYPE note SYSTEM "Note.dtd">
<note>
<to>Tove</to>
<from>Jani</from>
<heading>Reminder</heading>
<body>Don't forget me this weekend!</body>
</note>
```

The DOCTYPE declaration in the example above, is a reference to an external DTD file. The content of the file is shown in the paragraph below.

XML DTD

The purpose of a DTD is to define the structure of an XML document. It defines the structure with a list of legal elements:

```
<!DOCTYPE note
[
<!ELEMENT note (to,from,heading,body)>
<!ELEMENT to (#PCDATA)>
<!ELEMENT from (#PCDATA)>
<!ELEMENT heading (#PCDATA)>
<!ELEMENT body (#PCDATA)>
]>
```

If you want to study DTD, you will find our DTD tutorial on our homepage.

XML Schema

W3C supports an XML-based alternative to DTD, called XML Schema:

```
<xs:element name="note">
<xs:complexType>
<xs:sequence>
<xs:element name="to" type="xs:string"/>
<xs:element name="from" type="xs:string"/>
<xs:element name="heading" type="xs:string"/>
<xs:element name="body" type="xs:string"/>
</xs:sequence>
</xs:complexType>
</xs:element>
```

If you want to study XML Schema, you will find our Schema tutorial on our homepage.

A General XML Validator

To help you check the syntax of your XML files, we have created an XML validator to syntax-check your XML.

XML Errors Will Stop You

Errors in XML documents will stop your XML applications.

The W3C XML specification states that a program should stop processing an XML document if it finds an error. The reason is that XML software should be small, fast, and compatible.

HTML browsers will display documents with errors (like missing end tags). HTML browsers are big and incompatible because they have a lot of unnecessary code to deal with (and display) HTML errors.

With XML, errors are not allowed.

Income tax department example.

Structure

What is issues which need to be address

What could be solution?

What is xbrl?

What is concept of xbrl

Structure of xml

Instant document _ picture of instant document

Taxonomy – xml schema

Concept of validation

What to do with the company updated

How to update the company report

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FROM THE GOVERNMENT

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(A) INCOME TAX

1) Procedure for regulating refund of excess amount of TDS deducted and / or paid.

The procedure for regulating refund of amount paid by the deductor in excess of the tax deducted at source (TDS) and/or deductible is governed by Board circular No. 285, dated 21-10-1980.

Subsequent to issue of circular No. 285, new sections have been inserted under Chapter XVII-B of the Income-tax Act, 1961. In consideration of the above and in supersession of the circular No. 285, dated 21-10-1980, the Board prescribes the procedure for regulating refund of amount paid in excess of tax deducted and/or deductible in respect of TDS on residents covered under sections 192 to 194LA of the Income-tax Act, 1961. This circular will not be applicable to TDS on non-residents falling under sections 192, 194E and 195 which are covered by circular No. 7/2007 issued by the Board.

(For Full text refer Circular No-2/2011 dated 27-04-2011)

(B) SERVICE TAX

1) Notification No-33/2011 dated 25-04-2011 regarding Commercial Training or Coaching Service

The Central Government on being satisfied that it is necessary in the public interest so to do, hereby exempt the commercial coaching or training centre from the whole of service tax providing-

(i) any preschool coaching and training;

(ii) any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognised by any law for the time being in force.

2) Notification No.34/2011 – dated 25-04-2011 regarding abatement to newly introduced 2 services

The Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments under the following two services:-

a) An abatement of 30% from the taxable service is provided for the purpose of levy of service tax under the category of specified restaurants.

(**Note:-** Taxable service means any service provided or to be provided to any person, by a restaurant, by whatever name called, having the facility of air – conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises.)

b) An abatement of 50% from the taxable service is provided for the purpose of levy of service tax under the category of hotels, etc providing short term accommodation.

(**Note:-** Taxable service means any service provided or to be provided to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continous period of less than three months.)

3) Prosecution provision in Finance Act, 1994 .

The provision for prosecution of specified offences involving service tax, becomes a part of Chapter V of Finance Act, 1994.

Instructions and guidelines issued by the Central Board of Excise and Customs (CBEC) from time to time, regarding prosecution under Central Excise law, will also

(Contd. on page no. 136)

ARTICLE...

TEAM BUILDING

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Team Life Cycle:

For many it is frustrating when the new teams don't reach the expected level of performance immediately and in many cases, some friction is common. These things happen because teams have life cycles, but when you identify and understand these cycles you can get the most out of the teams. One familiar team-maturing model is proposed by B.W. Tuckman and M.A.C. Jenson in group and organization studies. According to them, teams progress through the following stages:

01. FORMING: This stage is characterized by the reliance of the team members on past behavior. Players may be uncertain why they are there, and they will avoid serious topics and expression of their feelings. Players look to the team leader for guidance and direction and try to avoid controversy and keep things safe. Team output at this stage of development is low.

LEADER'S ROLE: The leaders role during the formation of the team includes clarification and direction, getting members acquainted, creating a positive atmosphere, and providing the opportunity for early success by seeking out straightforward, quick result the team can accomplish. During this phase, the leader often acts as both supervisor and leader.

02. STORMING: In this stage conflict and competition surface within the team. Some players may be hostile for defensive. The team is trying to find a way to achieve the task it was assembled to accomplish, although there may be serious disagreement about its goals and objectives. Conflicts results from some players' attempts to dominate the group while other remain silent. In order to leave the storming phase, the team needs to acquire a problem-solving mentality. Output in this stage is still low.

LEADER'S ROLE: The leader's role includes opening up of conflict, moving toward negotiation ground rules with the team. The leader in this phase is often acting as teacher, coach and mentor.

03. NORMING : During this stage the teams come together. The goals and objectives are agreed to and *" owned"* by players. This phase is typified by acknowledgement of individual member's contributions, team building and cohesion. Players share feelings solicit and give feedback, and maintain the safe atmosphere already created. Team competence and price develop. The major task of this stage is data flow between members and exploration of possible solutions. Output of this stage is moderate to high.

LEADER'S ROLE: During this phase, the leader's role becomes much less directive. The leader lets the team provide its own task direction, helps build solid working relationships and trust and encourage the team to evaluate progress and establish its own goals. The leader continues to act as mentor and moves in to consulting.

04. PERFORMING : At this point team identify is complete and players moral is high. Players are both task and people oriented. Team members organize themselves in highly flexible ways and innovate and experiment with solutions. If team reach this stage - and not all do – their capacity, range and depth of personal interactions make them truly independent. Output at this level is very high.

LEADER'S ROLE : The leader begins to consult and mediate. The leader participates on an equal footing with other team members, becoming involved in tasks as required. He may also consult with and inspire players to higher levels of productivity. As a mediator, the leader keeps communication and information pertinent to the task flowing in to the group as well as drawing out necessary information from team members. The leader also reinforces performance by celebrating team achievements and provides vision for the team.

05. ADJOURNING : Once the goal is achieved, the team recognizes its own accomplishment, may be rewarded by others, and disbands.

LEADER'S ROLE : The Leader recognizes the efforts of each individual team member and promotes the results as combined efforts of all players, never the ability or performance of the leader. If an award is given to the team, the leader offers it to the team and receives it on behalf of each team member.

TEAM WORK :

How to deal with conflict :

To handle conflict among your team members:

- Ask those who disagree to paraphrase one another comments. This may help them learn if they really understand one another.
- Work out a compromise. Agree on the underlying source of conflict, then engage in give-and-take and finally agree on a solution.
- Ask each member to list what the other side should do. Exchange list, select a compromise all are willing to accept and test the compromise to see if it matches with team goal.
- Have each side write 10 questions for its opponents. This will allow them to single their major concerns about the other sides position. And the answers may lead to a compromise.
- Convince the team members they sometimes may have to admit they are wrong. Help them save face by convincing them that their changing a position may well show strength.

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(Contd. from page no. 134)

From the Governments

be applicable to service tax, to the extent they are harmonious with the provisions of Finance Act, 1994 and instructions contained in this Circular for carrying out prosecution under service tax law.

(For Full text refer Circular No- 140/2011, dated 12-05-2011)

4) Clarification regarding short term accommodation service and restaurant service. Circular No. 139/8/2011, dated 10th May 2011

In case of Short term accommodation service :-

- Declared tariff" includes charges for all amenities provided in the unit of accommodation like furniture, air-conditioner, refrigerators etc., but does not include any discount offered on the published charges for such unit.
- A separate tariff for the same accommodation in respect of a class of customers which can be recognized as a distinct class on an intelligible criterion is possible except for a single or few corporate entities.
- Where the declared tariff includes the cost of food or beverages, service tax will be charged on the total value of declared tariff. But where the bill is separately raised for food or beverages, and the amount is charged in the bill, such amount is not considered as part of declared tariff.

—> When the declared tariff is revised as per the tourist season, the liability to pay Service Tax shall be only on the declared tariff for the accommodation where the published/printed tariff is above Rupees 1000/-.

- luxury tax has to be excluded from the taxable value.

In case of service provided by the restaurants:-

- If there are more than one restaurant belonging to the same entity in a complex, which are clearly demarcated and separately named, the one which satisfy both the criteria is only liable to service tax.
- The taxable services provided by a restaurant in other parts of the hotel i.e swimming area, are also liable to Service Tax as these areas become extensions of the restaurant.
- When the food is served in the room, service tax cannot be charged under the restaurant service as the service is not provided in the premises of the air-conditioned restaurant with a license to serve liquor. Also, the same cannot be charged under the Short Term Accommodation head if the bill for the food will be raised separately and it does not form part of the declared tariff.
- State Value Added Tax (VAT) has to be excluded from the taxable value.

(For Full text refer Circular No. 139/8/2011, dated 10th May 2011)

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HEALTH AND FUN

HEALTH & FUN

Compiled from various sources from internet.

FOOD ALLERGY

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What are food allergies? This is a difficult question with confusing answers. When the term "allergy" was first coined, it meant an adverse reaction to any substance that does not bother most people. Then in the 1920's, it was discovered that a type of antibody called "Reagin" or IgE was involved in many allergic reactions, especially those to inhalants. So conventional medicine defined allergy as an IgE-mediated response.

IgE-mediated allergies are easily detected by standard blood or skin tests. The reactions happen rapidly, usually within a few minutes of exposure to inhaled substances or eating a food. Small amounts of the offending substance trigger the reactions, which commonly occur in the respiratory tract, digestive system, or skin. IgE-mediated food reactions are often "fixed." This means that after months or years of avoiding a problem food, eating any amount of it will still cause symptoms.

A food allergy occurs when the body's immune system reacts to otherwise harmless substances in certain foods. This is different from a food intolerance, which does not involve the immune system. While most food allergies are mild, in some cases they can cause anaphylactic shock, a serious, sometimes life threatening reaction. Food allergies affect mostly young children, and approximately 90% of these allergies are caused by eight foods: cow's milk, eggs, soy, peanuts, tree nuts, wheat, fish, and shellfish. With the exception of peanut allergy, the majority of children outgrow their food sensitivities.

Signs and Symptoms:

Many people who think they have food allergies actually have food intolerances that may cause serious health issues themselves. However, symptoms of a true food allergy usually involve the skin and intestines and typically begin just after eating and not longer than 2 hours following in digestion of the particular food. Common symptoms include:

- Hives, swelling, itching, or eczema
- Nausea and vomiting, stomach cramps, indigestion, or diarrhea
- Swelling of the eyelids, face, lips, tongue, throat, or other parts of the body.
- A metallic taste in the mouth
- Wheezing, nasal congestion, or trouble breathing
- Lightheadedness, dizziness, or fainting

When the symptoms listed above are extreme, they can be life threatening. Urgent need to call a medical emergency response unit if you see the following signs of extreme allergic reaction:

- Swelling of the throat and difficulty in swallowing
- Difficulty in breathing
- Rapid pulse
- Dizziness, lightheadedness, or loss of consciousness
- Blue color to the skin and nails

Causes

In most cases, allergies occur when an individual who has a genetic sensitivity to certain allergens is exposed to the substance. Foods frequently responsible for food allergies include:

- Tree nuts, including walnuts, almonds, and pecans
- Peanuts
- Fruits, particularly strawberries, but also melons, pineapple, and other tropical fruits
- Tomatoes
- Fish
- Shellfish, such as shrimp, crab, and lobster
- Food additives such as dyes, thickeners and preservatives.

Foods that may cause intolerance include:

- Wheat and other gluten containing grains
- Cow milk and other dairy products
- Corn products

Risk Factors

Family history of allergies increases your risk of having allergies, including food allergies. Excessive exposure to a particular food — for example, in Japan where rice is a staple, rice is a common food allergen. In Scandinavia, the common allergen is codfish, and in India, chickpeas.

Diagnosis

Take a comprehensive history to find out what symptoms you experience after eating and how soon after eating they occur. Your doctor will also want to know how often you have the reaction and what type of medical treatment you received. Even if your symptoms seem clearly related to a specific food, your doctor may still want to do some tests to be sure that you have a true food allergy and to verify the food or foods responsible for your reaction.

The food causing the allergy can sometimes be identified by the following techniques:

- Elimination and re-challenging diet (also called elimination and provocation diet). This technique involves eliminating suspected foods from the diet one at a time until the symptoms disappear. If there is still a question about what may be causing the symptoms, then individual foods are reintroduced one at a time to see if an allergic reaction develops. (Note: this would not be done if the allergic reaction is dangerous or life threatening.) This method is not definitive, but may help narrow the list of suspected foods.
- Skin testing. A diluted amount of the food allergen is placed under the skin; if allergic, a raised, red skin lesion will appear, generally within 15 - 20 minutes.
- Blood tests (RAST and ELISA). These look for antibodies against the particular food allergens.

FUN

DAYS

There are two days in every week that we should not worry about, Two days that should be kept free from fear and apprehension.

One is YESTERDAY, with its mistakes and cares, its faults and blunders, its aches and pains.

YESTERDAY has passed forever beyond our control.

All the power in the world cannot bring back YESTERDAY.

We cannot undo a single act we performed.

Nor can we erase a single word we've said - YESTERDAY is gone!

The other day we shouldn't worry about is TOMORROW, with its impossible adversaries, its burden, its hopeful promise and poor performance.

TOMORROW is beyond our control.

TOMORROW'S sun will rise either in splendor or behind a mask of clouds - but it will rise.

And until it does, we have no stake in TOMORROW, for it is yet unborn.

This leaves only one day - TODAY.

Any person can fight the battles of just one day.

It is only when we add the burdens of, YESTERDAY and TOMORROW that we break down.

It is not the experience of TODAY that drives people mad, it is the remorse of bitterness for something, which happened YESTERDAY, and the dread of what TOMORROW may bring.

Let us, therefore, LIVE ONE DAY AT A TIME! LIVE FOR NOW, TODAY!!

I'm the Boss

The boss was complaining in our staff meeting the other day that he wasn't getting any respect.

Later that morning he went to a local sign shop and bought a small sign that read:

'I'm the Boss!'

He then taped it to his office door.

Later that day when he returned from lunch, he found that someone had taped a note to the sign that said: 'Your wife called, she wants her sign back!'

New Employee

Several weeks after a young man had been hired, he was called into the personnel director's office. 'What is the meaning of this?' the director asked. 'When you applied for this job, you told us you had five years experience. Now we discovered this is the first job you've ever held.'

'Well,' the young man replied, 'in your advertisement you said you wanted somebody with imagination.'

Bosses Vs. workers

When I take a long time, I am slow.
When my boss takes a long time, he is thorough.
When I don't do it, I am lazy.
When my boss doesn't do it, he's too busy.
When I do it without being told, I'm trying to be smart.
When my boss does the same, that is initiative.
When I please my boss, that's brown-nosing.
When my boss pleases his boss, that's co-operating.
When I do good, my boss never remembers
When I do wrong, he never forgets.

Sentence with 8 Different Meanings

Professor Ernest Brennecke of Columbia is credited with inventing a sentence that can be made to have eight different meanings by placing ONE WORD in all possible positions in the sentence:

"I hit him in the eye yesterday."

The word is "ONLY".

The Message:

1. ONLY I hit him in the eye yesterday. (No one else did.)
2. I ONLY hit him in the eye yesterday. (Did not slap him.)
3. I hit ONLY him in the eye yesterday. (I did not hit others.)
4. I hit him ONLY in the eye yesterday. (I did not hit outside the eye.)
5. I hit him in ONLY the eye yesterday. (Not other organs.)
6. I hit him in the ONLY eye yesterday. (He doesn't have another eye..)
7. I hit him in the eye ONLY yesterday. (Not today.)
8. I hit him in the eye yesterday ONLY. (Did not wait for today.)

This is the beauty and complexity of the English language.

(Information compiled from various sources from internet)

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ASSOCIATION NEWS

(A) THE ANNUAL GENERAL MEETING

At the 60th Annual General Meeting of the members of the Association held on Friday 5th May, 2011 at the ICAI Bhawan, 123, Sardar Patel Colony, Naranpura, Ahmedabad, the following Office Bearers and Executive Committee Members have been declared elected for the year 2011-12.

CA. Kunal A. Shah
Hon. Secretary

CA. Ashok C. Kataria
Hon. Secretary

Office Bearers

(1)	Shri Chandrakant H. Pamnani	President	**(2)**	Shri Gaurang M. Choksi	Vice President
(3)	Shri Kunal A. Shah	Hon.Secretary	**(4)**	Shri Ashok C. Kataria	Hon.Secretary
(5)	Shri Arvind R.Gaudana	Imm. Past President			

Executive Committee Members

(6)	Shri Bhaskar M. Bhojak	**(7)**	Shri Jignesh J. Shah	**(8)**	Smt. Jyoti D. Shah
(9)	Shri Ketul R. Patel	**(10)**	Shri Mrunal N. Shah	**(11)**	Shri Mukesh O. Parikh
(12)	Shri Narain K. Aswani	**(13)**	Shri Parin P.Shah	**(14)**	Shri Vartik R. Choksi

(B) AT THE ANNUAL GENERAL MEETING, THE FOLLOWING PRIZES AND MEDALS WERE DISTRIBUTED TO THEIR PROUD RECIPIENTS.

Best Articles in ACA Journal

Sr. No.	Name of the Trophy	Name of the Recipient	Title of the Article published in the ACA Journal
1	Shri Gatorbhai Patel Shiva Pharma Foundation Trophy for Best Article on Direct Taxes 2010-2011	CA. Yogesh G. Shah CA. Arpit J. Jain	" Foreing Tax Credit in India " at Arm's Length"
2	Shri U.R. Shah Memorial Funds Trophy for Best Article on Allied Laws 2010-11	CA. Pradip R. Shah	" Point of Taxation Rules - Pain of Taxation? "

Best Study Circle Meeting Leader :-

1	Shri Dwarkadas B. Shah Memorial Trophy for the Best Lead Study Circle Meeting Meeting 2010 - 11.	Shri Tushar P. Hemani	" Recent Changes in TDS Provisons & Practical Issues with respect to TDS"

C. LIST OF STUDENTS WHO HAVE BEEN AWARDED DIFFERENT MEDALS/PRIZES FOR THE YEAR 2010 AT THE ANNUAL GENERAL MEETING OF C.A. ASSOCIATION HELD ON 5TH MAY, 2011.

Sr. No.	Medal Name	Highest Mark in	PCC / FINAL C.A. Exam	Name of the Recipient Student	Marks Obtained
1	CA. Avinash J. Budhdev Memorial CA Student Award Cash Prize of Rs.11000/-	Final Year Topper (Gujarat)	**Final / MAY 2010** R.NO. 09755	Dipti Ramavtar Banka	517 4th Rank
			Final / NOV 2010	Tarun Ramgopal Agrawal	526 14th Rank
2	KANTILAL V. PATEL Memorial Medal	Best Student of the year 2010 in Gujarat	**FINAL/ MAY 2010**	Tarun Ramgopal Agrawal	540 5th Rank

Sr. No.	Medal Name	Highest Mark in	PCC / FINAL C.A. Exam	Name of the Recipient Student	Marks Obtained
3	SHRI K.T. THAKORE Memorial Medal	Best Student of the year 2010 in Gujarat	**PCC/MAY 2010**	Vineet P. Kotak	540 5th Rank
4	B.S. SONI Memorial Medal	Best Student in Ahmedabad	**IPCC / MAY 2010** R.NO. 10453	Rohit Gupta	505
			IPCC / NOV 2010 R.NO. 10467	Dipam Arpit Patel	512 19th Rank
5	AKSHAY TRIVEDI Memorial Medal	Auditing	**PCC/MAY 2010** R.NO. 10453 R.NO. 1314	 Rohit Gupta Ravi Rameshbhai Devani	 75 75
			PCC/NOV 2010 R.NO. 1928	 Vaishali Hirenbhai Thaker	 81
6	HASMUKHLAL J. PATEL (Bidiwala) Medal	Accounting	**PCC/MAY 2010** R.NO. 200	 Sneha Shyam Batra	 95
			IPCC/MAY 2010 R.NO. 10143 R.NO. 11831	 Akash Bhavyesh Shah Devesh Baid	 85 85
			IPCC/NOV 2010 Roll No. 100905 Roll No. 102673	 Saurabh Kamleshbhai Shah Alpesh Vallabhbhai Shekhadia	 88 97
7	SHRI V.R. SHAH Memorial Medal	Best Student for the year 2010 in Ahmedabad for Business and Corporate Laws	**PCC/MAY 2010** R.NO. 75	Mittali Trivedi	83
8	VNS & BNS SOCIAL WELFARE Medal	Income Tax and Central Sales Tax	**PCC/MAY 2010** Roll No. 1799	Nitinkumar Vasantbhai Agrawal	79
			IPCC/NOV 2010 Roll No. 101585 Roll No. 101620	 Alvina Sureshbhai Maniar Samkit Ashwinkumar Shah	 82 82
9	H.V. VASA Memorial Medal	Best Student in Ahmedabad	**FINAL/MAY 2010** RollNo. 104	Archit Atulbhai Shah	449 3rd Rank
			FINAL/NOV 2010 Roll No. 41063	Ashutosh Agrawal	516 21st Rank
10	A.M. THAKER Memorial Medal	Best Lady Candidate in Ahmedabad	**FINAL/MAY 2010** Roll No. 45009	Neha InderJain	436
			FINAL/NOV 2010 Roll No. 40053	Neha Vijaykishan Moondra	483 50th Rank
11	CHANDULAL M. SHAH Memorial Medal	**Paper 1 -** Advanced Accounting	**FINAL/MAY 2010** Roll No. 317	Ritesh Dineshkumar Darji	81
			FINAL/NOV 2010 Roll No. 41063	Ashutosh Agrawal	91
12	DHIRUBHAI B. SHAH Memorial Medal	**Paper 3** Advanced Auditing	**FINAL/MAY 2010** Roll No. 104	Archit Atulbhai Shah	63
			FINAL/NOV 2010 Roll No. 40424	Nikhilkumar Sushilkumar Jain	76
13	A.M. GANG Memorial Medal	**Paper 7** Direct Taxes	**FINAL/MAY 2010** Roll No. 726	Narendra Bherulal Shah	73
			FINAL/NOV 2010 Roll No. 866	Jaykin Rajendrakumar Shah	74
14	JAGRUTIBEN K. SHAH Memorial Medal	**Paper 8** Indirect Taxes	**FINAL/MAY 2010** Roll No. 45158	Harsh Mukeshbhai Lakdawala	70
			FINAL/NOV 2010 Roll No. 41063	Ashutosh Agarwal	81

Sr. No.	Medal Name	Highest Mark in	PCC / FINAL C.A. Exam	Name of the Recipient Student	Marks Obtained
15	MADHUBEN PRAFULBHAI TRIVEDI Medal	**Paper 5** Cost Management	**FINAL/MAY 2010** Roll No. 1315	Noopur Bhanwar Jain	59
			FINAL/NOV 2010 Roll No. 40704	Sanket Daxesh Nanavati	81
16	MANSUKHBHAI J. SHAH Medal	**Paper 4** Corporate Laws & Secretarial Practice	**FINAL/MAY 2010** Roll No. 224	Manan Ketankumar Shah	67
			FINAL/NOV 2010 Roll No. 40175	Malay Pravinchandra Maniar	87
17	VNS & BNS SOCIAL WELFARE Medal	**Paper 2-** Management Accounting & Financial Analysis	**FINAL/MAY 2010** Roll No. 45202	Jinal Mukeshbhai Gohel	70
			FINAL/NOV 2010 Roll No. 40521	Archit Pranay Mehta	86
18	VNS & BNS SOCIAL WELFARE - Medal	**Paper 6** Management Information & Control Systems	**FINAL/MAY 2010** Roll No. 944	Swetang Vishnuprasad Raval	69
			FINAL/NOV 2010 Roll No. 40704 Roll No. 844 Roll No. 1172 Roll No. 625	Sanket Daxesh Nanavati Malhar Kamalkumar Jain Khushi Pradip Vanwani Roanna Marian Miranda	73 73 73 73
19	MANSUKHBHAI S. SHAH Memorial Medal	Information Technology	**PCC/MAY 2010** Roll No. 2384	Nikita Ajay Goinka	77
			PCC/NOV 2010 Roll No. 10248 Roll No. 100442	Rahil Nimeshbhai Shah Tejaswita Prashant Maharishi	78 78
20	LALITA KHANCHAND TEKWANI Memorial Medal	Cost Accounting and Financial Management	**PCC/MAY 2010** Roll No. 2551	Rajshri S. Modi	87
			PCC/NOV 2010 Roll No. 1098 Roll No. 1501	Bhavika Sureshchandra Shah Raju Gigabhai Modhavadiya	83 83
			IPCC / NOV 2010 Roll No. 100921	Harsh Jayendrakumar Modi	83

(D) AT THE AGM AND FIRST EXECUTIVE COMMITTEE MEETING

1 At the First Executive Committee Meeting held on 5th May, 2011, three senior members of the Association viz. CA. Chandrakant F. Patel, CA. Kaushik C. Patel and CA. Ajit C. Shah have been co-opted as the members of the Executive Committee.

2. At the 60thAnnual General Meeting of the Chartered Accountants Association M/s Atul R. Shah & Co. Chartered Accountants, are appointed as Hon. Auditors of the Association for the financial year 2011-12.

3. At the 23rd Annual General Meeting of the Mutual Benefit Scheme, M/s Atul R. Shah & Co. Chartered Accountants, are appointed as Hon. Auditors of the Mutual Benefit Scheme of Chartered Accountants Association for the financial Year 2011-12.

4. List of Sub Committees, their Chairman, Convenor and Members are as under:-

SR. NO.	NAME OF THE COMMITTEE	CHAIRMAN	CONVENOR	OTHER MEMBERS
1	JOURNAL COMMITTTEE	CA. Darshan A. Shah	CA. Parimal S. Shah	CA. Sanjay R. Shah CA. T. J. Advani CA. Rajni M. Shah CA. Ganesh Nadar CA. Bijal Gandhi CA. Hardik Vora CA. K. C. Patel CA. N. K. Aswani CA. Ketul R. Patel
2	RESIDENTIAL REFRESHER COURSE COMMITTEE	CA. Shailesh C. Shah	CA. Umesh S. Shah	CA. Ajit C. Shah CA. Ashwin H. Shah CA. Darshan A. Shah CA. Bharat M. Vashi CA. Mukesh M. Khandwala CA. Chintan M. Doshi CA. Prakash B. Sheth

SR. NO.	NAME OF THE COMMITTEE	CHAIRMAN	CONVENOR	OTHER MEMBERS
3	BRAIN TRUST COMMITTEE	CA. Prakash B. Sheth	CA. Bhadresh P. Soni	CA. Parin P. Shah CA. Deepak R. Shah CA. Ajit C. Shah CA. Rajni M. Shah CA. Ashwin H. Shah CA. Shailesh C. Shah
4	PROFESSIONAL DEVELOPMENT COMMITTEE	CA. Satyapal K. Sadhwani	CA. Lacchu I. Kalwani	CA. N. K. Aswani CA. Chandrakant F. Patel CA. Dipti D. Buch CA. Jyoti D. Shah CA. Nesal H. Shah CA. Palak B. Pavagadhi
5	STUDY CIRCLE COMMITTEE	CA. Chintan M. Doshi	CA. Kandarp G. Trivedi	CA. Abhishek J. Jain CA. Diti B. Vashi CA. Uday I. Shah CA. Ashok C. Kataria CA. Bhaskar Bhojak CA. Asutosh Nanavaty
6	LEGAL AND REPRESENTATION COMMITTEE	CA. Rohit K. Choksi		CA. Mrunal N. Shah CA. C. F. Patel
	SUB- Group of Independent Charge			
	GUJARAT VAT	CA. Priyam R. Shah		CA. Pathik B. Shah
	SERVICE TAX	CA. Ashwin H. Shah	CA. Nitesh J. Jain	CA. Rashmin Vaja CA. Bishan R. Shah
	COMPANY LAW	CA. Darshan A. Shah	CA. Parimal S. Shah	CA. Kantilal V. Karkar CA. Kaushik C. Patel CA. Jayesh C. Sharedalal
	ICAI	CA. Parag R. Raval	CA. Purushottam H. Khandelwal	CA. Amish Khandhar
7	INFORMATION TECHNOLOGY COMMITTEE	CA. Jayesh C. Sharedalal	CA. Chintan M. Doshi	CA. Atul R. Shah CA. Ketul R. Patel CA. Jignesh J. Shah CA. Nesal H. Shah CA. Bishan R. Shah CA. Pitambar S. Jagyasi CA. Kandarp G. Trivedi CA. Gaurang M. Choksi CA. Sanjay R. Shah CA. Ashok C. Kataria
8	MEMBERS COUNSELLING COMMITTEE	CA. Parag R. Raval CA. Aniket Talati Co-Chairman	CA. Purushottam M. Khandelwal	CA. Jignesh J. Shah CA. Kaushik D. Shah
9	PUBLICATION COMMITTEE	CA. Mukesh M. Khandwala	CA. Shailesh C. Shah	CA. Jignesh J. Shah CA. Rajni M. Shah CA. Jayesh C. Sharedalal CA. Ashwin H. Shah CA. Gaurang M. Chokshi CA. Mukesh O. Parikh CA. Sanjay R. Shah CA. Vartik Choksi
10	CULTURAL AND ENTERTAINMENT PROGRAMME COMMITTEE	CA. Nesal H. Shah	CA. Nirav R. Choksi	CA. Ajit C. Shah CA. Mukesh O. Parikh CA. Shailesh C. Shah CA. Darshan A. Shah CA. Bijal Gandhi
11	MEMBERSHIP DEVELOPMENT AND LIBRARY COMMITTEE	CA. Harsh R. Rathi	CA. Rinkesh Shah	CA. Umang Saraf CA. Dhiru C. Shah
12	FORUM OF PAST PRESIDENT	CA. Manubhai G. Patel		CA. Chandrakant F. Patel CA. Ramubhai S. Patel
13	PUBLIC RELATION & MEDIA	CA. Yamal A. Vyas	CA. Jainik N. Vakil	CA. Durgesh V. Buch CA. Ajit C. Shah

SR. NO.	NAME OF THE COMMITTEE	CHAIRMAN	CONVENOR	OTHER MEMBERS
14	ACCOUNTANT PLUS	CA. Bipin M. Shah CA. S. K. Shawani Co-Chairman	CA. Nesal H. Shah	CA. Jayesh C. Sharedalal CA. Chandrakant F. Patel CA. Rajni M. Shah CA. Ajit C. Shah CA. Mehul S. Shah CA. Jyoti D. Shah
15	DIAMOND JUBILEE COMMITTEE	CA. Durgesh V. Buch		CA. Chandrakant F. Patel CA. Sunil H. Talati

(E) FORTHCOMING PROGRAMME

The details of Forthcoming Programmes are as under:

Date/Day	Time	Programmes	Speaker	Vanue
6-8-2011 to 9-8-2011		38TH Residential Refresher Course at Jaipur	Shri Saurabh N. Soparkar CA. Padamchand khincha Shri S. S. Gupta CA. Kaushik C. Patel CA. jayesh C. Sharedalal	The Gold Palace Resort. Kukas, Jaipur

(F) IN RETROSPECT

Date/Day	Time	Programmes	Speaker	Vanue
23-5-2011 Monday	5.00 pm. To 8.00 pm.	P. D. Committee meeting on "Provisions of Section 44AD of the Income Tax Act,1961" "Filing of Income Tax Returns for AY 2011-12"	CA. Jayesh C. Sharedalal CA. Jignesh J. Shah	Shantinath Hall, ICAI Bhawan, 123, Sardar Patel Colony, Naranpura, Ahmedabad.
21-05-2011	6.30 P.M.	Concluding Session of 6th Batch of Accountant Plus	Chief Guest Shri Dinesh Patel (Deep Builders)	Hotel Kanak, Opp Gujarat College, Ahmedabad.
03-06-2011	5.30 P.M. to 7.30 P.M.	Taxability of transactions in shares and stocks and issues under section 14A of the Income Tax Act, 1961.	CA. Nirav H. Patel	Shantinath Hall, ICAI Bhawan, 123, Sardar Patel Colony, Naranpura, Ahmedabad.
27-6-2011	8 p.m. onwards	Cultural, Entertainment & Sports Programme Committee	Musical Nite "TRIBUTE TO LEGEND R.D. BURMAN " (PANCHAMDA)	Tagore Hall, Paldi, Ahmedabad
02-07-2011	9.00 A.M. to 1.15 P.M.	First Brain Trust Cum workshop meeting on " Audit under Income Tax Act,1961.	CA. Ameet Patel, Mumbai	Shantinath Hall, ICAI Bhawan, 123 Sardar Patel Colony, Naranpura, Ahmedabad.

PUBLICATIONS FOR SALE

1. New Publication on " INBOUND AND OUTBOUND INVESTMENT PRACTICE AND PROCEDURES" Authored by CA. Hiren D. Shah
   This Publication is Priced at Rs. 500/-. But for Members of our Association it is Priced at 50% Discount i.e. Rs.250/-. Please note that a Member shall be offered only one book at the above stated discounted Price.

GENTLE REMINDER:

1. Membership fees for the year 2011-12 falls due for payment on 1st April, 2011. Members are requested to remit the same by cash or by cheque in favour of "Chartered Accountants Association, Ahmedabad" depending upon their choice for enrolment.
   (a) Entrance Fees - Rs. 500/- **(b)** Life Membership Fees Rs. 7500/-
   (c) Annual Membership Fees
   1) If paid prior to June 30 of each financial year:
      (a) In case of Membership (of ICAI) for a period of less than or equal to five years Rs. 600/-
      (b) In case of Membership (of ICAI) for a period of more than five years Rs. 750/-
   2) If paid after June 30 of each financial year:
      (a) In case of Membership (of ICAI) for a period of less than or equal to five years Rs. 750/-
      (b) In case of Membership (of ICAI) for a period of more than five years Rs. 900/-
   (d) Brain Trust Meeting Fees Rs. 500/-
2. The members are requested to intimate changes in their email ID & mobile phone number at the Association's office, which will help the office bearers to remind you about the programmes through email and SMS.
3. Members who have not yet paid their contribution under the Mutual Benefit Scheme are kindly requested to pay the same at the earliest.

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