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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

A soft nature of person does not mean weakness, Remember…
Nothing is softer than water…
But its force can break the strongest of Rocks…

A Good heart and A Good nature are two different issues, A good heart can build many relationship but a good nature can win many good hearts.

"The new source of power is not money in the hands of a few, but information in the hands of many"

- John Naisbitt
American author

ATTENTION

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EDITORIAL

Body Language - The unspoken language

The ability to read a person's attitude and thoughts by his behavior was the original communication system used by the humans before the evolution of languages spoken by people in the world. Juxtapose this to the silent movies of 1960's and before.

Body language is the language of non verbal communication. It is the language of minds. It is used for negotiating interpersonal attitudes and in some cases is used as a substitute of verbal message. In reality, body language travels faster than the spoken language when communicator and receiver are within the sight of each other. The very visibility (i.e. appearance) of a person sends vibrations which the opponent receives and primary reactions are formed in his within.

There is a rigid link between body language and words. The Body language is the entry point for entering into any type of verbal negotiation or communication. The effect created by the body language is to be sustained or removed by the spoken words.

In **"The Definitive Book of Body Language",** Alan and Barbara Pease, on page378-379 have decoded **Six Secrets of Attractive Body Language:**

Face: Have an animated face and make smiling a part of your regular repertoire. Make sure you flash your teeth.

Gesture: Be expressive but don't overdo it. Keep your fingers closed when you gesture, your hands below chin level and avoid arm or feet crossing.

Head Movement: Use Triple Nods when talking and Head Tilt when listening. Keep your chin up.

Eye Contact: Give the amount of eye contact that makes everyone feel comfortable. Unless looking at others is a cultural no-no, lookers gain more credibility than non lookers.

Posture: Lean forward when listening. Stand straight when speaking.

Territory: Stand as close as you feel comfortable. If the other person moves back, don't step forward again.

Mirror: Subtly mirror the body language of others.

One must realize that the entire body is to body language as the speech organs are to the spoken language. Each movement or position of body has adaptive, expressive and defensive functions – some conscious, some unconscious.

Posture, movements, eye contacts, expressions, appearance, clothing portray a person prior to the spoken words. They are the pilots of the communicator and create aspirations and expectations in the mind of the opponent.

All over the world, the politicians, the theatrical actors, the beauty pageants are known for their ability to exploit the nuances of body language. We professionals claim to be less than 0.05% of the total population and therefore are rare species. We struggle to master the spoken language which is effective only when the decibels we generate can reach the receiver. We too need to master the secrets of Body language and be more resourceful professionals.

World over, the most ardent users of body language are the politicians. The plausible explanation is they have to deal with human beings on a larger scale than any other living soul - rest of the human species exhibit the body language only when needed. The participants of a beauty pageant are trained how to sit, walk, stand, gesture, pose. Their movements are tested and accurate. The celluloid and small screen artists too do not lag behind. We all experience the outcome of their proficiency at using the body language.

One will never be able to change the body characters – like features, voice tone, frame structure etc. You cannot be somebody else. So love yourself the way you are. Do not worry about what you cannot change.

But do know that stinking body, stinking clothes, ruffled attire, ill fitted clothing are the great adversaries of meaningful body language. Presence of either of them will make the presenter work harder than normal to achieve the desired goal.

One can purposefully project negative body language by flattening pitch of voice, by stripping it off of all emotions, deadpanning face to eliminate emotions, very cleverly feeding wrong body movements. Here also, the manipulator has to be very smart because same disaster results when the person is too inhibited and awkward to use the correct gestures or just not knowing what is right.

A word of caution – the exaggerated use of a limited amount of body language makes the user a fair game to mimic.

Unconsciously, we all are playing the game of body language throughout the life time. Now, start playing it consciously. Break a few rules and see what happens. It will be surprising and sometimes a bit frightening, adventurous, revealing and funny, but I promise, it won't be dull.

CA DARSHAN SHAH

EDITOR

Please do read "The Definitive Book of Body Language", Alan and Barbara Pease.

PRESIDENT'S MESSAGE

DEAR PROFESSIONAL FRIENDS,

July is the month where we begin by celebrating the CA day on 1st of July, and I would say the celebrations continued for the Association and its members by way of Brain Trust meeting on 2nd July on the topic of Audits under the Income Tax Act. It was indeed a brain storming session and very well lead by the learned speaker from Mumbai CA Ameet Patel. The various events at the Association are lined up with an important event of 38th Residential Refresher Course (RRC) at Jaipur to be held from 6th to 9th August 2011 in prime focus. The process of registration of members for the RRC is going on and I am hopeful that large number of members would come forward for the RRC.

The rule 12 of the Income Tax Rules has been amended whereby w.e.f. 1-7-2011, Firms / Individuals / HUF liable to audit under section 44AB are now required to compulsorily file the return of income under digital signature. With the electronic filing of returns and processing of these returns by the department at the CPC various issues arose that were brought to the notice of the Association by the members concerned that included processing of returns with incorrect figures, non receipt of refunds, adjustment of incorrect demands, mismatch of tax credit with form no. 26AS. I am pleased to inform the members that the representation on issues referred and many others arising on account of processing returns was made by the Association to the Chief Commissioner of Income Tax-I, Ahmedabad and we are informed by the Hon. CCIT that same has been forwarded to D.G.(Systems), New Delhi for further action.

The issue of 2G spectrum has been talked about so many times and it continues to haunt back. The matter has brought in the discussion on the concept of "Presumptive Loss". The Deputy Chairman of Rajya Sabha Mr. M.K.Rahman Khan has suggested that ICAI must take up accounting and auditing related issues like presumptive loss and also suggest measures to the Government so as to improve the efficiency of public expenditure. (source - www.businessline.in). It is one more occasion of taking pride for being a part of the profession which is looked upon with a great degree of integrity.

The second week of the month has once again witnessed the terror attacks in Mumbai. Three bomb blasts at busy places of the city has resulted in loss of many lives. The city being the financial hub of the country and considering its geographical location and cosmopolitan culture has always been an easy and prime target for such kinds of attacks. The spirit of Mumbai and the resilience of the people are much talked about in the media. It is the time to look into the spirit of the family that gets shattered and affected by such attacks and whether any option lies apart from being resilient considering the number of attacks Mumbai has had over last decade. The spineless government's inaction and impotency to deal with such episodes have also been the reason of disappointment amongst the civil society.

Not favoring the culprits of these attacks or pardoning them for the barbaric acts on mankind, there are two ways to look into. One, there is this world of hatred that causes these terror attacks and another world filled with love that gives us strength and has the power to overcome hatred. Confirming it is the poem by Robert Frost "Fire and Ice" with which I would conclude:

"Some say the world will end in fire,

Some say in ice,

From what I've tasted of desire,

I hold with those who favor fire,

But if I had to perish twice,

I think I know enough of hate,

To say that for destruction ice,

It is also great

And would suffice,

Regards,

CA. C.H.Pamnani.

ARTICLE...

PART - III

DIRECT TAXES CODE BILL - 2010

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, in the first UPA Government, had announced in 2006 – 07 that there was need to simplify the Direct - Tax Laws. First, Dr. Kelkar Committee (Task Force) was appointed in 2004. Its report was received in July, 2004. Thereafter, an internal committee was appointed to draft a new Direct Tax Code Bill which would replace the existing Income tax Act, 1961 (ITA) and Wealth tax Act, 1957 (WTA). Based on this, the present Finance Minister, Shri Pranab Mukherjee, announced in his Budget Speech delivered in the Parliament on 6th July, 2009, that Direct Taxes Code, along with a Discussion Paper, will be released to the public for debate. He also stated that the Government will finalize the Direct Taxes Code Bill for introduction in the Parliament, after considering inputs received, sometime during the Winter Session.

1.2 Shri Pranab Mukherjee released the "Direct Taxes Code Bill, 2009" (DTC) with a discussion paper for public debate on 12th August, 2009. In his Foreward to this document he observed as under:

"The thrust of the Code is to improve the efficiency and equity of our tax system by eliminating distortions in the tax structure, introducing moderate levels of taxation and expanding the tax base. The attempt is to simplify the language to enable better comprehension and remove ambiguity to foster voluntary compliance. The new Code is designated to provide stability in the tax regime as it is based on well accepted principle of taxation and best international practices. It will eventually pave the way for a single unified taxpayer reporting system. It will specially meet the aspirations of our young and professionally mobile population."

1.3 The above Direct Taxes Code Bill, 2009, and the discussion paper issued in August, 2009, was discussed by the members of the public, tax professionals, trade, industry and professional associations and representations were made to the Government. Based on these representations, the Finance Ministry issued a Revised Discussion Paper on Direct Taxes Code on 15th June, 2010. In this revised discussion paper the Ministry identified eleven issues and announced that changes will be made in the Direct Taxes Code Bill. These issues are as under.

(i) **Minimum Alternate Tax (MAT)** - It was announced that MAT will be levied on book profit of the company and not on the gross assets of the company as originally proposed.

(ii) **Tax Treatment on Savings** - It was announced that Exempt Exempt Exempt (EEE) method will continue in respect of Government P.F., Public P.F., Recognised PF and certain approved Pension Funds, Insurance Products etc. In respect of other existing instruments for which EEE method is recognised at present will continue in respect of these instruments issued before the date of commencement of DTC. However, for these instruments issued after DTC comes into force, the Exempt, Exempt Tax (EET) as originally proposed will be introduced.

(iii) **Taxation of Income from Employment** - It was announced that the valuation of perquisite in the nature of rent free accommodation based on market value, as originally proposed, will not be introduced. The perquisites in relation to medical facilities / reimbursement, as per the existing law will continue with appropriate enhancement of monetary limits. The method of valuation of other perquisites will be appropriately provided in the Rules.

(iv) **Taxation of Income from House Property** - It was announced that the rental value of house property let out will be computed on the basis rent received or receivable basis. If the house is not let, rental income will be 'Nil' and no deduction for expenses will be allowed in such cases. However, in respect of one house which is not let, interest on monies borrowed for acquiring /constructing the house, subject to ceiling

of Rs.1.5 lacs, will be allowed.

(v) **Taxation of Capital Gains** - It was decided to modify the original proposal as under:

(a) Income from capital gain will not be considered as income from ordinary sources.

(b) Asset held for more than one year from the end of the financial year will be considered as long term capital asset.

(c) Securities Transaction Tax (STT) will continue.

(d) For long term capital gains indexation benefit will continue. The existing date of 1.4.1981 will now be fixed as 1.4.2000.

(e) Capital Gains Savings Scheme will be introduced.

(f) A new scheme for taxation of capital gains on investment assets has been proposed to reduce the burden of tax.

(g) Income of FIIs from share trading will be considered as capital gains and not business income.

(vi) **Taxation of Non-Profit Organisations (Charitable Trust and Institutions) (NPO)**

The following modifications to original proposals were announced:

(a) Registration u/s 12 A / 12 AA given under the existing law will continue for the existing charitable trusts.

(b) The term "permitted welfare activity" as originally proposed changed to "charitable purpose".

(c) NPO will be permitted to accumulate 15% of net income or 10% of gross receipts whichever is higher for 3 years subject to certain conditions.

(d) Tax rate on net taxable income in excess of Rs.1 lac will be 15% of such excess.

(e) NPO can maintain books on cash method of accounting.

(f) Certain other beneficial provisions are proposed.

(vii) **Special Economic Zones (SEZ)** - It was proposed that specific provisions for protecting such deduction in the case of SEZ for the unexpired period will be provided. Similarly, provision to protect profit linked deductions to existing SEZ units will also be made.

(viii) **Concept of Residence in the case of Foreign Companies** - Instead of the original proposal the following provisions will be made:

(a) A Foreign company will be treated as resident in India if its "place of effective management" is situated in India.

(b) A new concept of "Controlled Foreign Company (CFC) will be introduced as an anti-avoidance measure.

(ix) **Double Taxation Avoidance Agreements (DTAA)** - The existing provision which states that DTAA or Domestic Law which is more favourable to the assessee will apply, is proposed to be continued under DTC. However, when (i) General Anti Avoidance Rule, (ii) Controlled Foreign Company provisions or (iii) Branch Profits Tax provisions are invoked, the Domestic law will apply.

(x) **Wealth Tax** - This tax will be levied on 'Unproductive Assets" as at present. List of such assets will be modified and explained. This tax will be payable by all assessees except NPOS. The threshold limit and rate of tax will be modified.

(xi) **General Anti - Avoidance Rule (GAAR**) - The following modifications were announced.

(a) CBDT will issue guidelines to provide for the circumstances under which GAAR may be invoked.

(b) GAAR provisions will be invoked only in respect of an arrangement where tax avoidance is beyond specified threshold limit.

(c) The forum of Dispute Resolution Panel (DRP) would be available where GAAR provisions are invoked.

1.4 Based on the above Revised Discussion Paper, the Finance Ministry has revised the Direct Taxes Code, Bill, 2009, originally drafted in 2009. The revised Direct Taxes Code Bill, 2010, was, accordingly, introduced in the Parliament by the Finance Minister on 27.8.2010. While introducing this Bill he has explained the objective for replacing the present Income tax Act, 1961 and Wealth Tax Act, 1957 by the new Direct Taxes Code (DTC) as under:

"The Income tax Act, 1961, has been subjected to numerous amendments since its passage fifty years ago. It has been considerably revised, not less than thirty-four times, by amendment Acts besides the amendments carried out through the annual Finance Acts. These amendments were necessitated by policy changes due to the changing economic environment, increasing sophistication of commerce, increase in international transactions as a result of globalization, development of information technology, attempts to minimize tax avoidance and in order to clarify the statue in relation to judicial decisions. As a result of

all these amendments, the basic structure of the Income tax Act has been over burdened and its language has become complex. Tax administrators, accountants and tax payers have raised concerns about the complex structure of the income tax Act. In particular, the numerous amendments have rendered the Act difficult to decipher by the average tax payer. The Wealth tax Act, 1957 has also witnessed amendments.

The Government, therefore, decided to revise, consolidate and simplify the language and structure of the direct tax laws. A draft Direct Taxes Code along with a Discussion Paper was released in August, 2009 for public comments. It proposed to replace the income tax Act, 1961 and the Wealth tax Act, 1957 by a single Act, namely the Direct Taxes Code. Public and stakeholder feedback on the proposals outlined in these documents was analysed and suggestions for amendments received from members of the public, business associations and other bodies were taken into account. Thereafter, a Revised Discussion Paper addressing the major issues was released in June, 2010. The present Bill is the outcome of this process."

1.5 The Direct Taxes Code Bill, 2010 (Code or DTC) contains 319 sections divided into 20 Chapters. The basic concepts are stated in these sections. However, details about computation of income, procedures to be followed, rates of taxes, rates of depreciation etc. are given in 22 schedules annexed to the Bill. The first four schedules give rates of taxes applicable to various types of assessees, TDS rates etc. This is a departure from the existing Income tax Act under which rates of taxes, TDS rates etc. are announced every year in the Finance Bill. Now, if the rates have to be changed, these schedules will be amended by the Parliament through the Amendment Act or Finance Act. This is a welcome change. Reading the Code as a whole, it will be noticed that several new concepts are proposed to be introduced. In this article, the provisions of the Code are briefly discussed. It is stated that the DTC is under consideration of the Standing Committee for Finance. After its Report is submitted, the Parliament will consider the Bill and the proposals for modification, before enacting the Code. The intention of the Government is to make the Code effective from 1.4.2012. Therefore, if the Code is enacted by the Parliament in 2011, the income for the F.Y. 1.4.2012 to 31.3.2013 and onwards will be assessed as provided in the Code.

2. Some Salient Features of the Code

2.1 Both the Direct Tax Laws i.e. Income tax Act and Wealth tax Act are combined in the Code so that all procedural provisions will be common. The assessee will have to file only a single return for both the taxes and only one common assessment order for levy of Income tax and Wealth tax will have to be passed by the A.O. Similarly, the appellate procedure against the levy of income tax and Wealth tax will also be common. Therefore, if an assessee has taxable income he will have to file a tax return which will include particulars of wealth even if the taxable net wealth is below taxable limit. Similarly, if he has taxable wealth but the total income is below the taxable limit, he will have to give details of his wealth as well as total income.

2.2 The language used in each section of the code is simple. Each sub-section has short sentences intended to convey only one point. Similarly, the use of "proviso or Explanation" in the section is done away with. More importantly, keeping in view the fact that a tax law is essentially a commercial law, extensive use of formulae and tables has been made.

2.3 The structure of the statute has been developed in a manner which is capable of accommodating the changes in the structure of a growing economy without resorting to frequent amendments. Therefore, to the extent possible, the essential and general principles have been reflected in the statute and the matters of detail are contained in the Schedules or will be clarified in the Rules to be prescribed.

2.4 At present, the rates of taxes are stipulated in the Finance Act of the relevant year. Therefore, there is a certain degree of uncertainty and instability in the prevailing rates of taxes. Under the Code, all rates of taxes are prescribed in the First to the Fourth Schedule to the Code itself. The changes in the rates, if any, will be done through appropriate amendments to the Schedule brought before Parliament in the form of an Amendment Bill or the Finance Bill.

2.5 At present, definitions of certain words and terms are given in different sections. Some times, the same word or term is defined differently in different sections. In the Code, Section 314 gives definitions of 297 words or terms. Thus, definitions of all words or terms used in the Code are available at one place.

2.6 The Code seeks to adopt, to the extent possible, a comprehensive definition of income. Therefore, income

for the purposes of this Code will, in general, include all accruals and receipts of revenue and capital nature unless otherwise specified. Further, on account of the assignment of the taxing powers under the Constitution to the States, agricultural income has been excluded from the scope of this Code.

2.7 Two new concepts, as a measure of anti-avoidance measure, have been introduced in the Code. These relate to introduction of "General Anti – Avoidance Rules" (GAAR) in sections 123 and 124 and "Controlled Foreign Company" (CFC) Rules as provided in Schedule - 20.

3. Chapters and Schedules

As stated earlier, there are 20 Chapters divided into 319 sections and 22 Schedules. For the purpose of understanding the provisions of the Code one has to refer to the relevant sections, definitions of certain words or terms in section 314 and also refer to the relevant schedules. In section 314 there are 297 sub-sections defining the various words and terms used in the Code.

Briefly stated these sections and schedules are as under.

Chapter	Topics		Schedules
1.	**Short Title, Extent and Commencement** Sec. 1		-
2.	**Basis of Charge** Sec. 2 - 11		(i) 1 (Rates of Income tax) (ii) 6 (Exclusion from Total Income) (iii) 7 (Entities not taxable)
3.	**A.**	**Computation of Total Income** **General** Sec. 12 - 19	(i) 6 (In Exclusion from Total Income) (ii) 9 (Income from Special sources)
	B.	**Heads of Income** **(i) Income from Employment** Sec. 20 - 23	-
		(ii) Income from House Property Sec. 24 - 29	-
		(iii) Income from Business Sec. 30 - 45	(i) 8 - Profits of Insurance Business (ii) 10 - Profits of Shipping Business (iii) 11 - Profits of Mineral Oil and Natural Gas Business (iv) 12 - Profits of SEZ Units (v) 13 - Profits of Specified Businesses (vi) 14 - Presumptive Income (vii) 15 - Depreciation Rates (viii) 22 - Allowance of Deferred Revenue Expenditure
		(iv) Capital Gains Sec. 46 - 55	17 - Determination of Cost of Acquisition of Assets

Chapter	Topics		Schedules
		(v) Income from Residuary Sources Sec. 56 – 59	20 - Determination of Income of Controlled Foreign Company (CFC)
	C.	**Aggregation of Income** Sec. 60 - 67	-
	D.	**Tax Incentives** Sec. 68 - 86	16 - Deduction for approved Donations.
	E.	**Maintenance of Accounts and other related matters** Sec. 87 – 89	-
4.		**Computation of Total Income of Non-profit Organisations** Sec. 90 - 103	7 (Persons not liable to tax)
5.		**Computation of Book Profit** Sec. 104 - 107	2 (Rates of tax)
6.		**Taxation of Venture Company / Fund** Sec. 108	-
7.		**Taxation of Dividend Distribution by Companies** Sec. 109	2 (Rates of tax)
8.		**Taxation of Distributed Income from M.F. and Life Insurers** Sec. 110	2 (Rates of tax)
9.		**Branch Profit tax** Sec. 111	2 (Rates of tax)
10.		**Wealth Tax** Sec. 112 - 114	2 (Rate of tax)
11.		**Provisions relating to Avoidance of Tax** Sec. 115 - 125	
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	C.	**Assessment in Special Cases** Sec. 164 - 177	
	D.	**Appeals and Revision** Sec. 178 - 192	21 - Appealable orders before CIT(A)
13.	**A.**	**Collection and Recovery of Tax Deduction of Tax at Source** Sec. 193 - 201	3 (TDS rates for Residents) 4 (TDS rates for Non - Residents)
	B.	**Collection of Tax at Source** Sec. 201 - 204	
	C.	**Advance Tax** Sec. 205	

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ARTICLE...

APPLICABILITY OF SECTION 2(22)(E) IN CASE OF LOAN ADVANCED BY ONE COMPANY TO ANOTHER COMPANY HAVING A COMMON SHAREHOLDER

CA. Parag Raval

Author is the Central Council Member and can be reached at

Where to be taxed?

Mumbai Special Bench in case of **Bhaumik Colour P. Ltd. v ACIT [2009] 313 ITR 146** has held that deemed dividend can be assessed only in the hands of a person, who is a shareholder of the lender company and not in the hands of a person other than a shareholder.

The expression "shareholder" referred to in section 2(22)(e) refers to both a registered shareholder and beneficial shareholder.

ITAT Mumbai has also supported this view in case of **Shruti Properties P. Ltd. [2010] 4 ITR 186**. The effect of these decisions is that in a case where loan is advanced by one company to another company having common shareholder, the amount of such loan would be caught under the mischief of the provisions of section 2(22)(e) and deemed dividend will be assessed in the hands of such common shareholder. Say loan is advanced by X Ltd. (Lender Company) to Y Ltd. (Borrower Company) and Mr. A holds 10% or more equity shares in X Ltd. and also substantially holds 20% or more equity shares in Y Ltd., then following the decision of Mumbai Special Bench, deemed dividend can be assessed in the hands of Mr. A and not in the hands of Y Ltd. to the extent of accumulated profits.

Thus, in all cases where loan is advanced by one company to another, even for genuine purpose, the ruling of Special Bench would result into taxing of deemed dividend in the hands of a common shareholder. However, before concluding this, it is relevant to consider the following:

Whether it is taxable?

Section 2(22)(e):

Section 2(22)(e) has three limbs, which are as under:

"**Any payment by a company**, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after 31-5-1987, **by way of advance or loan**:

First limb

(a) **to a shareholder**, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) **holding not less than ten per cent of the voting power.**

Second limb

(b) or **to any concern in which such shareholder** is a member or a partner and in which he **has a substantial interest** hereafter in this clause referred to as the said concern.

Third limb

(c) or **any payment** by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

Intention behind enacting section 2(22)(e):

The Finance Minister in his budget speech while introducing clause (e) to section 2(6A) of the IT Act, 1922 (which corresponds to section 2(22)(e) of IT Act, 1961); acknowledged the fact that the insertion of this clause was based on recommendations of Taxation Enquiry Commission (Report of 1953-54 Volume II Chapter X). The intention laid down therein was that closely held companies (i.e., companies in which public are not substantially interested), which are controlled by a group of members, even though the company has accumulated profits would not distribute such profit as dividend, because if so distributed the dividend income would became taxable in the hands of the shareholders. Instead of distributing accumulated profits as dividend, companies distribute them as loan or advances to shareholders or to concern in which such shareholders have substantial interest or make any payment on behalf of or for the individual benefit of such shareholder. In such an event,

by the deeming provisions such payment by the company is treated as dividend. **The deeming provisions as it applies to the case of loans or advances by a company to a concern in which its shareholder has substantial interest, is based on the presumption that the loan or advances would ultimately be made available to the shareholders of the company giving the loan or advance.**

Conditions for invoking second limb of section 2(22)(e):

(i) Loan or advance is given by a closely held company.

(ii) Such loan is given to a concern.

(iii) One of the shareholders' is beneficially holding 10% equity share capital in the closely held company and has substantial interest in the concern.

(iv) Such loan or advance is treated as deemed dividend to the extent of accumulated profits of the company.

Inspite of the above conditions, **the essence for invoking the provisions of section 2(22)(e) is that the loan or advance given should confer individual benefit to the shareholder.** Though this condition is not envisaged in the section itself, various courts have held that without the fulfillment of this pre-requisite, provisions of section 2(22)(e) can not be invoked as it would abandon the purpose behind this section. Some important decisions in this context are as under:

(a) Calcutta High Court in case of **Mukundray K. Shah v Commissioner of Income Tax [2005] 146 Taxman 0743** has observed that notwithstanding the fact that the company undisputedly satisfies all qualifications laid down for invoking section 2(22)(e), the critical qualification that should be examined is that whether the payment made was for the benefit of the shareholder or person or such persons having substantial interest. In absence of this qualification, the provisions of section 2(22)(e) can not be invoked.

On appeal being made to Supreme Court in the above case [290 ITR 433], the honorable Apex Court confirmed the assertion of Calcutta High Court that section 2(22)(e) can be invoked only if there is individual benefit conferred upon the shareholder. However, the Apex Court held against the assessee due to fact that there existed co-relation between the RBI bonds purchased by the assessee and the payments made by a private limited company to two partnership firms wherein the assessee was a shareholder and partner respectively.

Thus, the basis for forming this decision was that there was individual benefit conferred upon the shareholder, without which the provisions of section 2(22)(e) can not be invoked.

(b) Calcutta High Court in case of **Nandlal Kanoria v CIT [1980] 122 ITR 405** has held that in order to invoke section 2(22)(e), there should be some co-relation between:

(i) The payment made by the lender company to borrowing company and

(ii) An advantage or benefit flowing from borrowing company to shareholder.

(c) Rajasthan High Court in case of **Hotel Hiltop v CIT [2009] 313 ITR 0116** has also supported this view by stating that the substance of the requirement for invoking section 2(22)(e) is that the payment should be made on behalf of or for the individual benefit of the shareholder. Section 2(22)(e) is intended to attract liability of tax on the person, on whose behalf, or for whose individual benefit, the loan is advanced by the lender company.

Thus, the motive or intention of the lender company while advancing the loan is important to analyze because for invoking section 2(22)(e), there should be some "benefit" which is flowing to the shareholder. In absence of this condition, the provisions of section 2(22)(e) can not be invoked notwithstanding the fact that all the other conditions are fulfilled.

Genuine business transactions are outside the scope of section 2(22)(e):

The provisions of section 2(22)(e)(ii) states that where loan is advanced to a shareholder by a company in its ordinary course of business where money lending is substantial part of its business, the provisions of section 2(22)(e) would not get attracted. Does this mean that those assessees which are not in money lending business, can not be waived of the provisions of this section on giving loans in their ordinary course of business?

Delhi High Court in case of **CIT vs Creative Dyeing & Printing (P.) Ltd. [2009] 184 Taxman 483** held that the provisions of section 2(22)(e)(ii) gives an example only of one of the situations where the loan or advance will not be treated as deemed dividend. The same can not be expanded further to take away the basic meaning, intent and purpose of the main part of this section. Once it is held that the business transactions do not fall within the provisions of this section as they do not correspond to the intention behind

this section, there is no need to go further to section 2(22)(e)(ii).

Chandigarh Tribunal in case of **Deputy Commissioner of Income Tax v Lakra Brothers 2007-(162)-Taxman -0170 – TCHD** has observed that the provisions of section 2(22)(e) can not be stretched to include even legitimate business transactions carried out in ordinary course of business where the intention is neither to give shareholder any money out of the amount of loan nor for his individual benefit. There should be actual payment i.e. outflow of money from the company to the shareholder. This condition is not satisfied in a case where the lender company advances money to lend financial support to another company, which is utilized by the borrowing company for genuine business purpose to bestow benefit upon its business and not upon the common shareholder. Where the real intention of the loan transaction is to facilitate the borrowing company in carrying on its business, with no other hidden purpose, it can be said that the provisions of section 2(22)(e) can not be invoked. This view is supported in the decisions of:

(i) CIT vs Raj Kumar [2009] 181 Taxman 155 (Delhi)

(ii) CIT vs Ambassador Travels (P.) Ltd. [2008] 173 Taman 407 (Delhi)

(iii) CIT vs Nagindas M. Kapadia [1989] 177 ITR 393 (Bombay)

Similarly, Delhi Tribunal in the case of **Sunil Seth v Deputy Commissioner of Income Tax [2008] 026 SOT 0095** held that simply because of the fact that the sum of money was given to the shareholder, section 2(22)(e) can not be invoked. Enough material or evidence should be brought on record to prove that the loan advanced was not for benefit of business but for shareholder's individual benefit.

The burden to prove the same is on the revenue as held by **Kerala High Court in case of Commissioner of Income Tax v P. V. John [1980] 181 ITR 0001.**

At this point, it is essential to consider the case of **M. D. Jindal v. CIT [1987] 164 ITR 28 ([1986] 28 Taxman 509) (Cal.).** In this case, a company dealing in iron materials had supplied iron rods to the assessee who controlled the company alongwith his wife, which were utilized by the assessee in construction of his house. The assessee contended that this transaction was not in nature of loan as it amounted to sale of iron rods by the company and the consideration to be paid against it was adjusted against the amount payable by the company to the assessee in lieu of purchase of flats, which were constructed by him using the said iron rods. It was observed that if the assessee had got the iron rods before entering into an agreement for sale of flats, it would have clearly invoked section 2(22)(e). Instead of doing that way, the assessee thought of a device to circumvent the provisions of section 2(22)(e) and made an arrangement with the company by which the company was made debtor of the assessee. The sale of flats to the company was observed to be an "arranged affair" to avoid taxing of deemed dividend in the hands of the assessee. Hence, value of iron rods were held to be taxable in the hands of the assessee as deemed dividend.

Notional entries are to be excluded:

In order to attract section 2(22)(e), there should be outgoing or flow of money from the lender company to the shareholder as held in case of Lakra Brothers(Supra). Thus, notional payment by way of book entries will not be included in the calculation of the amount of deemed dividend. Thus, if interest is charged by the lender company or notional entry for expenses is passed in the books, in any case, the same will have to be excluded from the computation of deemed dividend in the hands of shareholder.

Conclusion:

In order to attract the mischief of section 2(22)(e), there should be two findings of facts, namely, the factum of payment by the lender company and the motive or intention of the company making such payment, namely, benefit accruing to the assessee shareholder. The crux for invoking the provisions of section 2(22)(e) is that the amount of loan given by the company should confer any kind of individual benefit to the shareholder. The loans advanced on the ground of business expediency can not be constituted as "loan" for the purpose of section 2(22)(e).

Thus, inspite of the decision of Special Bench in case of Bhaumik Colours (Supra), in every case of loan advanced by one company (i.e. X Ltd.) to another company (i.e. Y Ltd.) having common shareholder (i.e. Mr. A), it is not possible to conclude that the provisions of section 2(22)(e) would apply to tax deemed dividend in the hands of such common shareholder (Mr. A), where the borrower company (Y Ltd.) did not act as conduit pipe through which money came from the lender company (X Ltd.) to shareholder (Mr. A). Moreover, as regards taxability of deemed dividend in hands of Y Ltd., it can be said that unless and until Y Ltd. is a registered and beneficial shareholder, the provisions of section 2(22)(e) can not be invoked to tax dividend in hands of Y Ltd.

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FROM THE COURTS

36 INTEREST ON REFUND OF SELF ASSESSMENT TAX :

CIT V/S. SUTLEJ INDUSTRIES LTD. (2010) 325 ITR 331 (DELHI)

Issue :

Whether assessee is entitled to interest on refund of self assessment tax?

Held :

It is a trite law that wherever the assessee is entitled to refund, there is a statutory liability on the Revenue to pay the interest on such refund on general principles. Sec. 244A of the I.T. Act, 1961, was inserted in the statute as a measure of rationalization to ensure that the assessee is duly compensated by the Government by way of payment of interest for monies legitimately belonging to the assessee and wrongfully retained by the Government without any gaps. On an analysis of Sec. 244A of the Act it is seen that where "Refund of any amount" becomes due to the asseesee, the assessee is entitled to simple interest thereon. The mode and manner of calculating such interest in laid down in clauses (a) and (b) of sub-section (1) of Sec. 244. Even though the short title to Sec. 140A makes it clear that there is no difference between (i) the tax paid u/s 115WJ, which deals with advance tax in respect of fringe benefits; or (ii) the tax collected at source u/s 206C or (iii) any tax paid by way of advance tax or any tax treated as paid u/s 199, which deals with credit for tax deducted, which are provided u/s 244(1)(a). Hence where self assessment tax is paid by the assessee u/s 140A is refunded, the assessee should be on principle entitled to interest thereon since the self assessment tax falls within expression " refund of any amount". The computation of interest on self assessment tax has to be in terms of section 244(1)(b), i.e. from the date of payment of such amount upto the date on which refund is actually granted.

37 FAILURE TO PRODUCE PERSONS & SEC. 145 (3) :

CIT V/S. JAS JACK ELEGANCE EXPORTS (2010) 191 TAXMAN 386 (DELHI)

Issue :

Whether provision of sec. 145(3) can be invoked for failure of the assessee to produce persons to whom payments are made?

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Held :

As regards failure of the assessee to produce the persons to whom payments were made by the assessee for fabrication, embroidery and dyeing and finishing etc, the Assessing Officer was at liberty to summon any or all of them in case he wanted to verify the genuineness of the payments made to them. No such course of action was, however adopted by him. Failure of the assessee to produce those persons could not have been a ground for rejecting the accounts u/s 145 (3) of the Act.

38 "RELIANCE PETRO PRODUCTS" DECISION EXPLAINED

CIT V/S. VIJAY KUMAR JAIN (2010) 325 ITR 378 (CHHATISGARH)

Issue :

What are the necessary ingredients for levy of penalty u/s 271(1)(c)?

Held :

In this decision for levy of penalty u/s 271(1)(c), High Court has explained the decision in "Reliance Petro Products" as under :

The Supreme Court in its latest decision in the matter of CIT v/s. Reliance Petro Products P. Ltd. (2010) 322 ITR 158 while considering the applicability of Sec. 271(1)(c) of the Act, held that in order to impose penalty under the aforesaid section, there has to be concealment of particulars of income of the assessee and the assessee must have furnished inaccurate particulars of his income. The meaning of the word "Particulars" used in section 271(1)(c) would

embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that every thing would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous. Where 'there is no finding' that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty u/s 271(1)(c). A mere making a claim, which is not sustainable in law by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars.

39 SEC. 194-C : APPLICABILITY : CONTRACT OF WORK V/S. CONTRACT OF SALE : THREE SITUATIONS.

CIT V/S. GLENMARK PHARMACUTICALS LTD.2010) 191 TAXMAN 455 (BOM) / (2010) 324 ITR 199 (BOM)

Issue :

How the provisions of Sec. 194-C would be applicable in three different situations?

Held :

Court had an occasion to discuss three different situation for applicability of provision of Sec. 194-C.

(1) The pharmaceutical company itself manufactures pharmaceutical preparations which are sold under its brand name.

(2) It involves loan licensing where the raw materials are supplied by the pharmaceutical company to the license manufacturer who, in turn manufactures pharmaceutical product on behalf of the company.

(3) One whereby an agreement between the pharmaceutical company and a manufacturer, it is manufacturer who procures the raw materials and manufactures the product under the specifications of the company and sells the end product to the company. The manufacturer may also affix the trade mark or brand name of the company, who in turn markets the products.

Court referred various circulars issued on the subject, by CBDT and also referred various court decisions and came to the conclusion that :-

(1) Where the material is provided by the purchaser and the work of fabrication or manufacture is carried out by the contractor, the agreement would constitute a contract of work.

(2) Where a manufacturer produces goods to the specifications of the purchaser and the property passes to the purchaser only upon delivery, the contract would be regarded as a contract of sale, if the raw material is sourced by the manufacturer and is not supplied to him by the purchaser.

The view of several High Courts was that contracts where:-

(i) Property passes to the purchaser upon delivery of the goods; and (ii) the raw material was sourced by the manufacturer and was not supplied by the purchaser do not fall within the scope and ambit of section 194-C.

40 LIQUIDATED DAMAGES FOR DELAY IN SUPPLY OF PLANT IS CAPITAL RECEIPT :

CIT V/S. SAURASTRA CEMENT LTD. (2010) 233 CTR 209

Issue :

Liquidated damages received for late delivery of plant and machinery is capital receipt or revenue receipt?

Held :

As per agreement for supply of plant, a provision was made that certain liquidated damages shall be paid by the supplier for late delivery of plant, calculated at certain parentage of the price, without proof of actual damages the assessee would have suffered on account of delay. The delay of supply could be of the whole plant or a part thereof but the determination of damages was not based upon the calculation made in respect of loss of profit on account of supply of a particular part of the plant. It is evident that the damages to the assessee was directly and intimately linked with the procurement of a capital asset i.e. cement plant, which could obviously lead to delay in coming into existence of the profit making apparatus, rather than receipt in the course of profit earning process. Compensation paid for the delay in procurement of capital asset amounted to sterilization of the capital asset of the assessee as supplier had failed to supply the plant within time as stipulated in the agreement and relevant clause came into play. The amount received by the assessee towards compensation for sterilization of the profit earning source, not in the ordinary course of their business was a capital receipt in the hands of the assessee.

41 CONSTITUTIONAL VALIDITY : RULE OF INTERPRETATION :

TUBE INVESTMENTS OF INDIA LTD. V/S. ASSTT. CIT (2010) 325 ITR 610 (MAD)

Issue :

What are the rules of interpretation to decide constitutional validity of a taxing provision?

Held :

While upholding constitutional validity of provisions of Sec. 40(a)(ia), High Court held as under :-

While considering the constitutional validity of a statute said to be violative of article 14 of the constitution, it is necessary to bear in mind certain well established principles which have been evolved by courts as rules of guidance in discharge of its constitutional function of judicial review. The first is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judiciary recognized and accepted that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its decimation is based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc.

42 NOTICE U/S 143(2) IS MANDATORY IN U/S 148 PROCEEDINGS :

CIT V/S. RAJEEV SHARMA (2010) 192 TAXMAN 197 (ALL)

Issue :

Whether notice u/s 143(2) is a must before proceeding to pass order in u/s 148 proceedings?

Held :

When a statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. It has been hitherto uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all.

The provisions contained in sub section (2) of section 143 are mandatory and the Legislature, in its wisdom by using the word 'reason to believe' has cast a duty on the A.O. to apply his mind to the material on record and after being satisfied with regard to escaped liability, to serve notice specifying particulars of such claim.

In view of the above, after receipt of return in response to notice u/s 148, it shall be mandatory for the AO to serve a notice under sub section (2) of section 143 assigning reasons therein.

In the absence of any notice issued under sub-section (2) of section 143 after receipt of fresh return submitted by the assessee in response to notice u/s 148, the entire procedure adopted for escaped assessment shall not be valid.

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TRIBUNAL NEWS

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20 ARMAYEAH GLOBAL VS. ACIT 45 SOT 69(MUM), ASSESSMENT YEAR 2007-08, ORDER DATED: FEBRUARY 23, 2011.

BASIC FACTS

The assessee was engaged in the business of manufacturing and exporting of hand embroidery and handicraft items. It exports its products to foreign countries and for procuring export orders, it took services of overseas commission agent. Agent was entitled for commission on actual sales executed. During the course of assessment, AO opined that the said services were managerial in nature and hence chargeable to tax in India and consequently assessee should have deducted tax on it. On appeal CIT(A) upheld the disallowance and aggrieved of the same, assessee went into appeal before ITAT.

ISSUE

Whether services of a commission agent for procuring export orders were chargeable to tax in India and consequently withholding provisions were applicable in the absence of any permanent establishment in India?

HELD

ITAT after considering the facts of the case held that neither the services were rendered in India nor the agent has any permanent establishment in India. The agent only received commission as a percentage of sales as per the contractual terms. The payments made were not chargeable to tax in India as the same was neither fee for technical services nor the same be said to be of managerial in nature. Hence in view of the same, tax was not deductible on the said payments.

21 GAUTAM CHAND JAIN VS. ITO 45 SOT 61 JABALPUR

ASSESSMENT YEAR 2001-02, ORDER DATED: APRIL 20, 2010

BASIC FACTS

Regular assessment was carried out for the year under consideration for the assessee. Assessee went into appeal before CIT(A) against the order of the AO. CIT(A) passed his order and allowed the appeal partially. In the mean time, AO issued a notice u/s 154 to rectify the assessment order in respect of an item of income while passing order giving effect to CIT(A)'s order. Assessee objected on this issue but assessing officer rectified the said order and enhanced the income which was duly confirmed by the CIT(A). aggrieved of the same, assessee went into appeal before ITAT.

ISSUE

Can assessing officer rectify the assessment order u/s 154 while passing order giving effect to CIT(A)'s order?

HELD

After hearing both the sides, ITAT held that the assessment order was rectified after the completion of four years from the date of the assessment order which was beyond the time limit provided in the act for rectification. Also it was held that the assessment order was merged with the order of CIT(A), hence only CIT(A)'s order can be rectified if any mistake is apparent from record. It was not allowed to amend the original assessment order by invoking provisions of section 154. Assessing officer is only required to pass an order giving effect to CIT(A)'s order. Hence in view of the same, order of the CIT(A) was quashed.

22 ITO VS. HANS ROAD CARRIER(P.) LTD. 45 SOT 149 (AHD) ASSESSMENT YEAR 2004-05, ORDER DATED: AUGUST 31, 2010.

BASIC FACTS

The assessee was engaged in the business of transportation business. Business consists of supply of own trucks on hire and arranging of trucks for customer on commission basis. During the perusal of TDS certificates, AO observed that in relation of 'S' Corporation, on an amount of Rs. 34,24,868 tax of Rs. 35,982 was deducted. However against the same, income offered by the assessee in this respect was only Rs. 44,000. Assessee explained that the said amount consists

of commission component which was Rs. 500 per truck and the rest of the amount was paid directly to the owners of the truck. AO opined that as the amount appearing in the TDS certificate does not matches with the amount recognized in books, he brought the differential amount to tax in the hands of assessee which CIT(A) deleted. Aggrieved of the same, revenue went into appeal before ITAT.

ISSUE

Whether it is necessary that amount shown in TDS certificate was income of the assessee and should be taxed wholly in the hands of the assessee?

HELD

As the nature of the business of the assessee involves that assessee arranges trucks for the customers and received commission for the same was complicated and AO misinterpreted the same. Assessee explained that tax was deducted on the whole amount of freight on trucks supplied through assessee but the said amount has an overriding right of the truck owners. Also, it was held that TDS is not a levy of tax but just a mechanism of collection of taxes. Various examples were cited by the ITAT wherein it was established that it is not necessary that the amount specified in TDS certificate is to be offered to tax in the same assessment year as shown in TDS certificate. It was brought to notice that income on which tax is deducted as per TDS certificate may or may not be chargeable to tax in the hands of the recipient assessee. Hence as the amount has an overriding right of the truck owners and that income is not the income of the assessee, order of CIT(A) was upheld.

23 DCIT VS. MOTHER DAIRY FRUITS & VEG (P.) LTD.45 SOT 186(DELHI)

ASSESSMENT YEAR 2003-04, ORDER DATED: JANUARY 28, 2011.

BASIC FACTS

The assessee paid salary to staff at Netherlands, who were residents of Netherlands. It did not deduct tax on the said payments. AO invoked provisions of the 40a(iii) as TDS was not deducted on the said payment. CIT(A) deleted the said addition by agreeing on the submission made by assessee. Aggrieved of the same, revenue went into appeal before ITAT.

ISSUE

Whether assessee is required to deduct tax on salary paid in any foreign country when the services were not provided in India and whether AO was justified in disallowing the amount by invoking provisions of section 40a(iii)?

HELD

As the amounts were paid to non residents, deduction of tax on the said amount would arise only if the said amount is taxable in India. If the services are rendered in India, it is deemed to accrue or arise in India and hence chargeable to tax in India. In the present case, as the services were not rendered in India but in Netherland, payment is not chargeable to tax in India and hence withholding provisions will not apply. Therefore assessee was right in not deducting tax and appeal of the revenue was dismissed.

24 ACIT Vs. GLOBAL VANTEDGE (P.) LTD 45 SOT 140 (DELHI) Assessment Year 2005-06, Order dated: May 06, 2011.

BASIC FACTS

The assessee was engaged in providing receivable management services to its offshore clients. For the year under consideration, assessee had undertaken international transaction with its associate enterprise namely, GVI. AO referred the transaction to TPO for determining arm's length price (ALP). TPO made an addition of Rs. 12,37,05,850 to the price declared by the assessee. AO made the said addition to the income of the assessee. CIT(A) provided relief to the assessee as the difference between ALP computed by him not shown by the assessee was not more than 5%. Aggrieved of the same, revenue went into appeal before ITAT.

ISSUE

Whether CIT(A) was right in deleting the addition as the difference between ALP determined by him and as shown by assessee was not more than 5%?

HELD

As the CIT(A) granted relief to the assessee because the ALP determined by him was not more than 5% of what assessee has disclosed. Therefore benefit of 5% was rightly granted by the CIT(A). Also as in earlier assessment years, order of the CIT(A) has been upheld, the same was done for the year under consideration.

25 KANPUR SUBHASH SHIKSHA SAMITI VS. DCIT 45 SOT 153 (KANPUR)

ASSESSMENT YEAR 2006-07, ORDER DATED: FEBRUARY 28, 2011.

BASIC FACTS

The assessee was running educational institutes which were registered u/s 12A. For the year under consideration, assessee filed its return of income by declaring income at nil. AO opined that the assessee violated the provisions of section 13(1)(d) on the ground that it had given loan to another

society in the financial year 2002-03 which continued to be lent during the year under consideration. Hence AO held that income of the assessee was to be calculated without giving benefit of sections 11 & 12. CIT(A) upheld the contentions of the AO. Aggrieved of the same, assessee went into appeal before ITAT.

ISSUE

Whether loan given to another society engaged in the same activity of running educational institutes amounts to violation of provisions of section 13(1)(d) & hence whether AO was justified in disallowing benefits of section 11 & 12?

HELD

Loan was given in the assessment year 2003-04 and the same was received back in march 2009. It was noticed that the same loans were also givenin earlier years where no disallowance was done. Further while passing order of assessment year 2008-09, AO observed that the other society was also engaged in the same charitable activities as that of assessee. ITAT held that ratio of DIT Vs. Acme Educational Society [2010] 326 ITR 146(Dsel.) was equally applicable in the said case. Following the said case, it was held that the provisions of section 13(1)(d) read with section 11(5) were not violated as the said loan was neither investment not deposit. Also loan was given in assessment year 2003-04, however the matter has been raised by the AO in assessment year under consideration. Nothing was brought on record in the intervening years. Hence it was held that AO himself in the similar circumstances had accepted that the assessee was entitled to exemption u/s 11, then principle of consistency should be followed and AO was not justified in denying the exemption u/s 11. Also AO failed to prove that the said loan was given out of accumulated surplus of the year under consideration because in the assessment order, it was clearly mentioned that surplus of income over expenditure is less than 15% of its gross receipts and hence income of the assessee works out to be nil. Finally in view of the aforesaid discussion appeal of the assessee was allowed.

26 ITO, V. CHANDRAKANT PATEL 131 ITD 1 (AHD)

ASSESSMENT YEAR – 2006-07, ORDER DATED APRIL 8, 2011

BASIC FACTS:

The assessee showed long term capital gains on sale of plots and showed sale consideration at 41,860 per sq. mt. The assessing officer made reference to DVO u/s 50C to determine capital gain. The DVO calculated the same at 45,000 per sq. mt. The assessing office on the basis of the report of DVO made addition. On appeal, the assessee contended that reference made u/s 50C was illegal. The CIT(A) held that a reference to DVO can be made either u/s 142A, or u/s 55A or u/s 50C. By, placing reliance on cited principles he had held that the assessing officer's action of referring the matter to the DVO for substituting the sale consideration was not legally sustainable. He had also opined that since the sale consideration as disclosed by the assessee being higher than the stamp value therefore, the assessing officer was not lawfully permitted to substitute the consideration for the purpose of computation of capital gains. In the appeal, he deleted the addition. Hence, the Revenue went in appeal.

ISSUE:

Whether for purpose of computation of capital gains u/s 48, a reference made to DVO only in situation as prescribed u/s 50C and not otherwise?

Whether area of operation of section 142A was limited in its span and confined to provisions of section 69, etc; and section 56(2) ?

HELD:

It was held that if a reference can be made to ascertain the fair market value of a property, then wherever this phrase 'to determine the fair market value of the property' was used there only the recourse of section 55A was possible. It was held that for the purposes of computation of capital gains u/s 48, a reference could be made to DVO only in situation as prescribed u/s 50C, and not otherwise. The provision of section 142A were also to be examined which limit its span of operation only to determine the value of investment in respect of certain assets, such as bullion, jewellery, valuable articles etc. In this section as well there was no power vest with assessing officer to seek the help of valuation officer in respect of determination of capital gains prescribed u/s 48 of the Act. It was held that the assessing officer was not empowered to refer to DVO because as per section 50C(2) the assessing officer may refer the valuation of a capital asset where assessee claims before assessing officer that the value adopted by the Stamp Valuation Authority exceeds the fair market value of the property as on the date of transfer. The valuation as suggested by DVO and the consequential addition as made by the assessing officer was to be reversed. The view taken by the CIT(A) was to be upheld. In the result, all the appeal of the revenue was to be dismissed.

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UNREPORTED JUDGEMENTS

In this issue we are giving full text of two important recent decisions pronounced by Mumbai Income tax Appellate Tribunal. The First one is regarding the powers of the Assessing Officer for invoking provisions of section 14A w.e.f. A.Y. 2008-09 r.w. rule 8D. The Hon'ble tribunal observed that when the assessee makes the claim regarding the quantum of expenses to the disallowed in terms of section 14A of the Act, it was incorrect on the part of the A.O. not to consider the claim of assessee accordingly. It was only when A.O. is not satisfied with the claim of assessee that A.O. can resort to the provisions of rule 8D of the Income Tax Rules. The Hon'ble Tribunal further observed that the satisfaction that the claim made by the assessee regarding expenses incurred in relation to the income which does not form part of the total income is not correct, has to be arrived at by A.O., on an objective basis. Without giving any finding with regard to the incorrectness of the claim made by the assessee regarding disallowance to be made u/s 14A, A.O. cannot apply rule 8D.

The Second decision relates to the issue regarding disallowance u/s 40(a)(ia) wherein the Bombay Tribunal while dealing with the issue whether TDS has to be made u/s 192 or u/s 194J, by way of an observation, mentioned that provisions of section 40(a)(ia) do not apply in the event of lesser deduction of tax and apply only in the event of non-deduction of tax.

We hope the readers would find them useful.

7 IN THE INCOME TAX APPELLATE TRIBUNAL

"C" Bench, Mumbai

Before Shri R.V. Easwar, President and Shri B. Ramakotaiah, Accountant Member

ITA No. 20/Mum/2010

(Assessment Year: 2006-07)

DCIT - 11(2) Room No. 479, M.K. Road, Aayakar Bhavan Mumbai 400020	Vs.	M/s. Chandabhoy & Jassobhoy 4th Floor 208, Phonex House, 'A' Wing 2nd Floor, 462 Senapati Bapat Marg, Lower Parel, Mumbai 400013 PAN - AAAFC 5274 C
Appellant		**Respondent**
Appellant by :		Shri Jitendra Yadav
Respondent by :		Shri Percy J. Pardiwalla

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

O R D E R

Per B. Ramakotaiah, A.M.

This appeal by the Revenue is against the order of the CIT(A)-III, Mumbai dated 20.10.2009.

2. Assessee is a partnership firm of Chartered Accountants and in the scrutiny assessment, the A.O. considered that payment made to certain consultants engaged by the Chartered Accountants' firm are in the nature of fees for professional services and accordingly provisions of section 194J would attract. It was the contention of the assessee that the consultants functioned as employees of the firm and were engaged on full time basis.

They could not undertake any other job or assignments privately and they were provided with annual leave and other benefits except bonus, gratuity and P.F. It was further submitted that they were employees of the firm and tax was deducted under section 192 of the I.T Act and these persons filed their returns based on Form 16 issued by the assessee firm and so their salary can not be under the provisions of section 194J. The A.O. analyzing the agreements entered by the assessee firm with the said consultants came to a conclusion that there is no employee-employer relationship and assessee should have deducted tax under section 194J and since assessee has not deducted the tax, the amounts claimed of '26,75,535/- was to be disallowed under section 40(a)(ia). The matter was carried to the CIT(A) who, after examining the issue and submissions of the assessee, deleted the addition by stating as under: -

"3.7.1. There is merit in this submission of appellant. The deduction of tax made by appellant though made u/s. 192 has not been disputed by AO, neither has the TDS deposit in Government account been challenged, nor has the genuineness of payment of monies to IHC been doubted by AO. As such, the payments

become allowable expense under the Act. These have been disallowed due to an interpretation of the section under which the payment made is to be considered i.e. whether section 192 or section 194J. Without prejudice to the decision in para 3.6 and 3.6.1 supra, in the background of appellant's submission and precedence of many years in his own case, it is felt that even if payments were considered to be u/s. 194J by A.O., the tax already deducted by appellant could have been considered against that due u/s 194J and shortage of TDS, if any, could have been arrived at. The consequent shortage of TDS with interest, if any, could have been considered as liability under the I.T. Act and as due from the appellant. Disallowance of the entire expenditure of Rs.26,75,535/- whose genuineness has not been doubted by the AO is not justifiable."

3. We have heard the rival arguments and examined the record. Assessee has employed about 18 consultants with whom it entered into agreements for a period of two years renewable further at the option of either parties and they were paid fixed amounts without any share in the profit. These consultants are prohibited from taking any private assignments and worked full time with the assessee firm. There is no dispute with reference to the deduction of tax under section 192 and also the fact that in their individual assessments these payments were accepted as salary payments. It is also not disputed that the entire amount paid for 18 consultants is only an amount of Rs. 26,75,535/-, which indicates that they are in employment and not professional consultants. It is also not the case that assessee has not deducted any amount. Assessee has indeed deducted tax under section 192 and so we are of the opinion that provisions of section 40(a)(ia) also do not apply as the said provision can be invoked only in the event of non deduction of tax but not for lesser deduction of tax. In view of this, we are of the opinion that there is no merit in Revenue's contention that the amount paid to the employees should be disallowed as provisions of section 194J would attract. On the facts of the case, there is no merit in Revenue's appeal. Accordingly the order of the CIT(A) is confirmed.

4. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 8th July 2011.

Sd/-	Sd/-
(R.V. Easwar)	**(B. Ramakotaiah)**
President	**Accountant Member**

8 IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH "B", MUMBAI

BEFORE SHRI R.S.SYAL(A.M) AND SHRI N.V.VASUDEVAN(J.M)

ITA NO.1050/MUM/2010(A.Y.2008-09)

M/s. Multi Commodity Exchange of (India) Limited., Exchange Square, CTS No.255, Suren Road, Chakala, Mumbai – 400 093 PAN: AADCM 8239K	Vs.	The DCIT, Cen. Cir. 46, Mumbai.
(Appellant)		**(Respondent)**

Appellant by : Shri Chetan A. Karia
Respondent by : Shri Satbir Singh
Date of Hearing : 28/07/2011
Date of pronouncement : 05/08/2011

ORDER

PER N.V.VASUDEVAN, J.M,

This is an appeal by the assessee against the order dated 4/12/2009 of CIT(A)-38, Mumbai relating to assessment year 2008-09.

2. The assessee is a company. It is a regulator and carries on the activity of a commodity exchange. The activities of the exchange are carried on by members of the exchange on an electronic platform and infrastructure provided by the assessee. The activities of the members are supervised and monitored by the assessee. The major source of income of the assessee is receipt of membership fee on grant of membership to new members, annual recurring fees and transaction processing charges for transaction carried out on the platform provided by the assessee. In order to carry out various transactions smoothly and on a regular and consistent basis, the assessee also invites deposits from the constituents. Such deposits are also allowed to be treated as margin money for transaction carried out by them. The amounts received are invested in to fixed deposits of banks and units of mutual funds. While no interest is paid to the constituents on such deposits, the assessee earns interest on such deposits or earns dividend from mutual fund. The assessee had made various investments into various scheme of mutual funds and had earned dividend income as also short term and long term capital gains on such investments on sale. The dividend earned during the year was Rs. 20,80,89,624/-. According to the Assessee, the entire investments was made out of own funds and out of various interest free deposits received from members. While the capital gains were taxed at appropriate rates,

the dividend income was claimed as exempt dividend income under section 10(35) (a) of the Income Tax Act, 1961. Since the dividend income was exempt the AO examined the question of disallowance of expenses in earning exempt income in view of sec. 14A of the Income Tax Act, 1961 (the Act).

3. The assessee claimed that it had not paid any interest except interest on car loans and interest on loans for business purposes to the extent of Rs.1,93,070/- (Including interest on delayed tax payment of Rs. 57,739/-). No interest was paid for any loan to earn exempt income. There is no dispute on this claim of the assessee as the same was accepted by the AO.

4. The assessee claimed that it had not incurred any direct expenses to earn the income by way of dividend which was claimed to be exempt. The reason for not incurring any directs expenses according to the assessee were as under:
   a. The entire investment was made under the advice and guidance of distributors of mutual funds.
   b. No direct payment was made by the company to such distributors.
   c. The activity of investing as also disinvesting involved banking activities as also requesting mutual funds for accepting fresh funds towards additional investments as also redemption of existing investment. These activities were fully supported by the employees of distributors of mutual funds.
   d. As such no direct cost either in terms of interest cost or employees cost was involved. Since there were no other direct expenses incurred no amount was disallowed by the Assessee on its own u/s.14A of the Act.

5. As far as indirect expenses are concerned, the assessee claimed that it had incurred some of the indirect expenses to earn such income they were in the form of cost of employees who shall take decision of making investments/ disinvestments as also cost of employees carrying out account entries of such transactions. The assessee had worked out the details of such indirect expenses and filed such details before the assessing officer. Based on such details, the amount disallowed were as under:

Nature of expenses	Amount
Rent	167562
Salary	408807
Staff welfare expenses	9452
Telephone expenses	18000
Total	603821

The assessee had also explained to the assessing officer as to how no amount was disallowable on account of direct expenses to earn such exempt income and that Rs. 6,03,821/- was incurred by way of indirect expenses. The Assessee submitted that in order to make investments the company had a dedicated person looking after investment decision and accounting thereof. He was also supported by a peon. He was also provided with a computer.

He was using office premises which were on rental basis. He was using telephone services etc. The assessee had provided for all such expenses which were incurred by the assessee for record keeping of such transaction and had arrived at expenses set out above, on scientific basis and has offered the same to be disallowed. In arriving at the salary of the persons, the Assessee pointed out that it had worked out the salary of all persons involved in the treasury operation covering the investment into mutual funds from which exempt income in the form of dividend was earned by the assessee. Similarly all expenses such as rent, telephone, conveyance, electricity expenses and security expenses were worked out on the basis of number of employees who had contributed to the total number of employees employed by the company.

6. The AO however was of the view that the disallowance under section 14A of the Act has to be made in accordance with Rule 8D of the IT Rules and he, therefore, worked out disallowance at a sum of Rs.2,14,41,162/- by applying the provisions of Rule 8D of IT Rules 1962.

7. On appeal by the assessee the CIT(A) was of the view that once it is admitted that the assessee has incurred some expenditure for earning income which is exempt, provisions of section 14A(2) and 14a(3) r.w.r. 8D of the Rules would automatically apply. The CIT(A), therefore, held that the disallowance made by the AO was justified. The assessee had also contended before the CIT(A) that the computation of disallowance made by the AO even as per the provisions of Rule 8D were not correct. This arguments was also rejected by the CIT(A).

8. Aggrieved by the order of the CIT(A) the assessee has preferred the present appeal before the ITAT and raised the followings grounds of appeal.

   "1. The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance made by the Assessing Officer u/s. 14A.

   2. The Learned Commissioner of Income Tax (Appeals) failed to appreciate that the disallowance u/s. 14A is without jurisdiction and bad in law.

3. The ld. Commissioner of Income Tax (Appeals) failed to appreciate that Rule 8D is ultra vires the provisions of S.14A and the same could not be applied to make disallowance u/s. 14A.

4. The Learned Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had made disallowance u/s. 14A and therefore provisions of rule 8D could not be applied to the case of the appellant."

9. We have heard the submissions of the ld. counsel for the assessee, who submitted that the AO was not justified in applying Rule 8D of the Income Tax Rules. In this regard the ld. counsel for the assessee drew our attention to the provisions of section 14A(2) of the Act and submitted that assessee had claimed before the AO that only a sum of Rs. 6,03,821/- can be considered as expenses incurred by the assessee in relation to income which does not form part of the total income under the Act. When such claim is made by the assessee the AO was required to apply his mind to the plea of the assessee. He was also expected to give a finding that he is not satisfied with the correctness of the claim made by the assessee. The AO also expected to spell out the reasons as to why the claim made by the assessee cannot be accepted. It is only after doing so that the AO can resort to the provisions of Rule 8D of the Rules. In this regard out attention was also drawn to the decision of the Hon'ble Bombay High Court in the case of **Godrej Boyce Manufacturing Co. Ltd., 328 ITR 81(Bom)**, wherein the Bombay High Court has laid down that Rule 8D can be invoked only if the AO rejects the correctness of the claim made by the assessee regarding expenses incurred in relation to income which does not form part of the total income under the Act. In other respects ld. counsel for the assessee reiterated the submissions made before the revenue authorities.

10. The ld. D.R submitted that the very fact that the AO invoked the provisions of Rule 8D of the Rules only implies that he was not satisfied with the claim of the assessee with regard to the expenses incurred in earning the exempt income. In other words, it was submitted by the ld. D,R that the satisfaction of the AO is implied. On merits it was submitted that the AO has rightly applied Rule 8D of the rules and the assessee cannot have any grievance.

11. We have considered the rival submission. The Hon'ble Bombay High Court in INCOME TAX APPEAL NO.626 OF 2010 in the case of Godrej & Boyce Mfg.Co.Ltd. Mumbai. Vs. Dy. Commissioner of Income Tax,Range 10(2), Mumbai & Anr. 328 ITR 81 (Bom) has held as follows:

"Insertion of Subsections (2) and (3) to Section 14A :

25. Subsections (2) and (3) of Section 14A were inserted by an amendment brought about by the Finance Act of 2006 with effect from 1 April 2007. Subsections (2) and (3) provide as follows :

"14A(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such Income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of subsection (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under Section 154 for any assessment year beginning on or before the 1st day of April, 2001."

(The proviso was inserted earlier by the Finance Act of 2002 with retrospective effect from 11.5.2001)

Under subsection (2), the Assessing Officer is required to determine the amount of expenditure incurred by an assessee in relation to such income which does not form part of the total income under the Act in accordance with such method as may be prescribed. The method, having regard to the meaning of the expression 'prescribed' in Section 2(33), must be prescribed by rules made under the Act. What merits emphasis is that the jurisdiction of the Assessing Officer to determine the expenditure incurred in relation to such income which does not form part of the total income, in accordance with the prescribed method, arises if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not form part of the total income. Moreover, the satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the

assessee. Hence, Sub section (2) does not ipso facto enable the Assessing Officer to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct. The Assessing Officer must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the accounts of the assessee. The satisfaction of the Assessing Officer must be arrived at on an objective basis. It is only when the Assessing Officer is not satisfied with the claim of the assessee, that the legislature directs him to follow the method that may be prescribed. In a situation where the accounts of the assessee furnish an objective basis for the Assessing Officer to arrive at a satisfaction in regard to the correctness of the claim of the assessee of the expenditure which has been incurred in relation to income which does not form part of the total income, there would be no warrant for taking recourse to the method prescribed by the rules. For, it is only in the event of the Assessing Officer not being so satisfied that recourse to the prescribed method is mandated by law. Sub section (3) of Section 14A provides for the application of sub section (2) also to a situation where the assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Act. Under the proviso, it has been stipulated that nothing in the section will empower the Assessing Officer, for an Assessment Year beginning on or before 1 April 2001 either to reassess under Section 147 or pass an order enhancing the assessment or reducing the refund already made or otherwise increasing the liability of the assessee under Section 154.

26. The circumstances in which the provisions of sub sections (2) and (3) were introduced by an amendment have been adverted to in a circular of the CBDT dated 28 December 2006. (Circular 14 of 2006) The circular notes that in the existing provisions of Section 14A no method for computing the expenditure incurred in relation to income which does not form part of the total income had been provided. As a result there was a considerable dispute between tax payers and the Revenue on the method of determining such expenditure. In this background, sub section (2) was inserted so as to make it mandatory for the Assessing Officer to determine the amount of expenditure incurred in relation to income which does not form part of the total income in accordance with the method that may be prescribed. The circular, however, reiterates that the Assessing Officer has to follow the prescribed method if he is not satisfied with the correctness of the claim of the assessee having regard to the accounts of the assessee." (underlining by us for emphasis)

12. It is clear from the observations of the Hon'ble Bombay High Court referred to above that the application of Rule 8D of the Rules is not automatic. When the assessee makes the claim regarding the quantum of expenses to be disallowed in terms of section 14A of the Act, it was incumbent on the part of the AO to consider the claim of the assessee. It is only when the AO is not satisfied with the claim of the assessee he can have recourse with the provisions of Rule 8D of the Income Tax Rules. The satisfaction that the claim made by the assessee regarding expenses incurred in relation to the income which does not form part of the total income under the Act, is not correct, has to be arrived at by the AO, on an objective basis. In the present case, we find that the AO has proceeded to apply Rule 8D without giving any finding with regard to the correctness of the claim made by the assessee regarding the disallowance to be made under section 14A of the Act. The CIT(A) has also proceeded on the same basis. We are, therefore, of the view that the orders of the CIT(A) has to be set aside and the issue should be remanded to the AO for fresh consideration. The AO will consider the claim of the assessee with regard to the disallowance to be made under section 14A of the Act in the light of the decision of the Hon'ble Bombay High Court referred to above. The AO will decide the issue after affording the assessee opportunity of being heard. For statistical purposes the appeal of the assessee is treated as allowed.

13. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on the 5th day of Aug., 2011.

Sd/-	Sd/-
(R.S.SYAL)	(N.V.VASUDEVAN)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated. 5th Aug.2011

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CONTROVERSIES

WHETHER CONSTRUCTION BY WAY OF EXTENSION OF THE OLD EXISTING HOUSE WOULD MEAN CONSTRUCTION OF RESIDENTIAL HOUSE FOR CAPITAL GAIN EXEMPTION OF SECTION 54 OF THE INCOME TAX ACT, 1961?

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ISSUE:

When assessee transfers a plot of land and Long Term Capital Gain is invested in construction of additional plot in the existing residential house, whether long term capital gain can be claimed as exempt U/s 54 of the Income Tax Act, 1961?

PROPOSITION:

Exemption u/s 54 of the Income Tax Act, 1961 is available only when any long term asset other than a residential house is transferred and long term capital gain is invested in acquiring a residential house either by way of purchase or by way of construction within the prescribed time period. The assessee must acquire a residential house. It is proposed that even addition of a floor of a self contained type to the existing house would qualify for exemption u/s 54F of the Income Tax Act, 1961.

VIEW AGAINST THE PROPOSITION:

Section 54F deals with capital gain on transfer of certain capital assets not to be charged in the case of investment in residential house. The section reads as follows:

"54F. *Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house*- (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being as individual or a Hindu undivided family, the capital gain arises from the transfer of any long term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year or {two years} after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,-

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged u/s 45;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as he cost of the new asset bears to the net consideration, shall not be charged u/s 45:

Provided that nothing contained in this sub-section shall apply where the assessee owns on the date of the transfer of the original asset, or purchase, within the period of one year after such date, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head 'Income from house property', other than the new asset."

Section 54 of the Income Tax Act, 1961 emphasizes on construction of a residential house. The section is very clear about the requirement of the investment of the capital gains in a new residential house. The said construction must be a real one. It should not be a symbolic construction. If the assessee constructs an additional floor in the existing residential house, then there is no investment in a residential house. It is only an extension of the old building. A mere extension of the existing building will not give benefit to the assessee as contemplated u/s 54 of the Income Tax Act, 1961. It is submitted that mere construction by way of extension of the old existing house would not mean constructing a residential house contemplated u/s 54 of the Act.

It is interesting to refer to the decision of the Hon. Madras High Court in the case of CIT v/s. V. Pradeep kumar 290 ITR 90 where, their lordships have held

that mere addition to the old building is not sufficient to claim exemption under section 54 of the Income Tax Act, 1961.

VIEW IN FAVOUR OF THE PROPOSITION:

It is submitted that section 54 is a beneficial provision and the same should be liberally interpreted. For the purpose of exemption u/s 54F the assessee must purchase or construct a residential house, when the investment is made in a part of the house, then also it satisfies the conditions of investment in a new residential house. The reliance can be placed on the judgment of **Mrs. Meera Jacob v/s ITO.** [313 ITR 411(Kerala)].

The assessee claimed exemption u/s 54 of the Income Tax Act, 1961 in respect of investment in modification or renovation of the existing house. If the investment is made in the existing house in respect of renovation or modification of the house, then exemption u/s 54F is not available. However, their lordships of Kerala High Court observed as under:

"The question involved is whether the assessee, in the computation of long term capital gains, is entitled to deduction u/s 54F of the Income Tax Act in respect of investment in modification/ expansion of an existing residential house. The tribunal took the stand that exemption is available only when the investment is in the construction of a house and not for investment in modification or renovation. Admitted facts are addition of 140 sq. meters of plinth area. However, it is the conceded position that the assessee has not constructed any separate apartment or house. Section 54F does not provide for exemption on investment in renovation or modification of an existing house. On the other hand, construction of a house only qualifies for exemption on the investment**. Even addition of a floor of a self contained type to the existing house would have qualified for exemption.** However, since the assessee has only made addition to the plinth area, which is in the form of modification of an existing house, she is not entitled to deduction claimed u/s 54F of the Act".

SUMMATION:

In order to claim exemption u/s 54 of Income Tax Act, 1961, two conditions are required to be satisfied namely, (1) the house property must have been used by the assessee or a parent of his mainly for the purposes of his own or the parents' residence during the two years immediately preceding the date on which the transfer took place, and (2) the assessee must have, within a period of one year before or after such date, purchased or within a period of two years after such date, constructed a house property for the purposes of his own residence. When section 54 talks of house property, it does not mean an independent and complete house in the sense in which the terms used to be understood once upon a time. House property for the purposes of section 54 has the same meaning as the concept of house property u/s 22 to 27 which makes it clear that the expression "house property" takes into account an independent residential unit. In fact, there can be no doubt that the section takes into account all independent residential units, particularly, in these days, when multi- storied flats are becoming the order of the day.

In ***CIT v. Tikyomal Jasanmal*** reported in [1971] 82 ITR 95 (Guj.), though the case went against the assessee on facts, the principle laid down therein, while interpreting the scope of section 54 by Bhagwati C.J., as he then was, speaking for the Bench, was to the effect that for the purpose of claiming exemption u/s 54, two conditions are required to be satisfied, namely, (1) the house property must have been used by the assessee or a parent of his mainly for the purposes of his own or the parents' residence during the two years immediately preceding the date on which the transfer took place, and (2) the assessee must have, within a period of one year before or after such date, purchased or within a period of two years after such date constructed a house property for the purposes of his own residence. **It has also been pointed out in that judgment that the ground floor could be taken as a unit of house property independently for the purpose of section 54.**

Now let me refer to a very important decision of Hon'ble ITAT Delhi bench -in the case of Ashokkumar HUF v AC IT reported in 65 ITD 352. The Hon'ble ITAT has held as under:

"The Hon'ble Madras High Court in case of ***CIT v. P.V. Narasimhan*** [1990] 181 ITR 101/ [1989] 47 Taxman 89 also considered the exemption u/s 54of the act. In that case the assessee owned two residential houses. He sold one house after demolishing the old structure of the first floor. Admittedly he earned capital gains. The ITO disallowed the assessee's claim for exemption u/s 54 on the ground that the assessee had made only some alterations by adding additional rooms to the existing house and charged tax under capital gains. On appeal the AAC accepted the assessee's claim holding the construction of the first floor as construction of a unit for house property for the purpose of section 54. The Tribunal concurred with the view of the AAC. When the matter came up before the High Court it was held:-

"The view taken by the Tribunal was unexceptionable having regard to the admitted position that the assessee after demolishing completely the first floor had put up a new construction within the period allowed by the statute *viz*

Contd. on page no. 273

JUDICIAL ANALYSIS

ONLY NET PROFIT ON UNACCOUNTED TURNOVER CAN BE TREATED AS INCOME OF THE ASSESSEE.

CIT V. President Industries. (2000) 158 CTR 372 (GUJ)

Advocate Tushar Hemani
The author is practising advocate. He can be reached at tusharhemani@gmail.com

xxx...

"Whether the Tribunal is right in law and on facts in holding that only the net profit rate can be applied in respect of admitted sales of goods outside the books of account ?"

2. The facts giving rise to the present case are that during the course of survey conducted on the premises of assessee on 1st December, 1994, from the excise records found, inference was drawn by the AO from the movement of finished goods from the premises of assessee to godowns that sales amounting to Rs. 29,01,300 have not been disclosed in the books of account. AO made the addition of the entire sum of the said undisclosed sales as income of the assessee for the asst. yr. 1994-95. The additions on account of undisclosed sales was affirmed by the CIT(A) to the reduced sum of Rs. 28,35,883. On further appeal the Tribunal found that the entire sale could not have been added as income of the assessee for the assessment year in question but only to the extent the estimated profits embedded in the sales for which the net profit rate was adopted entailing addition of income on the suppressed amount of sales. The Tribunal also found that there is no material on the record to suggest that the assessee made any investment outside books of accounts to make alleged unaccounted sales in respect of the aforesaid appellate order. The applicant made an application under s. 256(1) for referring the aforesaid two questions said to be arising out of Tribunal's order.

3. Having perused the assessment order made by the AO, the order made by the CIT(A) and the Tribunal, we are satisfied that the Tribunal was justified in rejecting the application under s. 256(1). It cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring cost in acquiring goods which have been sold have been made by the assessee and that has also not been disclosed. In the absence of such finding of fact the question whether entire sum of undisclosed sale proceeds can be treated income of the relevant assessment year answers by itself in negative. The record goes to show that there is no finding nor any material has been referred about the suppression of investment in acquiring the goods which have been found subject of undisclosed sales.

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CIT v. BalchandAjit Kumar (2003) 263 ITR 610 (MP)

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Sans unnecessary details, the facts as have been set forth are that there was a search operation conducted at the business and residential premises of the assessee. During the search, it was found that there were credit sales which were not reflected in the books of account. The Assessing Officer on scrutiny of the regular books of account maintained by the assessee being dissatisfied rejected the same and added a sum of Rs. 8,19,255 towards the sales profit of the assessee. The said order was contested by the assessee in the backdrop that the sales were fully recorded and the assessee was following a system of recording the credit sales in the way as and when the credit sales were made, the assessee issued cash memos of sales and the outstandings were recorded in the copy separately. The Commissioner of Income-tax (Appeals) came to the conclusion that the entire credit sales could not have been included in the total income of the assessee and accordingly followed the method of adding a net profit rate of five per cent. on these sales and accordingly Rs. 40,960 was included on that score. An appeal was preferred by the Revenue assailing the order of the first appellate authority vide which he has adopted this net profit rate. The assessee being dissatisfied with regard to the rate

of addition preferred an appeal. The Tribunal in its order came to hold that the first appellate authority had taken recourse to a reasonable method by adopting the net profit rate inasmuch as the entire sale could not have been regarded as the profit of the assessee. The Tribunal, however, did not think it appropriate to reduce the rate which was added by the first appellate authority. Accordingly, it dismissed both the appeals. This court while admitting the appeal framed the following substantial question of law :

"Whether, on the facts and circumstances of the case, the assessee having not included the credit sales in the books of account and in the balance-sheet, the Tribunal was justified assuming that the assessee followed different method of accounting for unrecorded sales, without any factual basis, and as such whether the order of the Tribunal does not suffer from perversity being against the settled principles of accountancy ?"

xxx...

On appreciating the rival submissions raised at the Bar, we have carefully perused the order passed by the Commissioner of Income-tax (Appeals) and also that of the Tribunal. It is not disputed that the undisclosed income was Rs. 2,57,000. The sole question that arises for consideration is whether the entire income has to be treated as profit or there should be adoption of a method of net profit income. In the case of **CIT v. President Industries** [2002] 258 ITR 654, the High Court of Gujarat in a similar matter came to hold as under :

"Having perused the assessment order made by the Assessing Officer, the order made by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal, we are satisfied that the Tribunal was justified in rejecting the application under section 256(1). It cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring the cost in acquiring the goods which have been sold has been made by the assessee and that has also not been disclosed. In the absence of such finding of fact the question whether the entire sum of undisclosed sale proceeds can be treated as income of the relevant assessment year answers by itself in the negative. The record goes to show that there is no finding nor any material has been referred about the suppression of investment in acquiring the goods which have been found subject of undisclosed sales."

We are in respectful agreement with the aforesaid opinion inasmuch as the total sale cannot be regarded as the profit of the assessee. The net profit rate has to be adopted and once a net profit rate is adopted, it cannot be said that there is perversity of approach. Whether the rate is low or high, it would depend upon the facts of each case. In the present case net profit rate of five per cent.has been applied. We do not think it appropriate that the same requires to be enhanced. We are also inclined to think that it is high. In any case, it cannot be said that there has been perversity of approach.

In view of the aforesaid, we find no merit in the appeal and the same stands dismissed.

Man Mohan Sadani v. CIT (2008) 304 ITR 52 (MP)

xxx...

"(i) Whether, in the facts and circumstances of the case, the Tribunal was correct in law in holding that the entire sales were liable to be assessed as income even when the purchases were recorded in the books of account ?

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As far as the first substantial question of law is concerned, it is submitted by learned senior counsel for the appellant that the Income-tax Appellate Tribunal in the impugned order has misinterpreted, misread and misapplied the judgment of this court reported in the matter of **CIT v. Balchand Ajit Kumar** [2003] 263 ITR 610 and on that basis has erroneously held that the entire sales made in the relevant period were liable to be assessed for the purpose of income-tax. It is submitted that the judgment of this court referred to and relied upon by the Income-tax Appellate Tribunal is in fact to the exactly opposite effect as this court has held that the assessing authority must determine the net income of the assessee by deducting the costs element before assessing the person to tax. It is specifically stated by learned senior counsel for the appellant that this court has not recorded any finding to the effect that the entire sale proceeds be assessed to income-tax as has been held by the Income-tax Appellate Tribunal in the impugned order.

We have carefully perused the judgment of this court in the case of BalchandAjit Kumar's case [2003] 263 ITR 610 dated April 14, 2003. From a perusal of the judgment it becomes clear that the part relied upon and quoted by the Income-tax Appellate Tribunal is in fact portion of the order of the Gujarat High Court reported in CIT v. President Industries [2002] 258 ITR 654 as quoted by this court and not the operative part of the judgment of this court in BalchandAjit Kumar's case [2003] 263 ITR 610. The relevant part of the judgment in the case of BalchandAjit Kumar's case [2003] 263 ITR 610 (MP) is reproduced below for properly appreciating the

contention of learned senior counsel for the appellant :

"On appreciating the rival submissions raised at the Bar, we have carefully perused the order passed by the Commissioner of Income-tax (Appeals) and also that of the Tribunal. It is not disputed that the undisclosed income was Rs. 2,57,000. The sole question that arises for consideration is whether the entire income has to be treated as profit or there should be adoption of a method of net profit income. In the case of CIT v. President Industries [2002] 258 ITR 654, the High Court of Gujarat in a similar matter came to hold as under :

'Having perused the assessment order made by the Assessing Officer, the order made by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal, we are satisfied that the Tribunal was justified in rejecting the application under section 256(1). It cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring the cost in acquiring the goods which have been sold has been made by the assessee and that has also not been disclosed. In the absence of such finding of fact the question whether the entire sum of undisclosed sale proceeds can be treated as income of the relevant assessment year answers by itself in the negative. The record goes to show that there is no finding nor any material has been referred about the suppression of investment in acquiring the goods which have been found subject of undisclosed sales.'

We are in respectful agreement with the aforesaid opinion inasmuch as the total sales cannot be regarded as the profit of the assessee. The net profit rate has to be adopted and once a net profit rate is adopted, it cannot be said that there is perversity of approach. Whether the rate is low or high, it would depend upon the facts of each case. In the present case, the net profit rate of five per cent. has been applied. We do not think it appropriate that the same requires to be enhanced. We are also inclined to think that it is high. In any case, it cannot be said that there has been perversity of approach."

From a perusal of the aforesaid dicta of this court, it is apparent that this court while deciding the matter has held that the total sales cannot be regarded as profit of the assessee and the net profit rate which was adopted in that case has to be adopted and if it is so adopted it cannot be said that the approach of the assessing authority is perverse.

Apparently, this court in the said judgment has not held that the entire sale proceeds have to be or should be regarded as profit or treated as undisclosed income of the assessee. On the contrary, this court has categorically held that it is the net profit rate which has to be adopted in such cases.

In the circumstances, we are of the considered opinion that question No. 1 framed by this court deserves to be and is answered in favour of the assessee and against the Revenue and it is held that the entire sale proceeds of the assessee should not be added to his income and that the Tribunal has erred in doing so by misreading the judgment of this court in the case of BalchandAjit Kumar [2003] 263 ITR 610.

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Kishor Mohanlal Telwala V. ACIT (1999) 64 TTJ 543 (AHD)

Thus, what can be added as the undisclosed income of the assessee under s. 158BC, is a reasonable amount of profit which the assessee could have earned by charging "on money" in respect of flats and the Mumbai Bench of the Tribunal in the case of Mrs. Mehroo IV. Irani in ITA No. 1140/Bom/89 has taken the view that when a person is found to have been engaged in building construction activity and has received unaccounted money, what is required to be taxed is not the receipt but only 5 per cent of the receipt which is to be taken as a net profit. As against the above decision the assessee has himself offered 8 per cent profit on the total receipts which should be considered fair and reasonable. In any case it is to be seen that after the exhaustive search and obtaining the disclosure of Rs. 17 lakhs the search party has not been able to find any unaccounted assets except those which have been referred to in the statement of the assessee and a broad break-up of which was given by the assessee in his statement aggregating to Rs. 17 lakhs. These assets are by way of application of the unaccounted income which have been earned by the assessee from Hare Krishna Apartment project, part of which was reflected on the piece of paper found during the course of search against which the assessee himself has offered a sum of Rs. 17 lakhs as his unaccounted income. Thus, it is clear that-the assets found at the time of search were the application of the unaccounted income of Rs. 17 lakhs which was offered to tax by the assessee in his return filed in response to notice under s. 158BC. Thus, keeping in view the totality of the facts and circumstances of the case we are of the opinion that the AO was not justified in making the addition of Rs. 1,47,91,840 as the concealed income of the assessee because the profit earned on the unaccounted receipts on the basis of the special provisions at 8 per cent as per s. 44AD of the Act will be less than the amount of Rs. 17 lakhs disclosed by the assessee as undisclosed income in the return filed in response to notice under s. 158BC. Accordingly we do not find any justification in the action of the AO in making the addition of Rs. 1,47,91,840 which is directed to be deleted.

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COMMERCIAL ASPECTS OF CIVIL CONSTRUCTION

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SERIES ON CONSTRUCTION WAS STARTED WITH FOLLOWING TOPICS:-

a Tendering and Budgeting

b Direct Tax Aspects

c Accounting policies and Standard for construction industry

d Service Tax Aspects for Civil Contractors

e Service Tax Aspects for Builders and Real Estate Developers

f **Practical Illustrations on Indirect Taxation**

g Gujarat and Inter-state vat on works contract

h Glimpse of VAT on Works contract across the country

i Structuring of sales invoice

j Applicablity of Labour Laws to the sector

k Internal Controls at Construction Site

a. Engineering

b. Stores

c. HR

d. Commercial Procurement

e. Account

l Designing MIS Systems for a civil construction company

m Project Completion

n Relevance of Information Technology to the construction sector

o Banking requirement of the sector

p Insurance needs of the sector

q ISO Implementation and Process Documentation

r Planning Internal Audit of a construction site

This month's topic is –

Practical Illustrations on Indirect Taxation

In the previous article on service tax we have spoken a lot on theoretical issues relating to service tax. An attempt has been made in this article to bring out the practical calculations as carried out in the real world. Some of the issues are enumerated in the form of Illustrations summarised as below:-

Various Illustrations on Service Tax and VAT

1. Various Statutory Conditions prevailing in the Works Contract.

It is normally seen that when a contractor is awarded the work by the contractee, there can be varied kinds of statutory conditions as per the contract depending upon the client, depending on the state, depending on the area say within SEZ or outside. In all such circumstances the contractor needs to keep himself updated and abreast of the environment so that the invoice is issued properly and all the rightful claims are made and recovered from the client. Various issues are assumed in this illustration depending on whether the contractor is under regular / composition scheme.

2. Sample Invoice for one of the conditions.

We have also found that the contractors face a lot of problem in proper disclosure of Free Issue Material, when the same has to be considered for the purposes of tax calculation. The illustrated invoice is one of the possible ways to raise an invoice in such a scenario keeping in mind the statutory compliances.

3. Deriving the Point at which Service tax is payable as per POT Rule, 2011

a) Point of Taxation rules have changed the world as regards the manner in which the service tax liability is going to be discharged henceforth. The illustration presents in a tabular format the manner in which the service tax becomes due under different scenarios. It also takes into account the provisions of Rule 6 of the said rules on Continuous Supply of Services (CSOS).

b) Practical implications for civil Contractors. - It was being presumed by the contractors that the

date of furnishing the uncertified abstract would be the date when the service tax becomes payable. But the recent circular from the department has clarified some finer aspects to the relief of the construction sector.

4. Working under the Supreme Court Judgement of Gannon Dunkerly & Co.

This is a landmark judgment adopted by various vat departments across the country. Hence it is an attempt to illustrate the manner in which the taxable turnover is arrived at as per this judgement in case of indivisible works contracts.

5. Taxability of road related works in a road contract

Road work, because of the exemptions has been marred with a lot of controversies, especially when the road work is part of another contract with various taxable works. The illustration takes an example of a work order to explain the various services which are taxable and which are not.

6. Reduction of 60% Input while raising the Invoice under Works Contract service

This is one of the recent amendments in budget 2011. This is applicable to those contractors registered under the chapter of Works contract service and having sub-contractors who are charging service tax at full rate of 10.3% without reducing the value of material involved. Thus it is hinting at the fact that because excise credit on input goods is not available to the contractor paying service tax at 4.12% under Work contract service, he may pass on the purchase of these material to sub-contractors who will take the excise credit. These sub-contractors would subsequently bill to the main contractor, who would take full service tax credit on input services against the liability under Work Contract services. The position now stands changed subsequent to budget 2011.

I - Illustration on Various Statutory Conditions in a Works Contract

A) If the contractor is under regular scheme under both VAT and Service Tax :-

Tax scenarios	Condition as per Work Order received from the client	Total Abstract Value including value of Mat (A)	Value of Mat (B)	Vat Rate % (C)	VAT Amt (D=C*B)	Labour (E=A-B-D)	Service Tax Rate % (F)	Service Tax Amount (G=E*F)	Bill Amount
1	Service Tax extra but VAT & WCT inclusive	10	3	4.00%	0.12	6.88	10.30%	0.71	10.71
2	Service Tax & VAT extra but WCT inclusive	10	3	4.00%	0.12	7	10.30%	0.72	10.84
3	Service Tax, VAT & WCT 2% extra (Note 1)	10.2	3	4.00%	0.12	7.2	10.30%	0.74	11.06

Note :- When as per the W.O, WCT is extra then the same needs to be incorporated within the value of Abstract, as the same can-not be charged separately.

B) Contractor is under the Composition scheme **(0.6%) under VAT and Works Contract Scheme under Service Tax with Free Issue of Material being issued by the client :-**

Tax scenarios	Condition as per Work Order received from the client	Abstract Value (A)	Free Issue Mat (B)	Service Tax Rate %	Value for service Tax (C=A+B)	Service Tax Amount (D=C*4.12%)	Total Bill Amount (A+D)
1	Service Tax extra but VAT inclusive	10	2	4.12%	12	0.49	10.49
2	Service Tax, & VAT 0.6% extra	10.06	2	4.12%	12	0.50	10.56

Note 1 *Cost of FIM is added from the date of the amendment, i.e. 07.07.09, under Work Contract Service*

C) Contractor is under the Composition scheme **under VAT and 33% Abatment Scheme under Service Tax With Free Issue Material being issued by the client :-**

Tax scenarios	Condition as per Work Order received from the client	Abstract Value (A)	Free Issue Mat (B)	Service Tax Rate %	Value for service Tax (C=A+B)	Service Tax Amount (D=C*4.12%)	Total Bill Amount (A+D)
1	Service Tax extra but VAT inclusive	10	2	3.40%	12	0.41	10.41
3	Service Tax & VAT extra	10.06	2	3.40%	12	0.41	10.47

Note 1 *Cost of FIM is added under the 33% scheme vide Notification No. 1/2006.*

Illustration II - Sample Invoice –ABC Ltd.

Village - Mokha,
Dist. Gandhidham
Gujarat

LST No:

01234567890

Invoice No	R/10-11/001
Ref. No:	RA-01
Invoice Dated	05-Jul-11
Work Order Reference No.	ABC12345
Service Tax Registration No.	AAACQ0123BST001
Category of Service	Civil & Structural Work
Service Period	01-06-11 to 30-06-11

		If VAT is paid extra		If VAT is inclusive	
	Break up of Abstract Value:		**51,00,000**		**51,00,000**
A)	**Material (Detailed break up attached)**				
	Material	11,00,000		11,00,000	
	VAT – 10%	1,10,000		1,10,000	
	Charge towards Material		12,10,000		12,10,000
B)	**Labour Charges**		40,00,000		38,90,000
	Add : Cost of Free Issue Material	15,00,000		15,00,000	
	Gross Charges for calculation of Service Tax	66,00,000 (40+11+15)		64,90,000	
	Service Tax	2,71,920	2,71,920	2,67,388	2,67,388
		TOTAL (A + B)	**54,26,920**	**TOTAL (A + B)**	**53,67,388**

For, XYZ Pvt. Ltd.
(Authorized Signatory)

For e.g. Total Value of Abstract is Rs. 51 Lacs with value of labour as Rs. 40 Lacs and value of material being Rs. 11 Lacs in an Indivisible contract. Value of material is arrived by adding normal GP in the project to the landed cost materials. The contractor has opted for a regular schem under VAT and Service tax to be charged under the Works Contract Scheme. Value of FIM is Rs. 15 Lacs. Both the possibilities that VAT extra and inclusive is considered.

Illustration III a - Illustration on Point of Taxation for the Construction Sector

S. No.	*Completion of service*	*Iinvoice Date*	*Payment recd.*	*Milestone In contract when pmt is due*	*Point of Taxation*	*Remarks*
1	April 10	April 20	April 30	April 8	April 20	Invoice issued in 14 days of milestone, hence date of Invoice is POT.
2	April 15	April 26	April 30	April 10	April 10	Invoice not issued within 14 days of milestone, hence date of milestone is POT.
3	April 10	April 20	April 15	April 9	April 15	Invoice issued in 14 days but payment received before invoice
4	April 10	April 26	April 5 (part) and April 25 (remaining)	April 10	April 5 & April 10 for respective amounts	Invoice not issued in 14 days. Part payment before completion, remaining later

The relevance of POT is that from this date the service becomes due and needs to be paid on 5th/6th of subsequent month / quarter as applicable on case to case basis.

Illustration III b - Practical situations after Point of Taxation Rule, 2011

Situation	*Impact*
As per the contract the milestone for payment is the last date of the month. Uncertified Abstract has been put up on 30th April of Rs. 100 Lacs which is certified on 30th May as Rs. 90 Lacs. Rate of service tax for sake of simplicity can be assumed at 10%	Service tax has to be paid on Rs. 100 Lacs * 10% = Rs.10 Lacs on 6th May, 2011 as the milestone is the point of taxation as per Rule 6. It is then advisable to issue an Invoice of Rs. 100 Lacs for proper accounting. On 30th May, a credit note is to be issued to the contractee and adjustment of excess payment of Rs. 1 Lac to be made as per Rule 6(3) of the Service Tax Rules.
As per the contract the milestone for payment is the certification of invoice on a monthly basis. Uncertified Abstract has been put up on 30th April of Rs. 100 Lacs which is certified on 30th May as Rs. 90 Lacs. Rate of service tax for sake of simplicity can be assumed at 10%	Since according to us, the Abstract does not qualify to be an invoice or a challan as per Rule 4A of Service Tax Rules, the date of giving the abstract should not be considered as point of taxation. Further as per the milestone theory the point of taxation would be 30th May. But since the invoice is kept on 30th of May, the point of taxation would be 30th of May and service tax of Rs. 9 Lacs would have to be paid on 6th June. This takes into consideration the latest circular from CBEC dt.18/7/2011.
Retention Monies are deducted by the client	Service Tax would have to be paid on such amounts on the date of furnishing the invoice.

Illustration IV - Gannon Dunkerly - For Contractors opting for payment of VAT under regular scheme instead of composition scheme

The Apex court in the case of Gannon Dunkerley and Company and Others v. State of Rajasthan and Others & Larsen & Toubro Ltd. v. Union of India and Others (1993) 88 STC 204 (SC) has laid down the following deductions to determine the element of deemed sales in works contract :-

(i) labour charges for execution of the works,
(ii) amount paid to a sub-contractor for labour and services,
(iii) charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract,
(iv) charges for planning, designing and architect's fees,
(v) cost of consumables used in the execution of the works contract,
(vi) cost of establishment of the contractor to the extent it is relatable to supply of labour and services,
(vii) other similar expenses relatable to supply of labour and services and
(viii) profit earned by the contractor to the extent it is relatable to supply of labour and services.

The below is a working based on Profit and Loss A/c for M/s XYZ for the year 2010-11

Particulars	**Amount as per Audited Financials**	**Eligible Deductions as per Above Judgements**
Sales as per P&L Account	**1,000,000 (A)**	**1,000,000**
Less : Operating Expenses		
Stores & Spares	50,000	50,000
Sub-Contractor Expenses	150,000	150,000
Departmental Labour	100,000	100,000
Wages	25,000	25,000
Equipment Hire Charges	55,000	55,000
Labour Expenses	1,500	1,500
Depreciation on Plant and Mach	15,000	Debatable
Depreciation on other Assets	7,500	0
Salary – Site Engg and Supervisors	25,000	Debatable
Salary – Admin Staff	15,000	0
Interest and Financial Charges	20,000	0
Office Expenses	12,500	0
Fuel for Machinery	12,500	12,500
Transportation Expenses:	11,000	11,000
Repairs -Plant and Machineries	12,500	12,500
	512,500(B)	**417,500 (B)**
Profit on Labour (C = B * 20%)where 20% is rate of GP	83,500	**501,000 (D=B+C)**
Deemed Sales		**499,000 (E=A–D)**

Purchases made in Works contract	Amount in Rs.	Proportion to Total Purchases (F)	Tax Payable 13,132
Purchase - 4%	150,000 (G)	66% (150000 / 228000)	(E*66%*4%)
Purchase - 12.5%	78,000 (H)	34% (78000 / 228000)	21,339 (E*34%*12.5%)
Total Purchases	**228,000**		**34,470 (I)**
		Input Credit on Purchase	15,750 (G)
		Payable	18,720 (I-G)

Illustration V on Road Contract

M/s XYZ has received a Works contract with following items :-

Item Code	Description	Value in Rs. Lacs	Taxability - Service Tax
1.1	Excavation	5	Taxable
1.2	Back filling	2	Taxable
1.3	Concrete	4	Taxable
1.4	Shuttering	5	Taxable
1.5	Internal road construction	10	Exempt as per Circular No.B1/6/2005-TRU dt.27-7-2005
1.6	Laying of Cables alongside road	2	Exempt as per Circular No.123/5/2010-TRU dt. 24-5-10
1.7	Laying of electric cable between grids / sub-stations	4	
1.8	Laying of electrical cable up to distribution point of residential / commercial complex	5	
1.9	Laying of electrical cable beyond distribution point of residential / commercial complex	6	Taxable as per Circular No. 123/5/2010-TRU dt. 24-5-10
2.0	Installation of Flood Lights	5	
2.1	Reinforcement	25	Taxable
2.2	Painting and Finishing	20	Taxable
2.3	Repair of Road	15	Exempt as per Circular No. 110/4/2009 – ST dated 23-2-2009
	Grand Total	**108**	

Thus out of Rs. 108 Lacs, service tax is to be charged on Rs. 72 Lacs only. It may be noted that Cir No. B1/6/2005-TRU dated 27-7-2005 clarifies as follows – If the contract for construction of commercial complex is a single contract and the construction of road is not recognised as a separate activity as per the contract, then the service tax would be leviable on the gross amount charged for construction including the value of construction of roads.

Illustration VI - Amendment in Works Contract Rules, 2007

- The Works Contract Rules, 2007 have been amended in the last budget

  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.

S. No.	Situation	Before Finance Bill, 2011	After Finance Bill, 2011
1	Mr C (sub-contractor) charges service tax to Mr B (contactor)@ 10.30% on total bill value of Rs.1 cr i.e. Rs. 10.3 Lacs. Sub-contactor has purchased all material and taken excise credit on the same. Mr B charges service tax to Mr A (client) under Works Contract composition scheme @ 4.12%	Mr B will get an Input Credit of Rs. 10.3 Lacs	Mr B will get an input credit of 40% of Rs. 10.30 Lacs = Rs. 4.12 Lacs

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INTERNATIONAL TAXATION

LANDMARK BOMBAY HC RULING ON TAXATION OF CROSS-BORDER TRANSACTIONS INVOLVING INDIA-MAURITIUS DTAA AND INDIRECT TRANSFER OF SHARES OF AN INDIAN COMPANY

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This article summarizes a recent ruling of the Bombay High Court (HC) in the cases of Aditya Birla Nuvo Ltd. (ABNL), Tata Industries Ltd. (TIL) and New Cingular Wireless Services Inc. (NCWS), wherein writ petitions had been filed challenging the various notices issued to them. The issue under consideration was taxability, under the Indian Income Tax Act, 1961 (Act), of gains arising to NCWS, a US company, on transfer of shares of an Indian joint venture company (JVC) that was held by a wholly-owned Mauritius tax resident subsidiary of NCWS as well as of gains arising to NCWS on a subsequent transfer of shares of the Mauritius subsidiary that held the balance shares in the JVC.

Having regard to the facts and circumstances of the transaction, the HC held that the Assessing Officer had a prime facie case for considering the gains as taxable in the hands of NCWS and, therefore, the notices issued by the Assessing Officer for initiating proceedings to assess the gains/withholding tax are valid.

In its order, the HC has made observations which suggest that, even though the Mauritius entity was the legal owner of the shares, having regard to the facts and circumstances, the gains may have accrued to NCWS, an US entity, and, accordingly, the gains may not be eligible for protection under the India-Mauritius Double Taxation Avoidance Agreement (DTAA). With regard to the acquisition of shares of the Mauritius entity, the HC has observed that the transaction, prima facie, appears to be a 'colorable device' to acquire the shares of the JVC.

Facts and background

- In 1995, US-based AT&T Corp, through its subsidiary, AT&T Wireless Services Inc. (AT&T US), entered into a joint venture agreement (JVA) with the India-based Birla Group to form a JVC in India for providing wireless telecommunication services. With the change in the JV partners at various points in time, the name of the JVC also changed. The JVC is presently known as Idea Cellular Ltd.
- As per the JVA, AT&T US, as founder, was to own and hold 49% equity stake in the JVC. The equity shares subscribed by the founders could be issued in the name of a permitted 100% subsidiary of the founder. Accordingly, the shares in the JVC that were subscribed by AT&T US were allotted to AT&T Cellular Private Ltd., Mauritius (AT&T Mauritius), a 100% subsidiary of AT&T US. However, all rights in respect of the equity shares of the JVC, like voting rights, rights of management, right of sale or alienation etc., absolutely vested with AT&T US.
- In 2000, the Tata Group entered as a JV partner and, hence, a new Shareholders Agreement (SA) was entered into between AT&T US, the Birla Group and the Tata Group for holding proportionate shares in the JVC. Consequently, the original JVA was succeeded by the SA. This SA also proportionately reduced the powers of the founders to reflect the new tripartite arrangement.
- In 2004, Cingular Wireless LLC, US acquired the shares of AT&T Wireless from AT&T Corp and renamed it as New Cingular Wireless Services Inc., USA (NCWS).
- In 2005, NCWS decided to exit and, having received an offer from an unrelated party, was obliged under the SA to offer such shares to the Birla Group and the Tata Group (as they had the first right of refusal). Both of them accepted the offer. It was decided that ABNL, representing the Birla Group, would directly acquire its share of the shares in the JVC from AT&T Mauritius. It was expected that the capital gains on this transaction would be protected from capital gains tax in India by the favorable Article 13 of the DTAA.
- TIL, representing the Tata Group, would, thereafter, acquire the entire shares in AT&T Mauritius from NCWS, representing its stake in the JVC. Since the shares transferred would be that of AT&T Mauritius in Mauritius, this transaction was also considered as not taxable in India as it did not relate to transfer of any capital asset situated in India.

- Share Purchase Agreements (SPAs) reflecting the above were entered into by the purchasers (ABNL and TIL) with NCWS, jointly with AT&T Mauritius (the immediate shareholder of the JVC).
- ABNL applied to the Assessing Officer for a no- objection to remit the entire consideration to AT&T Mauritius without withholding any taxes.
- ABNL argued that the shares were acquired from a tax resident of Mauritius holding a valid Tax Residency Certificate (TRC). Hence, capital gains arising on transfer of shares of the JVC should not be taxable in India by virtue of Article 13 of the DTAA. Reliance was placed on various administrative circulars and also on the decision of the Supreme Court (SC) in the case of **Azadi Bachao Andolan** to contend that, as AT&T Mauritius was holding a valid TRC, the DTAA should apply and, hence, no taxes should be required to be withheld. The Assessing Officer agreed with ABNL and issued a nil withholding tax order. Sale consideration was paid to AT&T Mauritius. Thereafter, AT&T Mauritius immediately used the funds to pay dividends to NCWS and repay a debt from NCWS.
- Subsequently, the Assessing Officer sought to tax the transaction in the hands of ABNL as a representative agent of the seller on the basis that the actual seller was not AT&T Mauritius but the US entity, NCWS (successor of AT&T US). Furthermore, the transfer was of the stake in the JVC and, hence, should be taxable in India even if the transfer related to shares of AT&T Mauritius outside India. Notices were also issued to the buyers for taxing them as taxpayers in default for failure to withhold taxes on the transaction/representative agent of the sellers. Assessment proceedings were also initiated directly against the alleged seller, NCWS.
- Against these various notices, writ petitions were filed by the parties before the HC. These writ petitions were collectively decided in this decision. The key issue was to determine whether any income chargeable to tax in India had accrued or arisen or deemed to have accrued or arisen in India on account of the exit of NCWS by transferring its stake in the JVC to TIL and ABNL, as explained above.

HC's ruling

Taxation of transfer of shares in the JVC by AT&T Mauritius

- The sequence of events indicates that it was AT&T US that carried on business in India and owned the equity shares of the JVC through AT&T Mauritius. Under the JVA, the obligation to subscribe and own shares of the JVC was on AT&T US.
- The fact that AT&T Mauritius made payments to the JVC towards equity shares would not make it the owner of the shares because, under the JVA, the JV partners alone were to subscribe and own the shares in the JVC. It is only because the JVA was implemented by the JV partners that shares were allotted to AT&T Mauritius. Apart from the JVA, there is no other document on record to show that AT&T Mauritius had independently entered into any transaction for acquiring the equity shares of the JVC. Therefore, it is evident that the payments made by AT&T Mauritius were for and on behalf of AT&T US.
- In these circumstances, the prima facie view of the Assessing Officer that the equity shares in the name of AT&T Mauritius were only as a permitted transferee of AT&T US under the JVA and that such allotment did not confer any beneficial ownership on AT&T Mauritius as expressly provided under the terms of the JVA, cannot be faulted.
- Even the substituted SA that was entered into with the entry of the Tata Group did not, in any way, impair or obliterate the ownership rights in the shares of the JVC vested in the JV partners, whether allotted prior to or subsequent to the SA. As per the JVA and the SA, the ownership of the shares was to vest in AT&T US.
- NCWS became a successor of AT&T US in this arrangement. Sale of shares in the JVC could be effected by AT&T Mauritius only with the consent of NCWS (as successor to AT&T US), pursuant to the JVA and, thereafter, the SA. That is why, in the SPAs under consideration, NCWS was a joint party with AT&T Mauritius. If AT&T Mauritius was, indeed, the owner of the shares in the JVC, there was no requirement for NCWS to be a party to the SPA.
- The provisions of the DTAA and administrative circulars explaining the provisions would apply only where investments are made by entities incorporated in Mauritius. It would have no relevance in the present case where investments in India were made by AT&T US under the JVA (as modified by the SA) through its permitted transferee, AT&T Mauritius. The decision of the SC in the case of Azadi Bachao Andolan also would have no application.
- The argument that the amount received was not sale proceeds but represented the dividend income and return of loan advanced by AT&T US to AT&T Mauritius cannot, prima facie, be accepted. This is because, under the JVA, the liability to pay for equity shares was on AT&T US and if AT&T US discharged its liability by a device of advancing loan to AT&T Mauritius and paying through AT&T Mauritius, it was open to the Assessing Officer to discard the device and take into consideration the real transaction between the parties.
- The SC decision relied on by ABNL: assets belonging to a wholly-owned subsidiary cannot be regarded as belonging to the parent company; the person whose name is entered in the register of members is to be regarded as the holder of shares; cannot be applied to the facts of the present case.

- Since AT&T Mauritius was not the 'owner' of shares in the JVC, the DTAA protection was not available. Prima facie, the transaction under the SPA was basically to transfer the entire right, tActe and interest in the JVC by NCWS (successor in interest of AT&T US).

Taxation as representative agent of the seller

- As per the provisions of the Act, a taxpayer can be treated as a 'representative agent', with respect to income of a non-resident (NR), if it is deemed to accrue or arise in India.
- In the case of Eli Lily [3], the SC had held that any income which accrues in India or is received in India will also qualify as income which is deemed to accrue or arise in India. In the present case, transfer of shares of the JVC constitutes transfer of a capital asset situated in India. Since this income is specifically enumerated under the deeming provision of the Act, it would also be considered as income deemed to accrue or arise in India. Therefore, income to NCWS on transfer of shares of the JVC can be assessed to tax in India in the hands of ABNL, as a representative agent, under the provisions of the ACT.
- Issuing of a nil withholding certificate initially and, thereafter, treating ABNL as a representative agent was appropriate in the present case. This is because the same was obtained by 'suppressing material facts' before the Assessing Officer by suggesting that the shares were held by AT&T Mauritius even when ABNL was very much aware of the entire background of the transaction.
- Withholding provisions and treatment as a representative agent operate in different fields and one does not preclude the initiation of the other. The former is as a payer of income to the latter, while the proceedings of a representative agent grant rights to ABNL to recover taxes paid on behalf of the principal (i.e., NCWS).
- Ordinarily, the Assessing Officer must not proceed against the representative agent once proceedings are initiated against the NR. However, in exceptional cases, like the present one, where the facts presented appear to have been suppressed, it is open to the Assessing Officer to continue with parallel proceedings against ABNL, being a representative agent, and also against NCWS, being an NR, simultaneously. The ACT does not prohibit such action undertaken by the Assessing Officer.

Taxation of transfer of shares in AT&T Mauritius

- TIL argued that the transaction envisaged under the SPA was for the purpose of acquiring shares of AT&T Mauritius and not the shares of the JVC. Furthermore, appropriate approvals had also been obtained from the regulatory authorities for acquiring the entire stake in AT&T Mauritius and, therefore, the Assessing Officer should not question the genuineness of the transaction and the proceedings initiated should be dropped.
- The HC observed that, TIL, while exercising its right of first refusal as per the SA, had agreed to purchase shares in the JVC from NCWS. However, instead of purchasing the said shares, an SPA was subsequently entered into, whereby the entire stake in AT&T Mauritius was acquired. The question that arose was whether the transaction under the SPA was for acquiring the shares of the JVC as AT&T Mauritius was not holding any other asset.
- TIL cannot be said to be unaware of the fact that the shares in the JVC were beneficially owned by NCWS as TIL was also one of the parties to the SA. Furthermore, it was also agreed under the SPA to transfer such shares only after ABNL acquired its stake, as explained earlier. All these aspects point out that the entire transaction was a 'colorable device' and, therefore, the Assessing Officer's action of treating TIL as a representative agent for assessing the gains on the transaction was justified.

Taxability of the transaction in the hands of the recipient

- The Assessing Officer initiated assessment proceedings directly on NCWS. The HC, after scrutinizing the SA as well as the SPA, held that the transaction, as depicted, does not appear to be bona fide as ABNL and TIL, in exercise of their rights of first refusal, had agreed to purchase the stake in the JVC. Thus, prima facie, the entire transaction under the SPAs entered into by NCWS was merely for transferring the right, tActe and interest in the JVC to the other JV partners. Therefore, the initiation of assessment proceedings by the Assessing Officer was appropriate. However, NCWS was asked to prove the contrary by placing the relevant material facts during the assessment proceedings.

Comments

- Taxation of cross-border acquisitions involving indirect transfer of shares of an Indian company as well as the use of the India-Mauritius DTAA for structuring acquisitions has been subject to controversy over the last several years. While some recent rulings by the Authority for Advance Rulings appeared to have provided some degree of comfort on the eligibility of benefits under the DTAA based on a TRC, this HC ruling does seem to raise a number of questions which are likely to result in a fair bit of uncertainty for taxpayers. While one still awaits the Supreme Court ruling in the Vodafone case on indirect transfer of shares, the observations made by the HC in this ruling are likely to exacerbate the ambiguity that currently prevails on this matter. This development reinforces the need for taxpayers to exercise adequate caution while structuring cross-border M&A transactions involving India.

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Overseas Direct Investment- Liberalization/ Rationalization

Ref.: A.P. (DIR Series) Circular No. 73 dated June 29, 2011

Attention is invited to the Notification No. FEMA 120/RB-2004 dated July 7, 2004 [Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004] (the Notification), as amended from time to time, and the following circulars issued thereunder:

- A.P. (DIR Series) Circular No. 41 dated December 6, 2003
- A.P. (DIR Series) Circular No. 29 dated March 27, 2006
- A.P. (DIR Series) Circular No. 69 dated May 27, 2011

With a view to restating the various provisions relating to transfer by way of sales of a joint venture or wholly owned subsidiary (JV or WOS) outside India with and without write off, the existing guidelines are consolidated as indicated below:

2. Transfer by way of sale of shares of a JV / WOS

An Indian Party, without prior approval of the Reserve Bank, may transfer by way of sale to another Indian Party which complies with the provisions of Regulation 6 of FEMA Notification 120/RB-2004 dated July 7, 2004 or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the following conditions:

(i) the sale does not result in any write off of the investment made.

(ii) the sale is to be effected through a stock exchange where the shares of the overseas JV/ WOS are listed;

(iii) if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS;

(iv) the Indian Party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from the JV or WOS;

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(v) the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;

(vi) the Indian party is not under investigation by CBI / DoE/ SEBI / IRDA or any other regulatory authority in India.

3. Transfer by way of sale of shares of a JV / WOS involving write off of the investment

(a) Indian Parties may disinvest without prior approval of the Reserve Bank, in the under noted cases where the amount repatriated on disinvestment is less than the amount of the original investment:

i) in cases where the JV / WOS is listed in the overseas stock exchange;

ii) in cases where the Indian Party is listed on a stock exchange in India and has a net worth of not less than Rs.100 crore;

iii) where the Indian Party is an unlisted company and the investment in the overseas venture does not exceed USD 10 million and

iv) where the Indian Party is a listed company with net worth of less than Rs.100 crore but investment in an overseas JV/WOS does not exceed USD 10 million.

(b) Such disinvestments shall be subject to the conditions listed at items (ii) to (vi) of paragraph 2 above.

4. The Indian Party is required to submit details of such disinvestment through its designated AD category-I bank within 30 days from the date of disinvestment.

5. An Indian Party, which does not satisfy the conditions stated above for undertaking any disinvestment in its JV/WOS abroad, shall have to apply to the Reserve Bank for prior permission.

6. Necessary amendments to the Foreign Exchange Management (Transfer or Issue of Any Foreign Security), Regulations, 2004 are being issued separately.

Foreign Direct Investment (FDI) in India - Issue of equity shares under the FDI Scheme allowed under the Government route

Ref.: A.P. (DIR Series) Circular No. 74 dated June 30, 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.

2. In terms of the Schedule 1 of the Notification, ibid, an Indian company may, under the automatic route, issue equity shares/ preference shares to a person resident outside India, being a provider of technology / technical know-how and against royalty / lumpsum fees due for payment subject to certain conditions like entry route, sectoral cap, pricing guidelines and compliance with the applicable tax laws.

3. The extant guidelines for issue of equity shares/ preference shares under the Government route have been reviewed in consultation with the Government of India and, accordingly, it has been decided to permit issue of equity shares / preference shares under the Government route of the FDI scheme for the following categories of transactions:

   (I) Import of capital goods/ machineries / equipments (including second-hand machineries), subject to compliance with the following conditions:

      (a) The import of capital goods, machineries, etc., made by a resident in India, is in accordance with the Export / Import Policy issued by the Government of India as notified by the Directorate General of Foreign Trade (DGFT) and the regulations issued under the Foreign Exchange Management Act (FEMA), 1999 relating to imports issued by the Reserve Bank;

      (b) There is an independent valuation of the capital goods / machineries / equipments (including second-hand machineries) by a third party entity, preferably by an independent valuer from the country of import along with production of copies of documents /certificates issued by the customs authorities towards assessment of the fair-value of such imports;

      (c) The application should clearly indicate the beneficial ownership and identity of the importer company as well as the overseas entity; and

      (d) All such conversions of import payables for capital goods into FDI should be completed within 180 days from the date of shipment of goods.

   (II) Pre-operative/pre-incorporation expenses (including payments of rent, etc.) subject to compliance with the following conditions:

      (a) Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred;

      (b) Verification and certification of the pre-incorporation/ pre-operative expenses by the statutory auditor;

      (c) Payments should be made directly by the foreign investor to the company. Payments made through third parties citing the absence of a bank account or similar such reasons will not be eligible for issuance of shares towards FDI; and

      (d) The capitalization should be completed within the stipulated period of 180 days permitted for retention of advance against equity under the extant FDI policy.

4. (i) All requests for conversion should be accompanied by a special resolution of the company.

   (ii) Government's approval would be subject to pricing guidelines of the Reserve Bank and appropriate tax clearance.

5. These directions have been issued with reference to the relevant paras of the Consolidated FDI Policy Circular 1 of 2011 dated March 31, 2011, issued by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India.

6. Necessary amendments 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 will be issued separately.

Buyback / Prepayment of Foreign Currency Convertible Bonds (FCCBs)

Ref.: A.P. (DIR Series) Circular No. 75 dated June 30, 2011

Attention is invited to the A.P. (DIR Series) Circular No. 39 dated December 08, 2008, A.P. (DIR Series) Circular No. 65 dated April 28, 2009 and A.P. (DIR Series) Circular No.07 dated August 09, 2010 on the captioned subject.

2. The Reserve Bank is presently considering applications under the approval route for buyback of FCCBs, subject to the issuers complying with the terms and conditions of buyback/ prepayment of FCCBs, as mentioned in the A.P. (DIR Series) Circular No.39 dated December 08, 2008 and A.P. (DIR Series) Circular No.65 dated April 28, 2009.

3. The existing policy on the premature buyback of FCCBs has been reviewed and it has been decided to extend the time limit for such facility and liberalise the procedure. Accordingly, the applications for buyback of FCCBs by Indian companies, both under the automatic and approval routes, will be considered as detailed hereunder:

A. Automatic Route

The designated AD Category - I banks may allow Indian companies to prematurely buyback FCCBs subject to compliance with the terms and conditions set out hereunder: 2

i) the buyback value of the FCCB shall be at a minimum discount of 8 per cent on the book value;

ii) the funds used for the buyback shall be out of existing foreign currency funds held either in India (including funds held in the EEFC account) or abroad and / or out of fresh ECB raised in conformity with the current ECB norms; and

iii) where the fresh ECB is co-terminus with the outstanding maturity of the original FCCB and is for less than three years the all-in-cost ceiling should not exceed 6 months Libor plus 200 bps as applicable to short term borrowings. In other cases, the all-in-cost for the relevant maturity of the ECB, as laid down in A. P. (DIR Series) No.26 dated October 22, 2008, shall apply.

B. Approval Route

Indian companies may be permitted to buyback FCCBs up to USD 100 million of the redemption value per company, out of their internal accruals with the prior approval of the Reserve Bank, subject to a :

i) minimum discount of 10 per cent of book value for redemption value up to USD 50 million;

ii) minimum discount of 15 per cent of book value for the redemption value over USD 50 million and up to USD 75 million; and

iii) minimum discount of 20 per cent of book value for the redemption value of over USD 75 million and up to USD 100 million.

4. Applications complying with the above conditions may be submitted, together with the supporting documents, through the designated AD Category - I bank, to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, ECB Division, Central Office, 11th Floor, Central Office Building, Shahid Bhagat Singh Road, Mumbai-400 001 for consideration.

5. The other terms and conditions as stipulated in paragraph 5 and 6 of A.P. (DIR Series) Circular No. 39 dated December 8, 2008 will continue to be applicable. 3

This facility shall come into force with immediate effect and the entire process of buyback should be completed by **March 31, 2012**.

Redemption of Foreign Currency Convertible Bonds (FCCBs)

Ref.: A.P. (DIR Series) Circular No. 01 dated July 04, 2011

Attention is invited to A. P. (DIR Series) Circular No.5 dated August 1, 2005, as amended from time to time, relating to instructions / guidelines in respect of External Commercial Borrowings (ECBs), which are also applicable, mutatis mutandis, to FCCBs.

2. Keeping in view the need to provide a window to facilitate refinancing of FCCBs by the Indian companies who may be facing difficulty in meeting the redemption obligations, it has been decided to consider applications for refinancing of FCCBs by Indian companies under the automatic route. Accordingly, designated AD Category - I banks may allow Indian companies to refinance the outstanding FCCBs subject to compliance with the terms and conditions set out hereunder: -

i) Fresh ECBs/ FCCBs shall be raised with the stipulated average maturity period and applicable all-in-cost being as per the extant ECB guidelines;

ii) The amount of fresh ECB/FCCB shall not exceed the outstanding redemption value at maturity of the outstanding FCCBs;

iii) The fresh ECB/FCCB shall not be raised six months prior to the maturity date of the outstanding FCCBs;

iv) The purpose of ECB/FCCB shall be clearly mentioned as 'Redemption of outstanding FCCBs' in Form 83 at the time of obtaining Loan Registration Number from the Reserve Bank;

v) The designated AD - Category I bank should monitor the end-use of funds;

vi) All other aspects of ECB policy under the automatic route, such as, eligible borrower, recognized lender, end-use, prepayment, refinancing of existing ECB and reporting arrangements shall remain unchanged;

vii) ECB / FCCB beyond USD 500 million for the purpose of redemption of the existing FCCB will be considered under the approval route; and

viii) ECB / FCCB availed of for the purpose of refinancing the existing outstanding FCCB will be reckoned as part of the limit of USD 500 million available under the automatic route as per the extant norms.

3. Restructuring of FCCBs involving change in the existing conversion price is not permissible. Proposals for restructuring of FCCBs not involving change in conversion price will, however, be considered under the approval route depending on the merits of the proposal.

4. The policy will be subject to review at an appropriate time depending upon evolving macroeconomic conditions and other relevant factors.

5. This facility shall come into force with immediate effect.

Regularization of Liaison / Branch Offices of foreign entities established during the pre-FEMA period

Ref.: A.P. (DIR Series) Circular No. 02 dated July 15, 2011

Attention is invited to Notification No. FEMA 22/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, as amended from time to time, read with A.P. (DIR Series) Circular Nos. 23 and 24 dated December 30, 2009, in terms of which a person resident outside India requires the prior approval of the Reserve Bank of India for establishing a Liaison Office (LO) /Branch Office (BO) in India. Further, attention of the AD Category - I banks is invited to A.P. (DIR Series) Circular No. 23 dated December 30, 2009 in terms of which applications from foreign Non-Government Organizations (NGOs) / Non-Profit Organizations (NPOs) / Government bodies / Departments for establishing BO / LOs in India are considered by the Reserve Bank in consultation with the Government of India, Ministry of Finance.

2. It has come to the notice of the Reserve Bank that certain BOs / LOs established by the foreign NGOs, NPOs, news agencies and other foreign entities are continuing to function in India, without the approval of the Reserve Bank, after the Foreign Exchange Management Act (FEMA), 1999 came into force from June 1, 2000. Under the provisions of FEMA, 1999, ibid, the request of such entities to open an office in India is considered by the Reserve Bank in consultation with the Government of India, wherever required.

3. Accordingly, the foreign entities who have established LO or BO in India and continuing to function without obtaining permission from the Reserve Bank of India should approach the Reserve Bank within a period of 90 days from the date of issue of this circular for regularization of establishment of such offices in India, in terms of the extant FEMA provisions.

4. The foreign entities who may have established LO or BO with the permission from the Government of India may also approach the Reserve Bank along with a copy of the said approval for allotment of a Unique Identification Number (UIN) by the Reserve Bank of India.

5. All such applications/ requests should be submitted to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai – 400 001 in form FNC and should be routed through the AD Category – I bank where the account of such LO /BO is maintained.

Facilitating Rupee Trade – hedging facilities for non-resident entities

Ref.: A.P. (DIR Series) Circular No. 03 dated July 21, 2011

Attention is invited to the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 dated May 3, 2000 [Notification No. FEMA/25/RB-2000 dated May 3, 2000], as amended from time to time.

2. In order to facilitate greater use of Indian Rupee in trade transactions, as announced in the Monetary Policy Statement for the year 2011-12 (para 85), it has been decided to allow non-resident importers and exporters to hedge their currency risk in respect of exports from and imports to India, invoiced in Indian Rupees, with AD Category I banks in India, as per details given in the Annexure to A.P. (DIR Series) Circular No. 03 dated July 21, 2011.

3. 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.

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FINANCIAL REPORTING STANDARDS

Introduction:

In previous column, we had discussed on IFRS 10, "Consolidated Financial Statements" issued by IASB. This is the 52nd column and it is time to diversify into other accounting standard framework. This column dwells upon the Exposure Draft issued by International Public Sector Accounting Standards Board (IPSASB) on "Key Characteristics of Public Sector with Potential Implications for Financial Reporting"

IFRS, IAS, SIC and IFRIC are the copyright of IFRS Foundation. The column includes references and extracts of the IFRS as issued by IASB. The IPSASB issues International Public Sector Accounting Standards (IPSAS). Government of many countries and international organizations like United Nations, Organization for Economic Co-operation and Development etc. adopting Accrual basis of accounting have opted to follow International Public Sector Accounting Standards. In India, Government Accounting Standards Advisory Board (GASAB), issues two sets of accounting standards:

1. Indian Government Accounting Standards (IGAS) for cash based system of accounting
2. Indian Government Financial Reporting Standards (IGFRS) for accrual based system of accounting. Indian Government Financial Reporting Standards are based on International Public Sector Accounting Standards and converged towards Indian laws, regulations, customs and practices.

The objective of GASAB is to formulate standards relating to accounting and financial reporting by the Union, the States and Union Territories with Legislature. The standards so formulated by GASAB are recommended to the Government of India

Need for a new Standard on Consolidated Financial Statements:

IASB has issued new standard on Consolidated Financial Statements curtailing the scope of IAS 27 to only Separate Financial Statements. The new standard on Consolidated Financial Statements is effective from January 1, 2013. Presently one standard and one interpretation provide guidance on when and how consolidated financial statements are to be prepared:

1. IAS 27 – Consolidated and Separate Financial Statements
2. SIC 12 – Special Purpose Entities

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The following were the major reasons for issuing a new standard on Consolidated Financial Statements:

1. Divergence in practice in applying IAS 27 and SIC 12

   The divergence in practice was mainly in the application of the concept of control in circumstances where a reporting entity controls another entity while holding less than a majority of voting rights of the entity, and in circumstances involving agency relationships.

2. Perceived conflict between IAS 27 and SIC 12

   IAS 27 requires consolidation of entities that are controlled by a reporting entity. SIC 12 which interprets the requirements of IAS 27 in the context of special purpose entities, places greater emphasis on risks and rewards.

3. Lack of Transparency for "Off balance sheet vehicles"

   The global financial crisis that started in 2007 highlighted the lack of transparency about the risks to which investors were exposed from their involvement with 'off balance sheet vehicles' (such as securitization vehicles), including those that they had set up or sponsored.

Objective of IFRS 10:

The objective of IFRS 10 is to establish principles for the preparation and presentation of consolidated financial statements when an entity controls one or more other entities. For this purpose, IFRS 10:

- Requires an entity (the parent) that controls one or more other entities (subsidiaries) to present consolidated financial statements
- Defines the principle of control, and establishes control as the basis for consolidation
- Sets out how to apply the principle of control to identify whether an investor controls an investee and therefore must consolidate the investee; and
- Sets out the accounting requirements for the preparation of consolidated financial statements

Scope of IFRS 10:

Para 4 of IFRS 10 requires a parent to present consolidated financial statements, except in the following circumstances:

1. Where a parent meets all of the following conditions:
   a. It is a wholly-owned subsidiary or is a partially owned subsidiary and all its other owners including those not otherwise entitled to vote, have been informed about, and do not object to, the parent not presenting consolidated financial statements
   b. Its debt or equity instruments are not traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local and regional markets)
   c. It did not file, nor is it in the process of filing, its financial statements with a securities commission or other regulatory organization for the purpose of issuing any class of instruments in a public market; and
   d. Its ultimate or any intermediate parent produces consolidated financial statements that are available for use and comply with International Financial Reporting Standards.
2. Post-employment benefit plans or other long-term employee benefit plans to which IAS 19, "Employee Benefits" applies.

   It should be noted that presently post-employment benefit plans have not been excluded from the scope. IAS 27's scope states that IAS 27 shall be applied in the preparation and presentation of consolidated financial statements for a group of entities under the control of a parent, Para 6 of SIC 12 categorically states that the interpretation is not applicable to post-employment benefit plans or other long-term employee benefit plans to which IAS 19 applies. Thus, if the entity has power to govern the financial and operating policies of the post-employment benefit plan or other long-term employee benefit plans so as to obtain economic benefits, that post-employment benefit or other long-term employee benefit plan would be consolidated as per IAS 27 but not as per IFRS 10. In author's view, such a blanket exclusion would encourage structuring opportunities. IASB should reconsider this and before the standard becomes effective, remove the blanket exclusion and make it a conditional one.

   To understand the objective and the scope, we need to be clear with certain terms and their definitions:

- **Consolidated financial statements**

  Consolidated financial statements are the financial statements of a group in which the asset, liabilities, equity, income, expenses and cash flows of the parent and its subsidiaries are presented as those of a single economic entity. Normally a question is asked, if investment in an entity gives only significant influence, should be investor entity prepare consolidated financial statements. It should be noted that consolidated financial statements are prepared only when there exists parent and subsidiary relationship. However, as per IAS 28, "Investments in Associates", an investment in an entity which gives significant influence to the investor should be accounted under equity method whether or not consolidated financial statements are prepared. Financial statements that are not consolidated financial statements and in which the investment in an entity gives significant influence to the entity is called Economic Entity Financial Statements.

  The definition of Group is same. It is defined as a parent and it subsidiaries

- **Parent**

  IFRS 10 makes a slight change to the definition of parent. Parent is defined as an entity that controls one or more entities. IAS 27 defines a parent as an entity that has one or more subsidiaries. However, such a change is not material one.

- **Subsidiary**

  As there is minor change in the definition of parent, the definition of subsidiary has also undergone minor change. Subsidiary is defined as an entity that is controlled by another entity. IAS 27 defines subsidiary as an entity, including an unincorporated entity such as a partnership that is controlled by another entity.

- **Control**

  The definition of control has been changed significantly. In fact, IFRS 10 does not define the term control but states the conditions when an investor can be said to control an investee. Under IFRS 10, an investor is said to control an investee when the investor is exposed, or has rights, to variable returns from its involvement with the investee and has the ability to affect those returns through its power over the investee A question arises that when should an entity determine whether it has control over an investee. Para 5 provides an answer to this question. It states that regardless of the nature of its involvement with an entity, investor has to determine whether it is a parent by assessing whether it controls the investee. An investor is said to have power over the investee when the investor has existing rights that give it the current ability to direct the relevant activities, i.e. the activities that significantly affect the investor's returns.

  The above definition looks to be very comprehensive. This definition of control could have been applied to post-employment benefit plans and long-term employee benefit plans and then a decision could have been taken whether the entity has control on the plans.

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INDIRECT TAXES CORNER

[I] A ROAD AHEAD GST REGIME PART – III:

DUAL GST SYSTEM PROPOSED:

[1] Moving close to the introduction of the new taxing systems, the Ministry of Finance has already released discussion paper given by the Empowered Committee of State Finance Ministers.

[2] According to the discussion paper the type of GST proposed to be implemented is dual GST. In dual GST there will be CGST (Central GST) and SGST (State GST) and there also will be IGST (Integrated GST) for taking the interstate transactions.

[3] CGST is to subsume of Central Excise Duty, Additional Excise (AED), Special Additional Duty (SAD), Countervailing Duty (CVD), Service Tax, Surcharge and Cesses, Credit Facility is available.

[4] Whereas SGST is to subsume State VAT, entry tax, octroi, entertainment tax, luxury tax, State Cesses etc. Credit facility is available.

[5] Present CST will be abolished and IGST will be replaced where tax paid under IGST is also available for credit.

[6] As regards credit facility, it has been proposed to provide a set off of CGST credit against CGST and SGST credit against SGST. Cross set off credit between CGST and SGST is not eligible. In other words SGST credit cannot be used to set off against the CGST credit nor vice versa. But IGST credit can be used to discharge either CGST or SGST or IGST liabilities. Similarly, the CGST credit or the SGST credit or the IGST credit can be used to discharge the IGST liability.

RATE OF GST:

According to the discussion paper the GST rate is likely to be fixed between 8% to 16% against the present common rate of Excise Duty and Service Tax at 10%. However, the exact rate of GST has not been made known in the discussion paper.

ADMINISTRATION:

There would be a dual GST system in the country (i.e.) Central GST (CGST) which would be levied by the Centre and State GST (SGST) which would be levied by the States.

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The Central and the States would have concurrent jurisdiction over the levy. In other words the CGST would be administered by the Centre and the SGST would be administered by the respective states. An Integrated GST (IGST) would be levied for all interstate transactions which would also be under the control of Centre. To administer the above system of transactions, a clearing house would monitor the transfers between the Centre and the States and would be netting of the funds according to the transactions.

LATEST POSITION IN INTRODUCTION OF GST:

[1] Constitution Amendment Bill introduced by Union Finance Minister in the Lok Sabha is being enacted shortly.

[2] It appears THAT THE Centre and States have agreed for (GST and SGST) to be levied respectively and getting ready to utilize the existing tax administration to collect the proposed levies.

[3] In order to administrate SGST every state is going to legislate its own separate statute on the basic features of law such as chargeability, taxable event and taxable person, measure of levy including valuation provisions, basis of classification etc. as far as possible and practicable.

[4] It appears that the Union Ministry of Finance has given two options to settle the Centre – States dispute over the levy of GST. One is to add another list of the products / services to exclude the items like Alcohol used for human consumptions, natural gas, diesel, petrol, crude oil, Aviation Turbine Fuel (ATF) etc. from GST. The second option is to reach on argument by which the Centre will allow State to tax specified service hitherto taxed by it and States will allow the Centre to levy taxes imposed by the States. Final decision as to which option is to be chosen is yet to be decided by the Empowered Committee of State Finance Ministers based on the Supreme Court judgment.

[5] Various areas such as common classification products / services, jurisdiction, tax credits and rates, legal aspects etc. are being debated.

[6] However the relevant rules on procedures are yet to be framed.

[II] IMPORTANT CIRCULARS / NOTIFICATIONS:

[A] RELAXATION IN PRE AUDIT RELIEF:

Vide Circular dated 21.6.2011, the Commissioner of Commercial Taxes has considered the difficulties of the traders and consultants and enhanced the limit of relief for cases referred to pre-audit at the stage of appeal. The relief of tax, penalty and interest in case of appeal before the Deputy Commissioner of Commercial Taxes, has been extended to Rs. 7.00 Lacs i.e. Deputy Commissioner of Commercial Taxes can pass the order without sending the file for pre-audit up to the relief of Rs. 7.00 Lacs which includes, tax, penalty and interest. This limit is extended up to Rs. 25.00 Lacs to the Joint Commissioner of Commercial Taxes who will pass the order without pre-audit exercise. This includes tax, penalty and interest. The readers are requested to see the circular as referred above for the details.

[B] Vide Circular dated 11.7.2011, hence forth the undertaking in case of e-filing return should be forwarded at the interval of six months instead of monthly and quarterly. The date is fixed April and October of each other.

[C] The welcome decision taken by the Circular dated 11.7.2011 that the dealers can keep the statutory forms under CST Act with him at the place of business. Till to-day the original form has to be submitted at the prescribed intervals before the Assessing Officer and at the time of assessment also. Looking to the above difficulty, it is now decided that the dealer can keep this form with him at the place of business. For the necessary check list, details are to be submitted as per prescribed format which was given with the circular.

[III] IMPORTANT JUDGMENTS:

[A] Tax Credit in case of Purchases of Laboratory Goods – Not admissible:

The Hon. Tribunal in case of Alembic Ltd. has decided that the Lab. Goods used for testing of Raw Materials and Finished Product are not considered as consumable stores/goods during the manufacturing process and therefore the tax credit in respect of purchase of laboratory goods is not available.

[B] Set off under Rule 44 was held admissible even though the dealer has not provided evidence of the selling dealer that they have deposited the tax.

In case of A. Bhupendra and Co. it was decided by the Hon. Tribunal that under the S.M.R. the set off under Rule 44 was not allowed. The dealer has preferred an appeal before the Hon. Tribunal but the Hon. Tribunal has relied on the case of Sanrel Rasayan and considered the matter in favour of the dealer and held that even in absence of positive proof that the vendor has paid the tax in respect of goods sold to the applicant against Form No.40, set off under Rule 44 could not be disallowed and the Hon. Tribunal has set aside the S.M.R. order.

[C] In case of Promate Plastics P. Ltd. it was held that interest u/s. 54 is admissible on the amount of refund raised under the CST Act.

Appellant was held entitle to refund in the assessment order passed for the period 1999-2000, passed under the CST Act. However, it was held that the interest on the amount of refund is not admissible to the appellant as there is no such provision under the CST Act. Appellant contended before the Hon. Tribunal that in view of amended section 9(2) of the CST Act, interest is admissible. Appellant also relied on the judgment in the case of M/s. Jagdish Export Industries, S. A. No. 212 of 2000 decided on 16.06.05.

[D] In case of Amulakh and Co. the Hon. Tribunal has reduced the penalty to the sizeable extent:

Appellant was assessed u/s. 41(6) for the U.R.D. period. It was held that the appellant is liable to pay tax on sale of towels and bed sheets. Appellant contended that towels and bed sheets are covered under entry 3 of Schedule II of the Act. They are exempted from tax because of notification entry 130 of notification issued u/s. 49(2) of the Act. Penalty levied u/s. 45(2)(a) was required to be set aside as it was levied without giving show cause notice in Form No. 38 as provided in section 45(9) of the Act. Hon. Tribunal held that entry 51 of Schedule II is very clear. The argument of the appellant that towels and bed sheets remains cotton fabrics is not acceptable. Hon. Tribunal held that the appellant has not collected tax on sale of towels and bed sheets. There is no concealment of any transactions. Accordingly the amount of penalty is reduced from Rs. 1,09,290/- to Rs. 75,000/-.

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CST LAW UPDATE

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Condition Precedent for entertainment of appeal- Pre-deposit-Power of Tribunal to waiver or reduce- Factors to be considered different from those under Central Excise Act.

In the case of JCT LIMITED v. STATE OF GUJARAT AND OTHERS Reported in [2011] 41 VST 312 (Guj.)

Background of the case:-

The Petitioner was a dealer engaged in business of manufacture and Sale/Purchase of various types of textile products. The Petitioner applied to the Joint Commissioner (Legal) for determination of availability of credit of value added tax paid at the rate of four per cent on purchases of raw material within the state of Gujarat. The application was decided holding that according to section 11(3)(b)(i) of Gujarat Value Added Tax Act, 2003, four per cent would be deducted from the tax credit available to the petitioner and the remaining amount would be admissible as tax credit. No finding was given in relation to the inapplicability of section 11(3)(a)(i) of the Act. The petitioner appealed before the High Court during the pendency of which the Assistant Commissioner served the petitioner with notices of demand with assessment orders for the period April 1, 2006 to March 31, 2007 and April 1, 2007 to July 31, 2007. The Petitioner filed two separate appeals with stay applications before the Deputy Commissioner (Appeals) who rejected the stay applications and dismissed both appeals. The Petitioner preferred appeals before the Tribunal with stay applications under section 73(4) of the Act. The Tribunal, in the light if the decision of the Supreme Court in the case of **Benara Valves Ltd. v. Commissioner of Central Excise [2009] 20 VST 297; [2007] 8 RC 6,** directed the Petitioner to pay 50 per cent of the total tax dues within a period of three months from the date of the order.

HELD THAT, allowing the petition, the decision of the Supreme Court in the case of **Benara Valves Ltd. v. Commissioner of Central Excise [2009] 20 VST 297; [2007] 8 RC 6** was rendered in the context of section 35F of the Central Excise Act, 1944 construing the provisions which specifically contained the expressions "under hardship to such person" and " to safeguard the interest of the Revenue". Section 73(4) of the 2003 Act provides that an appellate authority may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order (a) without payment of tax with penalty (if any) or, as the case may be, of the penalty, or (b) on proof of payment of such smaller sum as it may consider reasonable, or (c) on appellant furnishing in the prescribed manner, security of such amount as the appellate authority may direct. There is a vast difference between the language employed in section 35F of the Central Excise Act and Section 73 of the 2003 Act. The 2003 Act now provides pre-deposit only in case where undue hardship is made out and in such manner so as to protect the interest of the Revenue. Therefore when the provisions are worded differently, the tribunal was not justified in drawing an analogy from the provisions of section 35F of the Central Excise Act while considering the question of waiver of pre-deposit under the 2003 Act. When the Tribunal, while arriving at its conclusion, had taken into consideration both revenue as well as extraneous material. In the circumstances, the order of the Tribunal so far as pertaining to the stay applications filed by the petitioner, was vitiated as having been passed on the basis of irrelevant and extraneous material and could not be sustained. The stay applications were to be restored for deciding afresh in the light of the provisions of section 73(4) of the Gujarat Value Added Tax Act.

Sale of old machinery as scrap, whether chargeable as sale of scrap or old machinery.

COMMISSIONER OF COMMERCIAL TAXES AND OTHERS v. CHITARHAR TRADERS Reported in [2011] 41 VST 1 (SC)

Background of the Case:

The Respondent was a purchaser in an Auction conducted by Metal Scrap and Trading Corporation Ltd., which was appointed as a selling agent by Neyveli Lignite Corporation to arrange for disposal of its condemned plant closed as unviable. The Sales tax Authorities in a reply to the letter sent by the respondent clarified that if the plant and machinery had been sold as scrap and the bidder was asked

to dismantle and transport it as a scrap, such sales of scrap were taxable 4% without surcharge under entry 4(1)(a) of the Second Schedule of the Tamil Nadu General Sales Tax Act, 1959. However thereafter the Sales Tax Authorities changed their stand and held that the respondent was liable to pay sales tax at 12 per cent along with five per cent surcharge treating the sale as a sale of plant and machinery as such. The writ petition filed by the respondent was followed by the single judge which was confirmed, in appeal, by the Division Branch holding that what was sold was scrap and not plant and machinery as such.

HELD, on appeal by the Department, dismissing the appeal, that the agreement between Neyveli Lignite Corporation Ltd. and Metal Scrap and Trading Corporation Ltd., clearly provided and established that what was sought to be sold was iron and steel scrap and rejected/condemned and obsolete secondary arising, etc. The respondent has dismantled the machinery by using explosives and transported it out of the premises in trucks as steel scrap. The sale was made by a public sector undertaking and the said sale was conducted for and on behalf of another public sector undertaking. The selling agent was also engaged in the business of metal scrap. The sale had taken place after about 36 years of the purchase of the machinery and the affidavit of Neyveli Lignite Corporation Ltd., clearly proved and established that the machinery had become obsolete and the plant and machinery had become condemned articles. All these contemporaneous documents and the factual situation made it abundantly clear that what was sold and purchased by the respondent was nothing else but scarp.

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section 54. It is also common ground that the assessee was in enjoyment of the entire property. Once the principles laid down in the judgments of the Delhi and Gujarat High Courts in Addi. **CIT v. *Vidya Prakash Talwar*** [1981] 132 ITR 661, and **CIT v. *Kodandas Chanchlomal*** [1985] 155 ITR 273, respectively, that 'house property' takes into account an independent residential unit, there was no force in the contention that since the independent residential unit (first floor in the present case) was put up on an existing old house, exemption u/s 54 was not available. Once there was concluded that the assessee was entitled to the exemption u/s 54, the question whether section 48 read with section 55(b) was applicable or not, would not arise. In the circumstances, the assessee was entitled to exemption u/s 54."

Having regard to the above decisions and considering the nature of the construction made by the assessee it cannot be said that the assessee had not invested the sale proceeds for the construction of the residential house. The Hon'ble Delhi High Court in the case of **Addi. CIT v. *Vidya Prakash Talwar*** [1981] 132 ITR 661 held that the residential house should be interpreted as residential unit as applied in sections 22 to 27. If any independent unit is constructed then that will tantamount to construction of a new residential house.

In the instant case also it was seen that the assessee constructed the mezzanine floor with kitchen and toilet which is an independent unit as such. That the assessee used for his own purposes will not in any case change the fact that a new residential unit has been brought into existence. That the original portion has been occupied by the assessee also will not affect the nature of the newly constructed residential portion as held by the Hon'ble Karnataka High Court in the case of ***J.R. Subramanyam*** *(supra)* (sic). In that case also the assessee sold a building in February, 197. In March, 1976 he had commenced construction of a new house which was completed in March, 1977. The Assessing Officer did not allow the claim on the ground that the construction of a new building had commenced much earlier to the sale of the old building and the major portion of the building was let out by the assessee. When the matter came up before the Hon'ble High Court it was held that it was immaterial that the construction of the new building was started in 1976. The construction was completed in March, 1977 which was within two years from the sale off the old building. Therefore, the assessee was entitled to exemption u/s 54F of the Act".

It is submitted that in view of the decision in the case of Ashokkumar HUF cited supra, it is very clear that in view of the legislative intent as spelt out by the Hon. Finance Minister, if the additional floor is constructed in an existing residential house, then assessee is entitled to claim exemption under section 54/54F of the Income Tax Act, 1961. Thus, when long term capital gain is invested in constructing an additional floor in an existing residential house, the exemption under section 54/54F of Income Tax Act, 1961 can not be denied.

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SERVICE TAX REVIEW

IN THIS ISSUE, JUDGMENT ON CONSULTING ENGINEER SERVICES AND MANDAP KEEPER SERVICES ARE REPRODUCED FOR THE BENEFIT OF MEMBERS.

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1) Whether deputation of manpower for pre-commissioning, commissioning and maintenance of plant would fall under the category of consulting engineer?

[2011] 11 taxmann.com 295 (Ahd. - CESTAT) CESTAT, AHMEDABAD BENCH Reliance Industries Ltd.* v. Commissioner of Central Excise, Vadodara-I

M//s Indian Petrochemicals Corporation Ltd., (now M/s Reliance Industries Ltd.), Vadodara entered into contract with M/s Haldia Petrochemicals Ltd., (hereinafter referred to as M/s HPL) to provide the services for successful completion of pre-commissioning, commissioning operation and maintenance of HPL plant, by deploying qualified manpower. By treating these services provided by the appellant falling within the definition of 'Consulting Engineer' as defined in section 65(31) of Service Tax, show-cause notices were issued to the appellant demanding Service Tax short paid. The original adjudicating authority confirmed the demand and subsequently the Commissioner (Appeals) upheld this order.

2. Admittedly, the appellants entered into an agreement with HPL for :—

(a) Manpower training deputed by the HPL at the appellant's factory.

(b) Deputing manpower to HPL for demonstration/ assistance in plant operation.

3. Revenue's contention was that these activities performed by the appellant came within the definition of the term 'Consulting Engineer'.

4. The short issues to be decided are :

(i) Whether these activities fall under the 'Consulting Engineer' services for which the Service Tax is to be levied or not.

(ii) Whether the demand is within the time limit or not.

5. Section 65(18) of Finance Act, 1994 defines 'Consulting Engineer' as under :

"A1 'Consulting engineer' means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering."

A2 Section 65(72)(g) states that taxable service with respect to a consulting engineer means any service provided to a client in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering."

As can be seen that the provisions relating to Service Tax have defined the scope of service rendered by 'Consulting Engineer' to be 'advice', 'consultancy' and 'technical assistance' in any manner.

6. The dictionary meaning of 'Consultant/Advisor' is basically a trained and experienced involving guidance, advising the client or finding a workable response.

7. We have also considered the two important factors provided in the agreement dated 18-11-1999 between the appellant and HPL that the manpower deputed by the appellant has to work according to the instructions given by HPL and that the HPL has rights to reduce or to require the removal of any person deputed by the appellant. The manpower deputed to HPL are required to participate in maintenance/demonstration/operation of the plant. In this context, Board's circular No. 79/9/ 2004-ST, dated 13-5-2004 clarifies as under :

"The issue has been examined by the Board in consultation with the Ministry of Law and Justice and in this regard, I am directed to say that the charges of erection, installation & commissioning are not covered under the category of Consulting Engineer Services. Commissioning or Installation service will be separately taxable under relevant entry and are not chargeable under Consulting Engineer Services. Accordingly, the clarification issued vide Circular No. 49/11/2002-ST, dated 18-12-2002 stands modified to this extent." (Emphasis supplied)

7.1 We observe that the Service Tax is levied on

commissioning/installation services with effect from 1-7-2003 and the period in dispute is upto 2000 and 2001. 'Commercial training or coaching' and 'Commercial training or coaching centre' are defined under section 65(29) as under :

"(26) "commercial training or coaching" means any training or coaching provided by a commercial training or coaching centre;

(27) "commercial training or coaching centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force."

8. The Tribunal in the case of Jyoti Ltd. (supra), while dealing with the similar issue, has observed with much clarity as follows :

"14. As is further seen that such engineering firm should be rendering any advice, consultancy or technical assistance to a client to make them liable to service tax. To render advice means to give opinion or to make a recommendation regarding decision or course of conduct. Consulting means seek information or advice from a person or to take counsel. Person consulted is a consultant and hence consultancy means rendering professional advice or service. Similarly, 'technical assistance' means providing assistance on the basis of special skill and knowledge. Where a person himself undertakes a job on contract basis for installation, erection and commissioning of machine, services are in the nature of execution of jobs and not in the nature of advice, consultancy or technical assistance. As observed by the original adjudicating authority, the word 'technical assistance' is preceded by the words 'advice' and 'consultancy'. Principle regarding interpretation of words has been laid down by Hon'ble Supreme Court in the case of **Rohit Pulp & Paper Mills Ltd. 1990 (47) ELT 491 and in the case of State v. Hospital Mazdoor Sabha 1960 SCR 886."**

9. When particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. This rule of ejusdem generis reflects an attempt "to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous." Considering the above points, we have no hesitation in holding the assessee's contention as seemingly sustainable.

10. In short, having taken a survey of the facts, evidences and various legal pronouncements, we observe that the deputation of manpower to HPL by the appellant cannot qualify as the service provided by 'Consulting Engineer'. Similarly, the activities undertaken by the appellant as per the agreement dated 28-10-1998, cannot be considered as 'advice', 'consultancy' and 'technical assistance' in nature.

11. Now, we shall deal with the issue of limitation. It is an undisputed fact that for the period of dispute, i.e., 1999 to 2000 and 2000 to 2001, the show cause notice was issued on 7-10-2002. The argument advanced by the appellant is that it was under bona fide belief that the activities carried out by it being supply of manpower for commissioning or installation and that of imparting training, will not be covered by the activities of 'Consulting Engineer' as per the definition contained in Chapter 5 of Finance Act, 1994. There is nothing on record to show that the appellant had deliberately suppressed any information from the department.

12. The Hon'ble Supreme Court in the case of **Collector of Central Excise v. Chemphar Drugs & Liniments 1989 (40) ELT 276**, has dealt with this issue and observed that it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with an intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months.

13. This view is further reiterated by Hon'ble Supreme Court in the order in the case of **Padmini Products v. Collector of Central Excise 1989 (43) ELT 195**, which is as follows:

". . . the appellants could not be held to be guilty of the fact that excise duty had not been paid or short-levied or short-paid or erroneously refunded because of either any fraud or collusion or willful misstatement or suppression of facts or contravention of any provision

of the Act or Rules made thereunder. These ingredients postulate a positive act. Failure to pay duty or take out a license is not necessarily due to fraud or collusion or willful mis-statement or suppression of facts or contravention of any provision of the Act. Suppression of facts is not failure to disclose the legal consequences of a certain provision."

14. We, therefore, find that the extended period cannot be invoked in this case.

15. In view of the foregoing, we set aside the impugned order and allow the appeal with consequential relief, if any, to the appellant.

2) Allotment of space to the member of the club :-

[2011] 31 STT 1/9 taxmann.com 313 (Guj.) HIGH COURT OF GUJARAT Karnavati Club Ltd. v. Union of India

JUDGMENT

Whether the petitioners, who are basically engaged in promoting different sports, are liable to pay service tax on the services rendered by it to its members is the issue that has come up for our consideration in these petitions.

2. The petitioners are companies registered under the provisions of the Companies Act, 1956. The main object of the petitioners is to encourage and promote the game of cricket and other different games and sports in the State of Gujarat and to provide facilities and infrastructure in connection with such games, sports and for other purpose. The petitioner is a members club without any shareholders and makes available facilities exclusively for its members and their guests and recoups expenses. The petitioner is therefore, a mutual undertaking which does not earn any profit as understood in commercial parlance and does not carry on any trade or business. In legal parlance, the element of mutuality in the affairs and dealing of the club exists. The petitioner club is having open lawn (space) and the said lawn of the club is provided for marriage ceremonies and other social functions to the members on charges.

3. The service tax has been imposed upon the service rendered by the 'Mandap Keeper' to its clients and as insisted upon by the officers of the respondent No. 1 the petitioner has got themselves registered under provision of Finance Act, 1994 for the purpose of making the payment of service tax as 'Mandap Keeper' provided by the petitioner to its members and started payment of service tax as per the provisions of Finance Act, 1994.

4. The petitioner challenges the action of the respondents in holding the petitioner club liable to pay service tax being a 'Mandap Keeper' within the contents of provision of the Finance Act, 1994.

5. Mr. Nanavati, learned Sr. counsel for the petitioner, has submitted that according to the respondents, the petitioner is "mandap keeper" in view of the provisions of clauses (66) and (67) of section 65 of the Finance Act, 1994 on the ground that it allows temporary occupation of mandap or open lawn (space) owned by the club for consideration for organizing any official, social or business functions.

6. Learned Sr. counsel has contented that the services offered by the petitioners were only as a matter of convenience for the use by its members and the invitees, which is one of the object of the clubs. Therefore, the facilities extended by the petitioners to its members cannot be classified as a trading activity.

6.1 Learned counsel has further submitted that there is no element of transfer of property between the members and the club when the petitioner club provides its members the facility to use the lawn for the purpose of wedding and other functions and the petitioner club is not a Mandap Keeper. When the club provides its facilities to its members for official, social or business functions, there is no letting-out of its immovable property for any consideration. Hence, no ingredients of clause (66) or (67) of section 65 of the Finance Act, 1994 get attracted. Moreover, no element of transfer is involved between the member and the club when the club provides its members the facility to use its property for any function. Therefore, under no circumstances, the petitioner can be classified as 'mandap keeper'.

6.2 Learned counsel has relied upon a decision of the Calcutta High Court in the case of Dalhousie Institute v. Assistant Commissioner, Service Tax Cell 2005 (180) E.L.T. 18 wherein, it has been held that the members of a club are allowed exclusively to participate in the services rendered by the club and its fund and that providing such facility to the members by its club cannot be termed to be a letting-out nor the members using the facility of any portion of the premises for any function can be termed to be a client. Similar principle is also laid down in another decision of the Calcutta High Court in the case of **Saturday Club Ltd. v. Asstt. Commissioner, Service Tax Cell 2005 (180) E.L.T. 437/1 STT 64.**

6.3 Learned Sr. counsel has further submitted that keeping in mind the principle laid down in the aforesaid decisions, the Union Government has also amended the Finance Act, by introducing the Finance (Amendment) Act, 2005, which came into force w.e.f. 16-6-2005. Therefore, the submissions canvassed by the petitioners have been

indirectly endorsed by the Union Government as well. Hence, the impugned action of the respondents is illegal and bad in the eyes of law and deserves to be quashed and set aside.

7. Mr. Y.N. Ravani, learned standing counsel appearing on behalf of the respondent-Central Government, has submitted that the Memorandum of Association of the petitioners include the leasing or hiring of any movable or immovable property as one of its object. The kind and scope of services, which attract service tax levy, have been well-defined in the service tax legislation. The petitioners provide services in relation to the use of its lawns, etc. to its members and therefore, it is covered by the scope of "taxable service" provided by a "mandap keeper" within the meaning of section 65(20) of the Act.

7.1 Learned counsel has further submitted that the terms "mandap" and "mandap keeper", as defined in the Finance Act, 1994 describe the scope and nature of levy, the taxable event and the person who is liable to pay tax. The levy covers not only establishments having regular business but also, the conference rooms, halls, etc. which are let-out for conducting official, social or business functions.

7.2 Learned counsel has submitted that the services rendered by the clubs in the form of temporary occupation of its premises, viz., the lawns, etc., to its Members, their families and guests, are charged for a consideration and that the same are being paid by the members. Hence, the services rendered by the clubs of allowing its members temporary occupation of its premises will attract the levy of service tax. The tax on the services rendered by the clubs is in pith and substance a tax on the services. The clubs are already exempted from the levy of income-tax and therefore, it would not be proper to grant them exemption even under the Service Tax Act. He therefore submitted that no interference is called for from this Court in this petition.

7.3 Learned counsel for the respondents has relied upon a decision of the Apex Court in the case of **Tamil Nadu Kalyana Mandapam Assn. v. Union of India 2004 (167) ELT 3/[2006] 4 STT 308**, wherein, it has been held that service tax on catering services does not amount to tax on sale and purchase of goods and that for a tax to amount to a tax on sale of goods, it must amount to a sale according to the established concept of a sale. It has been further held therein that the operative words of article 366(29A)(f) of the Constitution of India is supply of goods and only supply of food and drinks and other articles for human consumption, is deemed to be sale or purchase of goods.

8. Having considered the rival submissions raised by the respective parties, the point is whether going by the definition of "mandap" and "mandap keeper", as defined in the Finance Act, 1994, the petitioner/club can be made liable to pay service tax or not. Service Tax was introduced in India vide the Finance Act, 1994. It is legislated by the Parliament under the residuary entry, i.e., Entry 97 of List I of the Seventh Schedule of the Constitution of India. It is an indirect tax and is to be paid on all the services notified by the Union Government for the said purpose. The said tax is on the service and not on the service provider.

9. However, under section 68 of the Finance Act, 1994, as amended by the Finance Act, 1997 the service provider is expected to collect tax from the client utilizing its services. Amongst other services, the Finance Act, 1997 made the services rendered by "mandap keepers" liable to service tax.

10. Looking to the facts of the case, a reference to some of the amended provisions of section 65 of the Finance Act, 1994 are required to be considered. It reads as under:

"(19) "Mandap" means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for consideration for organizing any official, social or business function;

(20) "Mandap Keeper" means a person who allows temporary occupation of a mandap for consideration for organizing any official, social or business function.

(41)(p) "Taxable Service" means any service provided to a client by a mandap-keeper in relation to the use of a mandap in any manner including the facilities provided to the client in relation to such use and also the services, if any, rendered as a caterer."

11. A conjoint reading of the above provisions of law goes to show that the services provided to a client, including the facilities provided in relation to its use and also the services, if any, rendered as a caterer, by a person who allows the temporary occupation of any immovable property, as defined in section 3 of the Transfer of Property Act, 1882 and which also includes any furniture, fixtures, light fittings and floor coverings therein, let out for consideration, for organizing any official, social or business function, in any manner, falls under the category of taxable service.

12. In other words, for a service/s to fall under the category of "taxable service", within the provisions of the Finance Act, 1994 the requirement is that it must be provided by a person, who allows temporary occupation of any immovable property, as defined under the provisions of

the Transfer of Property Act, 1882 and includes such facilities attached thereto, let out for consideration for the purpose of organizing any official, social or business function to a client. The words "let out for consideration" employed in the definition of "mandap" clearly intend the element of use by any person, including the third party, of an immovable property as well as the furniture, fixtures and light fittings given by the landlord on consideration. Therefore, the meaning and definition of letting-out inheres transaction of commercial character, rather trading. Similarly, from the definition of "mandap keeper" it is clear that a person allows temporary occupation of a mandap for consideration, meaning thereby temporary parting with the possession to a third party for consideration. Thus, it is obvious that Legislature intended this transaction must be for commercial purposes. Again, the words, "provided to a client" used in the definition of "taxable service" necessarily presupposes that the "mandap keeper" must be letting out an immovable property to any person on consideration.

13. Now, it has to be examined in the context of the aforesaid reading and meaning of the three definitions as to whether the petitioner/Club does come within the purview of the same or not. One of the criteria is that such service must be provided to a client. If such service is not provided to a client, then it would not attract levy under the provisions of the Act. Hence, the question that is now required to be considered by this Court is as to whether the members of the clubs fall under the definition of "client" or not so as to attract levy of tax under the provisions of the Act.

14. To decide the same, we shall refer to the meaning of the term "client" as defined in some of the leading dictionaries. In Concise Oxford Dictionary, the word "client" is defined as "a person using the services of a lawyer, architect, social worker or other professional person". Wharton's Law Lexicon, 1976 Edn. defines client as "a person who seeks advice of a lawyer or commits his cause to the management of one, either in prosecuting a claim, or defending a suit in a Court of justice." In the English Solicitors Act, 1870, (S.3) client is defined as "Client includes any person who, as a principal or on behalf of another person, retains or employs, or is about to retain or employ, a solicitor; and any person who is or may be liable to pay the solicitors Bill of costs, for any services, fees, costs, charges, or disbursements." In Stroud's Judicial Dictionary, it is defined as "any person who, as a principal or on behalf of another person, retains or employs or is about to retain or employ, a solicitor". In Corpus Juris Secondum, it has been defined "a client is one who seeks advice of an attorney or retains him to prosecute or defend a suit. A client is one who applies to a lawyer or counselor for advice and direction in a question of law or commits his cause to his management in prosecuting a claim or defending him against a suit in a court of justice; one who retains the attorney who is responsible to him for his fees and to whom the attorney is responsible for the management of the suit; one who communicates facts to an attorney expecting professional advice".

15. The definition of the term "client" clearly shows that an element of agency is implicit between a person and the agency providing service to him. A "client" is one who applies for service or advice or who retains a solicitor in the management of his suit. A "member" of a club is not a client of the club.

16. It is a well-settled law that in between the principal and agent when there is no transfer of property available, the question of imposition of service tax cannot be made available. The petitioners herein are a "members" club and not a "proprietary club". It is not even the case of the respondents that the petitioners are a "proprietary club". Therefore, if the club space is allowed to be occupied by any member or his family members or by his guest, for a function, by constructing a "mandap", the club cannot be called as "mandap keeper" because the club is allowing its own member to do so, who is, by virtue of his position, a principal of the club. If any outside agency is called upon to do the needful, it may raise a bill along with the service tax upon the club and the club as an agent of the members, is supposed to pay the same.

17. The authority cannot impose service tax twice once upon the people carrying out the business of "mandap keeper" and then upon the members club for the purpose of using the space for constructing or using it as a "mandap". Therefore, apart from any other question, the possibility of double taxation cannot be ruled out.

18. If, in a given case, a person, being an owner of a house, allows another to occupy the house for the purpose of carrying out any function in that house, then it will not be construed as transfer of property. But, if such person calls upon a third party, a "mandap keeper", to construct a "mandap" in such house, then in that case, such "mandap keeper" can be able to raise bill upon the user of the premises along with the service tax. Therefore, it cannot be held that the "members club" is covered by the Finance Act, 1994 for imposition of service tax to use its space as "mandap".

19. For the applicability of service tax, there should be existence of two sides/entities, viz., transaction as against consideration. In a "members club" there is no

question of two sides. "Members" and "Club" both are the same entity. One may be called as "principal" when the other may be called as "agent". Therefore, such transaction, in between themselves, cannot be recorded as income, sale or service.

20. By relying upon the bye-laws of the clubs, a ground is sought to be raised that since the clubs also take on lease or hire movable or immovable property for its different purposes, they are liable to pay service tax. We have gone through the bye-laws and also the relevant rules and regulations of the Clubs and do not find any provision that the properties and/or the facilities, those are being made available by the members to themselves could be extended to third parties for any consideration whatsoever.

21. The members of the clubs are allowed exclusively to participate in the services rendered by the clubs and no third party is allowed to participate in the same. Even, the facilities and amenities of the clubs are not extended to any third party who, of course, may come as a guest and/or invitee of the members. The above exclusiveness is given for a limited period and for a specific purpose and therefore, in any case, it cannot be termed as "lease" or "hire". Thus, it is clear from the activities of the clubs, as stipulated in its bye-laws and the relevant rules and regulations that the "mandap keeper", in this case, are the members collectively. Hence, we are of the opinion that the understanding of the respondents about the petitioners dealing is fallacious, for they mean the word "client", relying on the dictionary expression, instead of reading and understanding the correct meaning.

22. Service tax is recoverable from the "mandap keeper", who is having a different and distinct separate legal and physical entity and who lets-out the "mandap" with a commercial and trading object. Here, the members have formed the club to serve themselves mutually and for this purpose, the members are paying for such user and any amount of receipt and expenditure of the clubs is enjoyed and/or incurred by the members alone and not by third party.

23. The principle of mutuality is squarely applicable in this case as going by the definitions of "mandap", "mandap keeper" and "taxable service", as reproduced herein above, the facility of use of the premises and/or the facilities attached thereto, by the members of the clubs cannot be termed to be "letting-out" nor the members of the club using the facility/s or any portion of the premises for any function can be termed to be client/s. The services rendered by any person to his client pre-suppose the element of commerciality and obviously this transaction must be involved with a third party, as opposed to the members of the Club.

24. Merely because the clubs are exempted from the levy of income-tax, the respondents could not impose service tax, unless and until the same is permissible under the law. It has now become an elementary principle of law that the question of estoppels cannot arise nor the principle thereof can be applied as against the provisions of law. If it is found that a particular statute is not applicable to any person/s, the action taken by mistake cannot operate as an estoppels or acquiescence. Therefore, the entire proceedings against the clubs about the applicability of service tax are required to be quashed and set aside.

25. In taxation matters, where a High Court is concerned with the interpretation of an all India statute, it should be a practice and policy that if one High Court has interpreted a provision or section of a taxing statute which is an all India statute and there is no other view in the field, another High Court must ordinarily accept that view in the interest of uniformity and consistency in matter of application of taxing statute so as to avoid the challenge of discrimination in application and administration of tax matters. Such principle has been laid down in Maneklal Chunilal & Sons Ltd. v. CIT [1953] 24 ITR 375 (Bom.); CIT v. Chimanlal J. Dalal & Co. [1965] 57 ITR 285 (Bom.), CIT v. Tata Sons (P.) Ltd. [1974] 97 ITR 128 (Bom.) and J.D. Patel v. Union of India 1975 G.L.R. 1083. We are, therefore, in respectful agreement with the view taken by the Calcutta High Court in the decision referred to in Dalhousie Institute and Saturday Club Ltd. cases (supra).

26. The subsequent amendment in the Act in 2005 clearly establishes that even the Legislature thought it fit to amend the relevant definition. The decisions of the Calcutta High Court, referred to in the earlier paragraphs, have been followed by several Tribunals in the country and the said decisions have not been stayed so far.

27. For the foregoing reasons, the petition is allowed. The entire proceedings initiated against the petitioner by the respondents about the applicability of service tax are quashed and set aside. Therefore, petitioners are required to make an application for recovery (sic) (refund) of service tax. The same will be decided within three months from the date of receipt of the application and it is made clear that authority will not reject the same on the ground of delay or the same is made after a lapse of time, but the same will be decided keeping in mind the decision taken by this Court in this judgment and also the principles of unjust enrichment if applicable. Rule is made absolute with no order as to costs to the aforesaid extent.

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CORPORATE LAWS UPDATE

FROM MCA

Of late the Ministry of Corporate Affairs have started taking rapid steps for simplifying and implementing various far reaching and revolutionary measures by issuing circulars practically on every alternate days. Every professional has to update himself with latest developments taking place around him. The circulars issued by MCA are reproduced hereunder:

CA. Chirag M. Shah
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From The Ministry of Corporate Affairs (MCA)

1. **Sub: Integration of Director's Identification Number (DIN) issued underCompanies Act, 1956 with Designated Partnership Identification Number(DPIN) issued under Limited Liability Partnership (LLP) Act, 2008**General Circular No. 44/2011 Dated: 08.07.2011

   The Ministry of Corporate Affairs has been issuing two separateidentification numbers as DIN to an individual for becoming a director of acompany under Companies Act, 1956 and DPIN for a designated partner in aLimited Liability Partnership under Limited Liability Partnership (LLP) Act,2008.

2. To avoid this duplicity and to give ease to the stakeholders, the Ministryhas decided to issue only one identification number to an individual for boththe purpose.

3. Therefore, the Ministry, vide notification dated 5th July, 2011, hasintegrated the Director's Identification Number (DIN) issued under CompaniesAct, 1956 with Designated Partnership Identification Number (DPIN) issuedunder Limited Liability Partnership (LLP) Act, 2008 with effect from 9.7.2011.

4. Pursuant to this notification:-

   (a) With effect from 9.7.2011, no fresh DPIN will be issued. Anyperson, who desires to become a designated partner in a LimitedLiability Partnership, has to obtain DIN by filing e-form DIN-1.

   (b) If a person has been allotted DIN, the said DIN shall also be used asDPIN for all purposes under Limited Liability Partnership Act, 2008.

   (c) If a person has been allotted DPIN, the said DPIN will also be usedas DIN for all the purposes under Companies Act, 1956.

   (d) If a person has been allotted both DIN and DPIN, his DPIN willstand cancelled and his DIN will be used as DIN as well as DPIN forall purposes under Limited Liability Partnership Act, 2008 andCompanies Act, 1956.

5. As per Circular no. 32/2011 dated 31.05.2011, the Ministry has madeIncome Tax Permanent Account Number (PAN) mandatory for obtaining DINfor Indian nationals. Further, all existing DIN holders, who have not furnishedtheir PAN at the time of obtaining DIN, are required to furnish their PAN tothe Ministry by filing e-form DIN-4 by 30th September, 2011.

6. Similarly, all DPIN holders, who had not furnished their PAN at the time ofobtaining DPIN, are required to furnish their PAN to the Ministry by filing eformDIN-4 by 30th September, 2011, failing which their DPIN/DIN will bedisabled and they will also be liable for heavy penalty.

Yours faithfully,
-Sd/-
(Monika Gupta)
Assistant Director

2. **Subject: NAME AVAILABILITY GUIDELINES, 2011(**General Circular No. 45/2011 No 17/90/2011- CL V Dated the 8th July, 2011)

   In supersession of all the previous circulars and instructions issued by Ministry of Corporate Affairs from time to time regarding name availability, the applicants and Registrar of Companies are advised to adhere following guidelines while applying or approving a name:

1. As per provisions contained in Section 20 of the Companies Act, 1956, no company is to be registered with undesirable name. A proposed name is considered to be undesirable if it is identical with or too nearly resembling with:

   (i) Name of a company in existence and names already approved by the Registrar of Companies;

   (ii) **N**ame of a LLP in existence or names already approved by Registrar of LLP;

   or

   (iii) A registered trade-mark or a trade mark which is

subject of an application for registration, of any other person under the Trade Marks Act, 1999.

2. While applying for a name in the prescribed e-form-1A, using Digital Signature Certificate (DSC), the applicant shall be required to furnish a declaration to the effect that:

(i) he has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e.,

www.mca.gov.in/MCA21 for checking the resemblance of the proposed name(s) with the companies

and Limited Liability Partnerships (LLPs)respectively already registered or the names already approved.

(ii) the proposed name(s) is/are not infringing the registered trademarks or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999;

(iii) the proposed name(s) is/are not in violation of the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time to time;

(iv) the proposed name(s) is not such that its use by the company will constitute an offence under any law for the time being in force.

(v) the proposed name is not offensive to any section of people, e.g., proposed name does not contain profanity or words or phrases that are generally considered a slur against an ethnic group, religion, gender or heredity;

(vi) he has gone through all the prescribed guidelines, understood the meaning thereof and the proposed name(s) is/are in conformity thereof;

(vii) he undertakes to be fully responsible for the consequences, in case the name is subsequently found to be in contravention of the prescribed guidelines.

3. There is an option in the e-form 1A for certification by the practicing Chartered Accountants, Company Secretaries and Cost Accountants, who will certify that he has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., www.mca.gov.in/MCA21 for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) respectively already registered or the names already approved and the search report is attached with the application form. The professional will also certify that the proposed name is not an undesirable name under the provisions of section 20 of the Companies Act, 1956 and also is in conformity with Name Availability Guidelines, 2011.

4 (i) Where e-form 1A has been certified by the professional in the manner stated at '3' above, the name will be made available by the system online to the applicant without backend processing by the Registrar of Companies (ROC). This facility is not available for applications for change of name of existing companies.

(ii) Where a name has been made available online on the basis of certification of practicing professional in the manner stated above, if it is found later on that the name ought not to have been allowed under provisions of section 20 of the Companies Act read with these Guidelines, the professional shall also be liable for penal action under provisions of the Companies Act, 1956 in addition to the penal action under Regulations of respective professional Institutes.

(iii) Where e-form 1A has not been certified by the professional, the proposed name will be processed at the back end office of ROC and availability or non availability of name will be communicated to the applicant.

5. The name, if made available, is liable to be withdrawn anytime before registration of the company, if it is found later on that the name ought not to have been allowed. However, ROC will pass a specific order giving reasons for withdrawal of name, with an opportunity to the applicant of being heard, before withdrawal of such name.

6. The name, if made available to the applicant, shall be reserved for sixty days from the date of approval. If, the proposed company has not been incorporated within such period, the name shall be lapsed and will be available for other applicants.

7. Even after incorporation of the company, the Central Government has the power to direct the company to change the name under section 22 of the Companies Act, 1956, if it comes to his notice or is brought to his notice through an application that the name too nearly resembles that of another existing company or a registered trademark.

8. In determining whether a proposed name is identical with another, the following shall be disregarded:

(i) The words Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;

(ii) The words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp.;

(iii) The plural version of any of the words appearing in the name;

(iv) The type and case of letters, spacing between letters and punctuation marks;

(v) Joining words together or separating the words, as this does not make a name distinguishable from a name that uses the similar, separated or joined words. Such as Ram Nath Enterprises Pvt. Ltd. will be considered as similar to Ramnath Enterprises Pvt. Ltd.;

(vi) The use of a different tense or number of the same word, as this does not distinguish one name from another. Such as, Excellent Industries will be similar to 4 Excellence Industries and similarly Teen Murti Exports Pvt. Ltd. will be to Three Murti Exports Pvt. Ltd.;

(vi) Using different phonetic spellings or spelling variations, as this does not distinguish one name from another. For example, J.K. Industries limited is existing then J and K Industries or Jay Kay Industries or J n K Industries or J & K Industries will not be allowed. Similarly if a name contains numeric character like 3, resemblance shall be checked with 'Three' also;

(vii) The addition of an internet related designation, such as .COM, .NET, .EDU, GOV, .ORG, .IN, as this does not make a name distinguishable from another, even where (.) is written as 'dot';

(viii) The addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc., as this does not make a name distinguishable from an existing name such as New Bata Shoe Company, Nav Bharat Electronic etc. Similarly, if it is different from the name of the existing company only to the extent of adding the name of the place, the same shall not be allowed. For example, 'Unique Marbles Delhi Limited' can not be allowed if 'Unique Marbles Limited' is already existing; Such names may be allowed only if no objection from the existing company by way of Board resolution is produced/ submitted;

(ix) Different combination of the same words, as this does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of "Builders and Contractors Limited", the name "Contractors and Builders Limited" should not be allowed;

(xi) Exact Hindi translation of the name of an existing company in English especially an existing company with a reputation. For example, Hindustan Steel Industries Ltd. will not be allowed if there exists a company with name 'Hindustan IspatUdyog Limited';

9. In addition to above, the user shall also adhere to following guidelines: —

(i) It is not necessary that the proposed name should be indicative of the main object.;

(ii) If the Company's main business is finance, housing finance, chit fund, leasing, investments, securities or combination thereof, such name shall not be allowed unless 5 the name is indicative of such related financial activities, viz., Chit Fund/ Investment/ Loan, etc.;

(iii) If it includes the words indicative of a separate type of business constitution or legal person or any connotation thereof, the same shall not be allowed. For eg: cooperative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.;

(iv) Abbreviated name such as 'BERD limited' or '23K limited' cannot be given to a new company. However the companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name (for Delhi Cloth Mills limited to DCM Limited, Hindustan Machine Tools limited to HMT limited) after following the requirement of Section 21 of the Companies Act, 1956. Further, if the name is only a general one like Cotton Textile Mills Ltd., or Silk Manufacturing Ltd., and not specific like Calcutta Cotton Textiles Mills Limited or Lakshmi Silk Manufacturing Company Limited, the same shall not be allowed;

(v) If the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding should not be allowed for a period of 2 years from the date of such dissolution since the dissolution of the company could be declared void within the period aforesaid by an order of the Court under section 559 of the Act. Moreover, if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 560 of the Act, then the same shall not be allowed before the expiry of 20 years from the publication in the Official Gazette being so struck off since the company can be restored anytime within such period by the competent authority;

(vi) If the proposed names include words such as 'Insurance' , 'Bank' , 'Stock Exchange' , 'Venture Capital' , 'Asset Management' , 'Nidhi' , 'Mutual fund' etc., the name may be allowed with a declaration by the applicant that the requirements mandated by the respective Act/ regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;

(viii) If the proposed name includes the word " State" , the same shall be allowed only in case the company is a government company. Also, if the proposed name is containing only the name of a continent, country, state, city such as Asia limited, Germany

Limited, Haryana Limited, Mysore Limited, the same shall not be allowed;

(ix) If the proposed name contains any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central or any State Government under any law for the time in force, unless the previous approval of Central Government has been obtained for the use of any such word or expression;

(ix) If a foreign company is incorporating its subsidiary company, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian state or city, if otherwise available;

(x) Change of name shall not be allowed to a company which is defaulting in filing its due Annual Returns or Balance Sheets or which has defaulted in repayment of matured deposits and debentures and/or interest thereon;

10. These guidelines and revised e-form 1A are likely to be implemented with effect from 24th July, 2011.

11. This issues with the approval of competent authority.

Yours faithfully,
-Sd/-
(Monika Gupta)
Assistant Director

3. Sub: Waiver of approval of Central Government for payment of remuneration toprofessional managerial person by companies having no profits or inadequate profits (General Circular No. 46/2011 No 14/03/2011/CL.VII Dated: 14.07.2011)

In order to promote the development of Indian Corporate sector and another step towards simplification of procedure under the Companies Act, 1956, the Ministry has decided to amend Schedule XIII to the Companies Act, 1956 w.e.f.14.7.2011.

1. At present, listed companies and their subsidiaries companies, which are not having profits or having inadequate profits, have to come to the Central Government for seeking approval for payment of remunerations exceeding Rs. 4 lakh p.m. even to professional managerial person, who has no interest in the capital or any relation with the directors of the company.

2. Pursuant to this amendment, no approval of Central Government will be required by the listed companies and their subsidiary companies, which are not having profits or having inadequate profits for payment of remunerations exceeding Rs. 4 lakh p.m., if the managerial person:-

(a) is not having any direct or indirect interest in the capital of the company or its holding company or through any other statutory structures at any time during last two years before or on the date of appointment and

(b) is having a graduate level qualification with expert and specialized knowledge in the field of his profession.

3. The other general conditions specified in para (c) of Section II of Part II of Schedule XIII to the Act shall continue to be complied with.

Yours faithfully,

-Sd-

(Monika Gupta)

Assistant Director

4. Sub: Waiver of approval of Central Government for payment of remuneration to professional managerial person by companies having no profits or inadequate profits (General Circular No. 46/2011No 14/03/2011/CL.VII Dated: 14.07.2011)

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(a) is not having any direct or indirect interest in the capital of the company or its holding company or through any other statutory structures at any time during last two years before or on the date of appointment and

(b) is having a graduate level qualification with expert and specialized knowledge in the field of his profession.

4. The other general conditions specified in para (c) of Section II of Part II of Schedule XIII to the Act shall continue to be complied with.

Yours faithfully,
-Sd-
(Monika Gupta)
Assistant Director

5. Sub: Prosecution of Directors – Regarding(General Circular No.47/2011 Dated the 14th July, 2011)

I am directed to refer to this Ministry's General Circular No. 08/2011 dated25.03.2011 on the subject cited above and to state that the nominee director onbehalf of Public Financial Institutions, Financial Institutions and banks on theboard of companies should also be treated in the same manner as provided in the para 2 of the said Circular.

Yours Faithfully
-sd/-
(Monika Gupta)
Assistant Director

6. NAME AVAILABILITY GUIDELINES, 2011(GENERAL CIRCULAR NO. 48/2011 Dt. 22/07/2011)

In continuation of this Ministry's earlier circular no. 45 dated 8.7.2011 onthe subject cited above, it is stated as under:-

1. The Name Availability Guidelines, 2011 and revised e-form 1A shall beimplemented with effect from 24th July, 2011.

2. A fee of C 1,000/- shall be charged w.e.f. 24th July, 2011 for making anapplication for availability of name in revised e-form 1A as providedunder Companies (Central Government's) General Rules and Forms(Amendment) Rules, 2011 dated 14.07.2011.

Yours faithfully,
(Monika Gupta)
Assistant Director

7. Sub: Simplified procedure for obtaining confirmation of shifting of registered office from one state to another state under section 17 of the Companies Act, 1956.(General Circular No. 50 / 2011 F.No. 1/ 1/ 2003 CL.V Dated 25th July, 2011)

In order to simplify the procedures and cut timelines, the Ministry has decided to notify section 8 of the Companies (Second Amendment) Ac t,2002 (1) of 2003 thereby the work relating to confirmation of shifting of registered office from one state to another state and consequent alteration to Memorandum of Association of the company under section 17 of the Companies Ac t, 1956 shall be shifted from the jurisdiction of Company Law Board to the Central Government.

1) It has further been decided to delegate this work to the respective Registrar of Companies under whose jurisdiction the registered office of the company is situated. The petitions filed with the Company Law Board and pending as on the effective date of notification shall be transferred to respective Registrar of Companies.

2) The revised e-forms and business re-engineering process under MCA-21 system is being developed and the simplified procedures to be followed by the companies and Registrar of Companies shall be given in the modified e-forms and instruction kit thereto shortly.

3) It is expected that on discharging of these functions by the respective Registrar of Companies on implementation of simplified procedures, the cost and the time to get such confirmation and alteration to Memorandum of Association under section 17 of the Companies Ac t, 1956 shall be reduced.

4) The above simplified process is likely to be implemented with effect from 24th September, 2011.

Yours faithfully,
(Kamna Sharma)
Assistant Director

8. Sub: Simplified procedure for rectification of register of charges under section 141 of the Companies Act, 1956.(General Circular No. 51 / 2011 F.No. 1/ 1/ 2003 CL.V Dated 25th July, 2011)

In order to simplify the procedures and cut timelines, the Ministry has decided to notify section 20 of the Companies (Second Amendment) Ac t, 2002 (1) of 2003 thereby the work relating to rectification of register of charges under section 141 of the Companies Act, 1956 shall be shifted from the jurisdiction of Company Law Board to the Central Government.

2. It has further been decided to delegate this work to the respective Registrar of Companies under whose jurisdiction the registered office of the company is situated. The petitions filed with the Company Law Board and pending as on the effective date of notification shall be transferred to respective Registrar of Companies.

3. The revised e-forms and business re-engineering process under MCA-21 system is being developed and the simplified procedures to be followed by the companies and Registrar of Companies shall be given in the modified e-forms and instruction kit thereto shortly.

4. It is expected that on discharging of these functions by the respective Registrar of Companies on implementation of simplified procedures, the cost and the time to get condonation under section 141 of the Companies Ac t, 1956 shall be reduced.

The above simplified process is likely to be implemented with effect from 24th September, 2011.

Yours faithfully,
(Kamna Sharma)
Assistant Director

9. Simplified procedure for obtaining online approval of Central Government undersection 297 of the Companies Act, 1956. (General Circular No. 52/2011F.No. 17/170/2011 CL.V Dated 25th July, 2011)

The Ministry of Corporate Affairs has been receiving representations form various stakeholders to simplify the approval processes under section 297 of the Companies Act, 1956. In order to cut timelines in giving approval, the Ministry has decided to simplify the procedures and to give approval online, if the proposed contract has been approved by the shareholders by way of special resolutions in a general meeting.

2. According to new procedure, application will be made in a new e-form with the prescribed fee. The relevant information like terms of contract and details of Board resolutions and special resolutions shall be captured in the e-form. The e-form shall also be certified by the practicing professional who shall specifically certify the correctness of the information and declarations given by the company in the e-form.

3. The company while seeking approval of the directors and shareholders in their meetings shall specifically take approval to the effect that: —

   (i) Proposed contract is competitive, at an arm's length, without conflict of interest and is not less advantageous to it as compared to similar contracts with other parties.

   (ii) The company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon and has filed its upto date Balance Sheets and Annual Returns with the Registrar of Companies;

   (iii) The proposed contract is falling within the provisions of section 297 of the Act and provisions of sections 198, 269, 309, 314 and 295 are not applicable in the proposed contract.

   (iv) The company and its Directors have complied with the provisions of sections 173, 287, 299, 300, 301 and other applicable provisions of the Companies Act, 1956 with regard to the proposed contract.

4. The application will be processed online and approval of Central Government shall also be made available to the applicant company online on the basis of declarations made by the company and certifications by the professionals given in the e-form.

5. If any of the information or declaration given by the company or certificate given by the professional in the e-form is found to be wrong, then the applicant company, its Directors and professional shall be liable for penal action under section 297 and 628 of the Companies Act, 1956 in addition to penal action prescribed in regulations of the respective professional institutes.

6. The process of online approval of Central Government under section 297 of the Companies Act, 1956 is likely to be implemented with effect from 24th September, 2011.

Yours faithfully,
(Kamna Sharma)

10. Subject:Guidelines for RDs/ROCs in the matter of scheme of arrangement /amalgamation under section 391-394. (GENERAL CIRCULAR NO. 53/2011F. No. 51/16/2011-CL.III Dated 26th July, 2011)

It has been observed that various field formations are following different practices while sending comments to the Hon'ble High Courts in respect of scheme of arrangement/ amalgamation u/s 391-394 of the Companies Act, 1956 on behalf of the Central Government. In order to streamline the procedure the following guidelines alongwith timelines are issued for strict compliance. These guidelines supersede all previous guidelines on the matter. Issues to be examined by ROCs and RDs are given at annexure I and II respectively. The procedure to be followed and the timelines are indicated below.

a) On receipt of notice from the court u/s 394A regarding the scheme, the Regional Director should make an entry in a register or in electronic form. If the petition has already been filed with ROC in Form 61 in the system, the same can be monitored directly from the system.

b) Thereafter within three days of receipt, Regional Director shall send a mail to ROC concerned for the report.

c) ROC should furnish his report online to RD within 7 days from receipt of Form 61without waiting for RD's communication.

d) Within seven days of receipt of notice RD should send a letter to local branch of Law Ministry / Assistant Solicitor General appointed for the state by Law Ministry as the case may be (furnishing copy of the notices received u/s 394A) requesting for nomination of an advocate.

e) Regional Director should send a letter within five days of receipt of notice to company /its Advocate to provide material of valuation report, Chairman's report regarding creditors / members meeting and on receipt of the information, the matter should be processed and finalized within a week's time.

f) The finalized affidavit should be sent to designated Standing Counsel for the particular case for signature and then to Law Ministry (local branch) for identification. This exercise should not take more than five days after which the affidavit should be filed in Court Registry.

2. The ROCs may examine the matter in respect of issues mentioned in Annexure 'I' and send their report to concerned RDs who would take into consideration the report of the ROC before finalizing their comment.

(Jaikant Singh)
Director

11. Subject: Pro-active action in case of winding up petitions. (GENERAL CIRCULAR NO. 54/2011F No. 35/6/2011/Insolvency Dated 26th July 2011)

It has been noticed that winding up petitions are filed by creditors, stakeholders and management before Hon'ble High courts without providing fullinformation. This leads to waste of valuable time of Hon'ble Court and also delayscompletion of winding up process as well. In order to speed up the winding upprocess and to introduce best international practices the winding up process,following actions will be taken by concerned OL:-

(a) OLs shall post one of the staff members to the Company Court tokeep track of all cases where applications have been filed for windingup, but orders for winding up are yet to be issued by the Court.

(b) For all cases pending till date and in future as well, information shallbe obtained by OL from "institution register" maintained in High Courtand action as below must be taken in all cases.

(c) In each case the OL will file an application praying to the Court todirect the management of the company to submit followinginformation duly verified by a chartered accountant:-

(i) The current addresses of the Directors, Company Secretaryand Statutory Auditor of the company.

(ii) Location and physical details of each immovable asset of thecompany along with its current valuation;

(iii) The details of all the debtors and creditors with theircomplete addresses and occupations;

(iv) The details of each movable asset of the company along withvalue;

(v) The details of workmen/employees and any amountoutstanding to them;

(vi) The details of all movable and immovable assets held in thepersonal names of director by providing its location, value,dates of acquisition and nature of right, title and interesttherein;

(vii) Copies of last three years audited balance sheet of thecompany; and

(viii) The details of location of the registered office of thecompany.

(d) RDs will ensure that in all pending cases, the applications are moved byOL before the Court before the next date of hearing and in all new cases, these are filed before the Hon'ble Court before the secondhearing of the case.

(e) RDs will ensure that a standard draft is prepared by them aftertaking legal advice and the same is used in all cases by OLs.

(Jaikant Singh)
Director

12. Subject: Scrutiny inspection and investigation in all winding up cases.(GENERAL CIRCULAR No. 55/2011 F. No. 35/6/2011/Insolvency Dated 26th July 2011)

It has been noticed that winding up petitions are being filed by management after having committed major violations under the Companies Act, 1956 as well as misappropriation of funds of the company. Winding up of such companies are also being filed by creditors. In order to curb such malpractices following procedure may be followed in all such cases:-

(a) The moment winding up petition is filed before the Court, Official Liquidator (OL) will obtain a copy of petition and forward the same to the Registrar of Companies (ROC) concerned.

(b) ROC will have a scrutiny of the details/documents available in respect of the company in MCA21 registry and will submit a preliminary report to the Ministry within a week time for inspection or investigation, if so required, containing following information for the past five years of the date of filing of petition:-

(i) History of the company, viz incorporation, maintenance of registered office, main object and present business activities;

(ii) Management pattern, including details of directors/ nominee directors and their directorship in other companies;

(iii) Capital structure and shareholding pattern;

(iv) Financial position and working results;

(v) Comments on filing position and compliances of Schedule VI read with Accounting Standards;

(vi) Nature of complaints registered on MCA-21, their nature and any noticeable findings;

(vii) Whether any complaint was received alleging that the company is involved in fraudulent activities, siphoning of funds etc. If so, the details thereof.

(viii) Whether any scrutiny/inspection was carried out, if so, the details thereof;

(ix) Whether the company is having any holding or subsidiary company, if so, details thereof;

(x) Whether company has raised funds through IPO, if so, the utilization of amount collected, compliance of provisions of the Act for deviation from the object stated in Prospectus/Offer Document; transactions

with related parties;

(xi) In case of public company, whether it has accepted public deposit. If so, whether the payment of matured amount including interest was made as per schedule. In case any amount is still pending, the details of amount and interest thereon.

(xii) The quantum of unsecured loan amount and related party transactions thereto.

(xiii) Secretarial reports and qualifications made by the auditors on accounts of the company;

(xiv) Whether company or its members/creditors have requested for investigation into the affairs of the company, if so, the details thereof.

(c) MCA will take a final view in the matter within a period of 15 days from the date of receipt of preliminary report from ROC. If any inspection under Section 209A and/or investigation under Section 235/237 of the Act is ordered, the same will be completed by the ROC and forwarded to the OL within 30 days.

(d) The OL will place the report before the Hon'ble High Courts for seeking appropriate order/action under Section 539 to 544 and other relevant provisions of the Act. Simultaneously, necessary action as per law will be initiated against the director, ex-director and key management of the company for any violation of law/ Companies Act, 1956.

(e) These cases will be monitored in the monthly staff meeting of Regional Directors.

Yours faithfully,
(Jaikant Singh)
Director

13. Subject: Blocking of DIN consequent to non-filing of Statement of Affairs (SOA) (GENERAL CIRCULAR No.56 /2011F. No. 35/6/2011/InsolvencyDated 28th July 2011)

It has been observed that companies are not filing Statement of Affairs (SOA) in time in terms of section 454 of the Companies Act, 1956. This delays the process of liquidation considerably. It has, therefore, been decided to give the companies and the directors of such companies where winding up orders have been passed by the Hon'ble Court, one months notice to file SOA before action for blocking their DIN is initiated by the Ministry.

2. Official Liquidators shall furnish list of all such directors who have failed to furnish SOA (giving their details) to the Ministry on 3rd working day of every month starting from 5th September, 2011 by e-mail to respective RD, ROC, e-Governance Cell and Insolvency Section of this Ministry.

3. MCA 21 cell in the Ministry would block DIN of all such directors on getting information after approval of the competent authority concerned and intimate the same to all.

Yours faithfully,
(Jaikant Singh)
Director

14. Sub: Filing of Balance Sheet and Profit & Loss Account in extensible Business Reporting Language (XBRL) Mode. (Circular No. 57/2011 Date: 28.07.2011)

The para 3 of the Circular No. 37/2011 dated 07.06.2011 may be read as under:

"All companies falling in Phase – I class of companies (excluding exempted class) are permitted to file their financial statements without any additional fee upto 30.11.2011 or within 60 days of their due date, whichever is later."

2. Further, in supersession of Para 2 (i) of Ministry's Circular No. 43/2011 dated 07.07.2011, it is informed that the verification and certification of the XBRL document of financial statements on the e-forms would continue to be done by authorized signatory of the company as well as professional like Chartered Accountant or Company Secretary or Cost Accountant in whole time practice.

3. This issue with approval of Competent Authority.

Yours faithfully,

(J.N.Tikku),

Joint Director.

15. Subject: Corrigendum to General Circular No. 54/ 2011. Pro-active action in case of winding up petitions. (General Circular No. 58/2011. Dated 1st August, 2011)

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In view of the representations from professional Institutes, it has been decided to amend Para (c) the Circular No. 54/2011 dated 26th July, 2011. Para (c)of the said Circular may be read as under:(c) "In each case the OL will file an application praying to the Court to direct the management of the company to submit following information duly verified by a Chartered Accountant/a Company Secretary/a Cost Accountant in practice:-"

2. All other clauses of the said Circular remain unaltered.

(Jaikant Singh)
Director

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FROM PUBLISHED ACCOUNTS

ACCOUNTING OF TAX – AS 22

EXCEL INDUSTRIES LIMITED – ANNUAL REPORT 2010-2011

SCHEDULE "T" NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(U) Taxation

Tax expense comprises of current and deferred tax. Current income tax measured at the amount expected to be paid to the tax authorities in accordance with the Income-Tax Act, 1961 enacted in India. Deferred income taxes reflects the impact to current year timing differences between taxable income and accounting income for the year and reversal of timing differences of earlier year.

Deferred tax is measured based on the tax rates and the tax laws enacted or substantively enacted at the balance sheet date. Deferred tax assets and deferred tax liabilities are offset, if a legally enforceable right exists to set off current tax assets against current tax liabilities and the deferred tax assets and deferred tax liabilities relate to the taxes on income levied by same governing taxation laws. Deferred tax assets are recognized only to the extent that there is reasonable certainty that sufficient future taxable income will be available against which such deferred tax assets can be realized. In situations where the company has unabsorbed depreciation or carry forward tax losses, all deferred tax assets are recognized only if there is virtual certainty supported by convincing evidence that they can be realized against future taxable profits.

At each Balance Sheet date the Company re-assesses unrecognized deferred tax assets. It recognizes unrecognized deferred tax assets to the extent that it has become reasonably certain or virtually certain, as the case may be that sufficient future taxable income will be available against which such deferred tax assets can be realized.

The carrying amount of deferred tax assets are reviewed at each Balance Sheet date. The Company writes-down the carrying amount of deferred tax asset to the extent that is so no longer reasonably certain or virtually certain, as the case may be that sufficient future taxable income will be available against which deferred tax asset can be realized. Any such write-down is reversed to the extent that it becomes reasonably certain or virtually certain, as the case may be, that sufficient future taxable income will be available.

Wealth Tax is provided in accordance with the provisions of the Wealth Tax Act, 1957.

MAT credit is recognized as an asset only when and to the extent there is convincing evidence that the company will pay normal income tax during the specified period. In the year in which the Minimum Alternative tax (MAT) credit becomes eligible to be recognized as an asset in accordance with the recommendations contained in guidance Note issued by the Institute Of Chartered Accountants Of India, the said asset is created by way of a credit to the Profit and Loss Account and shown as MAT Credit Entitlement. The company reviews the same at each Balance Sheet date and writes down the carrying amount of MAT Credit Entitlement to the extent there is no longer convincing evidence to the effect that Company will pay normal Income Tax during the specified period.

ONMOBILE GLOBAL LIMITED 2009-10

Schedule 18 Significant Accounting Policies And Notes On Accounts

A. SIGNIFICANT ACCOUNTING POLICIES

13. Income Tax

Income tax expense includes Indian and international income taxes. Income taxes comprises of the Current tax provision and net change in deferred tax asset or liability in the year.

Provision for current tax is made taking into account the admissible deductions/ allowances and is subject to revision based on the taxable income for the fiscal

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year ending 31 March each year.

Provision for taxation includes tax liabilities in India on the company's global income as reduced by exempted income and any tax liabilities arising overseas on income sourced from those countries.

Deferred tax assets and liabilities are recognized for the future tax consequences of temporary differences between carrying values of the assets and liabilities and their respective tax bases and are measured using enacted tax rates applicable on the Balance Sheet date.

Deferred Tax assets are recognized subject to management's judgement that realization is reasonably/ virtually certain.

The effect of changes in tax rates on deferred tax assets and liabilities is recognized in the income statement in the year of enactment of change.

Research tax rebate :

In accordance with French fiscal rules, the subsidiaries Vox Mobile S.A.and Telisma S A are entitled to special tax rebate/refund calculated based on the social cost of the research and development staff. Such tax rebate is recognized as other income on actuarial basis.

TRIVENI ENGINEERING & INDUSTRIES LTD.

Schedule 26 Notes To Accounts

1. SIGNIFICANT ACCOUNTING POLICIES

m) Taxes on income

i) Current tax on income is determined on the basis of taxable income computed in accordance with the applicable provisions of the income Tax Act, 1961.

ii) Deferred tax is recognized for all timing differences between the accounting income and the taxable income for the year, and quantified using the tax rates and laws enacted or substantively enacted as on the Balance Sheet date.

iii) Deferred tax asset is recognized and carried forward only to the extent that there is a reasonable certainty that sufficient future taxable income will be available against which such deferred tax assets can be realized, except in the case of unabsorbed depreciation or carry forward of losses under the income Tax Act, 1961.Deferred tax asset is recognized only to the extent that there is virtual certainty supported by convincing evidence that sufficient future taxable income will be available against which such deferred tax assets can be realized.

iv) Minimum Alternate Tax (MAT) credit is recognized as an asset only when and to the extent there is convincing evidence that the Company will be in a position to avail of such credit under the provisions of the Income Tax Act, 1961.

ALLSEC TECHNOLOGIES LIMITED

18 Notes to accounts

18.2) Statement of significant accounting policies:

m) Taxation

Tax expense comprises current and deferred income taxes. Provision for current income tax and fringe benefit tax is made on the assessable income at the tax rate applicable to the relevant assessment year. Deferred income taxes are recognized for the future tax consequences attributable to timing differences between the financial statement determination of income and their recognition for tax purposes.

Deferred tax is measured based on the tax rates and the tax laws enacted or substantively enacted at the balance sheet date. Deferred tax assets and deferred tax liabilities offset, if a legally enforceable right exists to set off current tax assets against current tax liabilities and deferred tax assets and deferred tax liabilities relate to taxes on income levied by same governing taxation laws. Deferred tax assets are recognized only to the extent that there is reasonable certainty that sufficient future taxable income will be available against which such deferred tax assets can be realised. If the group has unabsorbed depreciation or carry forward tax losses, deferred tax assets are recognized only if there is virtual certainty supported by convincing evidence that such deferred tax assets can be realised against future taxable profits.

The carrying amount of deferred tax assets are reviewed at each balance sheet date. The group writes-down the carrying amount of a deferred tax asset to the extent that it is no longer reasonably certain or virtually certain, as the case may be, that sufficient future taxable income will be available against which deferred tax asset can be realised.

At each balance sheet date the group re-assesses unrecognized deferred tax assets. It recognizes unrecognized deferred tax assets to the extent that it has become reasonably certain or virtually certain, as the case may be that sufficient future taxable income will be available against which such deferred tax assets can be realized.

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BITS & BYTES

UNDERSTANDING XBRL -3

CA. B. M. Zinzuvadia
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Till this time we have learned that XBRL belongs to mark-up family of computer language and XBRL is basically XML. The XML does not do anything with the data, it just store and transport the data. For the purpose of the transporting and storage of the data, it is necessary that the xml file should be well formed and validated.

Well formed xml documents have some characteristics.

1. documents must have a root element

   All XML documents must contain a single tag pair to define the root element. All other elements must be nested within the root element. All elements can have sub (children) elements. Sub elements must be in pairs and correctly nested within their parent element

2. elements must have a closing tag

   In HTML, some elements may not have closing tag but xml must have a closing tag.

3. tags are case sensitive

   XML tags are case sensitive, for example, <Subject> and <subject> are two different elements.

4. elements must be properly nested

   properly nesting of elements refers to tree structure of elements and opening and closing of tags in its order.

5. attribute values must be quoted

   Attribute values must always be quoted. Either single or double quotes can be used. For email attribute in example author element can be written like this:

   <author1 email = "bmzinzuvadia@gmail.com" >

   <author1 email = 'bmzinzuvadia@gmail.com' >

   Well formed in relation to XML means that it has no tax, spelling, punctuation, grammar errors, etc. in its markup. These kinds of errors can cause your XML document to not parse.

An XML Parser is software that reads XML documents and interprets or "parses" the code according to the XML standard. A parser is needed to perform actions on XML. For example, a parser would be needed to compare an XML document to a DTD.

However, a well formed xml document may not be valid xml document. A Valid xml document conforms to the data definition besides the rule of being a well formed xml document.

Validation

A validation program basically checks the values assigned to the tag with the data definition defined in the DTD or XML schema files.

XML files are designed to be easy for people to read and edit. They are also designed for easy data exchange among different systems and different applications. Both of these advantages can work against if the data is in a specific format. Validation enables confirmation that XML data follows a specific and predetermined structure so that an application can receive it in a predictable way. This structure against which the data is compared can be provided in two different ways, Document Type Definitions (DTDs) and XML schemas.

Error in validation process

Errors in XML document will stop application further validating process of XML document.

The 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 not stop and 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.

Filling of financial statement by companies in XBRL.

The ministry of corporate affairs (MCA) has decided to make it mandatory for companies to file their returns with the Registrar of Companies using XBRL (eXtensible Business Reporting Language).

Initially, this will be applicable to all companies listed in India and their subsidiaries, including overseas subsidiaries and all companies having a paid up capital of Rs. 5 Crore and above or a Turnover of Rs 100 Crore or above .

All companies falling in Phase -I are permitted to file up to 30-09-2011 without any additional filing fee.

The scope will be increased further to other companies in later phases.

Statutory, auditor has to certify the financial statement prepared in xbrl. (Circular NO. 26/2011 dated 7th July 2011)

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FROM THE GOVERNMENT

(A) SERVICE TAX

1) Clarification on completion of service.

The Service Tax Rules, 1994 require that invoice should be issued within a period of 14 days from the completion of the taxable service. The invoice needs to indicate interalia the value of service so completed. Thus it is important to identify the service so completed. This would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc which may be essential pre-requisites for identification of completion of service. The test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. However such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

The above interpretation also applies to determination of the date of completion of provision of service in case of "continuous supply of service". **(For Full Text refer Circular no- 144 , dated 18/07/2011)**

2) Service provided by certain association of dyeing units is exempt from whole of service tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts club or association service referred to in sub-clause (zzze) of clause (105) of section 65 of the said Act, provided by an association of dyeing units in relation to the project, from the whole of service tax leviable thereon under section 66 of the Finance Act.

Explanation.- For the purposes of this notification, project means common facility set-up for treatment and recycling of effluents and solid waste discharged by dyeing units, with financial assistance from the central or state government. **Notification No 42, dated : July 25, 2011**

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CA. Kunal A. Shah
The author is the Hon. Secretary of CAA. He can be reached at cakashah@gmail.com

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STOP PRESS

EVERY ASSESSEE HAS TO FILE HALF YEARLY SERVICE TAX RETURN ELECTRONICALLY ONLY W.E.F. 1-10-21

- NOTIFICATION NO. 43/2011 DT. 25/08/2011

- *Whoever undertakes to set himself up as a judge of Truth and Knowledge is shipwrecked by the laughter of the gods.*
- *Without deep reflection one knows from daily life that one exists for other people.*
- *You ask me if I keep a notebook to record my great ideas. I've only ever had one.*
- *You can never solve a problem on the level on which it was created.*
- *You cannot simultaneously prevent and prepare for war.*

Albert Einstein

HEALTH AND FUN

HEALTH & FUN

Compiled from various sources from internet.

Rubella

Rubella, commonly known as German measles, is a disease caused by the rubella virus. The name "rubella" is derived from the Latin, meaning little red. Rubella is also known as German measles because the disease was first described by German physicians in the mid-eighteenth century.

Causes

Rubella is caused by a virus that is spread through the air or by close contact. A person with rubella may spread the disease to others from 1 week before the rash begins, until 1 - 2 weeks after the rash disappears. Because the measles-mumps-rubella (MMR) vaccine is given to most children, rubella is much less common now. Almost everyone who receives the vaccine has immunity to rubella. Immunity means that your body has built a defense to the rubella virus. Children and adults who were never vaccinated against rubella may still get this infection.

Signs and Symptoms

Rubella infection may begin with 1-2 days of mild fever and swollen, tender lymph nodes, usually in the back of the neck or behind the ears. A rash then begins on the face and spreads downward. As it spreads, it usually clears on the face. This rash is often the first sign of illness that a parent notices.

Rubella in a pregnant woman can cause congenital rubella syndrome, with potentially devastating consequences for the developing fetus. Children who are infected with rubella before birth are at risk for growth retardation; mental retardation; malformations of the heart and eyes; deafness; and liver, spleen, and bone marrow problems.

Prevention

Rubella can be prevented by the rubella vaccine. Widespread immunization against rubella is critical to controlling the spread of the disease, thereby preventing birth defects caused by congenital rubella syndrome.

The vaccine is usually given to children at 12-15 months of age as part of the scheduled MMR immunization. A second dose of MMR is generally given at 4-6 years of age. As is the case with all immunization schedules, there are important exceptions and special circumstances. Your child's doctor will have the most current information.

CA. Ganesh Nadar
Practising since 1996. He can be reached at ganesh@dgsm.co.in

The rubella vaccine should not be given to pregnant women or to a woman who may become pregnant within 1 month of receiving the vaccine. If one think about becoming pregnant, make sure that she is immune to rubella through a blood test or proof of immunization. If you're not immune, you should receive the vaccine at least 1 month before you become pregnant.

Pregnant women who are not immune should avoid anyone who has the illness and should be vaccinated after delivery so that they will be immune during any future pregnancies.

Treatment

Rubella cannot be treated with antibiotics because they do not work against viral infections. Unless there are complications, rubella will resolve on its own.

Any pregnant woman who has been exposed to rubella should contact her obstetrician immediately.

Rubella is typically mild in kids, who often can be cared for at home. Monitor your child's temperature and call the doctor if the fever climbs too high.

FUN

SUPERB DEFINITIONS

School:	A place where Papa pays and Son plays.
Life Insurance:	A contract that keeps you poor all your life so that you can die Rich.
Nurse:	A person who wakes u up to give you sleeping pills.
Marriage:	It's an agreement in which a man loses his bachelor degree and a woman gains her masters.
Tears:	The hydraulic force by which masculine willpower is defeated by feminine waterpower.
Lecture:	An art of transferring information from the notes of the Lecturer to the notes of the students without passing through 'the minds of either'

Conference:	The confusion of one man multiplied by the number present.
Compromise:	The art of dividing a cake in such a way that everybody believes he got the biggest piece.
Dictionary:	A place where success comes before work.
Conference Room:	A place where everybody talks, nobody listens and everybody disagrees later on.
Father:	A banker provided by nature.
Boss:	Someone who is early when you are late and late when you are early.
Politician:	One who shakes your hand before elections and your Confidence after.
Doctor:	A person who kills your ills by pills, and kills you by bills.
Classic:	Books, which people praise, but do not read.
Smile:	A curve that can set a lot of things straight.
Office:	A place where you can relax after your strenuous home life.
Yawn:	The only time some married men ever get to open their mouth.
Etc.:	A sign to make others believe that you know more than you actually do.
Committee:	Individuals who can do nothing individually and sit to decide that nothing can be done together.
Experience:	The name men give to their mistakes.
Atom Bomb:	An invention to end all inventions.
Philosopher:	A fool who torments himself during life, to be wise after death

I have learned....

that you cannot make someone love you. All you can do is be someone who can be loved. The rest is up to them.

that no matter how much I care, some people just don't care back.

that it takes years to build up trust, and only seconds to destroy it.

that no matter how good a friend is, he is going to hurt you every once in a while and you must forgive him for that.

that it's not what you have in your life but who you have in your life that counts.

that you should never ruin an apology with an excuse.

that you can get by on charm for about fifteen minutes. After that, you'd better know something.

that you shouldn't compare yourself to the best others can do.

that you can do something in an instant that will give you heartache for life.

that it's taking me a long time to become the person I want to be.

that you should always leave loved ones with loving words. It may be the last time you see them.

that you can keep going long after you can't.

that we are responsible for what we do, no matter how we feel.

that either you control your attitude or it controls you.

that regardless of how hot and steamy a relationship is at first, the passion fades and there had better be something else to take its place.

that heroes are the people who do what has to be done when it needs to be done, regardless of the consequences.

that money is a lousy way of keeping score.

that my best friend and I can do anything or nothing and have the best time.

that sometimes the people you expect to kick you when you're down will be the ones to help you get back up.

that sometimes when I'm angry I have the right to be angry, but that doesn't give me the right to be cruel.

that true friendship continues to grow, even over the longest distance. Same goes for true love.

that just because someone doesn't love you the way you want them to doesn't mean they don't love you with all they have.

that maturity has more to do with what types of experiences you've had and what you've learned from them and less to do with how many birthdays you've celebrated.

that you should never tell a child their dreams are unlikely or outlandish. Few things are more humiliating, and what a tragedy it would be if they believed it.

that your family won't always be there for you. It may seem funny, but people you aren't related to can take care of you and love you and teach you to trust people again. Families aren't biological.

that it isn't always enough to be forgiven by others. Sometimes you are to learn to forgive yourself.

that no matter how bad your heart is broken the world doesn't stop for your grief.

that our background and circumstances may have influenced who we are, but we are responsible for who we become.

that a rich person is not the one who has the most, but is one who needs the least.

that just because two people argue, it doesn't mean they don't love each other. And just because they don't argue, it doesn't mean they do.

that we don't have to change friends if we understand that friends change.

that you shouldn't be so eager to find out a secret. It could change your life forever.

that two people can look at the exact same thing and see something totally different.

that no matter how you try to protect your children, they will eventually get hurt and you will hurt in the process.

that even when you think you have no more to give, when a friend cries out to you, you will find the strength to help.

that credentials on the wall do not make you a decent human being.

that the people you care about most in life are taken from you too soon.

that it's hard to determine where to draw the line between being nice and not hurting people's feelings, and standing up for what you believe.

that people will forget what you said, and people will forget what you did, but people will never forget how you made them feel

Microsoft Windows in Hindi

Bill Gates was in India last year. He announced that Microsoft plans to release a Windows version in Hindi. Here are some of the Windows related terms that have been approved by Bill Gates to be used in the Hindi version of... Khidkiyan 2000: (More appropriately Atyant Mulayam Khidkiyan 2000)

Atyant Mulayam = Microsoft
Khidki = Window
Phaail = File
Bachao = Save
Aise Bachao = Save as
Subko Bachao = Save All
Mujhe Bachao = Help
Madad Pe Madad = Help On Help
Dhoondo = Find
Firse Dhoondo = Find Again
Hilao = Move
Chaara = Options
Bura sandesh yaa phaail naam = Bad command or file name
Garbh girao, Firse koshish karo, Naakaamyab = Abort, retry, fail
Chhavo = Tile
Aadmi Bhejo = Send Mail
Daak = Mail
Daakiya = Mailer
Bhaago = Run
Chhaapo = Print
Dekh Ke Chhaapo = Print Preview
Chipkao = Paste
Khaas Chipkao = Paste Special
Mitao = Delete
Kagaz Uper = Page Up
Kagaz Neeche = Page Down
Anth = End
Saaf karo = Clear
Sab Kuch Saaf Karo = Clear All
Makan = Home
Topi Ka Tala = CapsLock
Hathiyaar = Tools
Khuli Chaadar = Spreadsheet
Futaas Ki Goli Kha = Exit
Ped = Tree
Chooha = Mouse
Chooha Chalak = Mouse Driver (Software)
Tik-Tik Karo = Click
Idhar-se-Udhar,Udhar-se-Idhar Wala Danda = Scrollbar
Pardha = Screen
Pardha Bachanewala = Screen Saver
Krimi = Virus
Tika = Anti Virus
Karo = Do
Galthi = Error
Ghusao = Insert
Pahle Ghusao = Insert Before
Beech Mein ghusao = Insert Between
Baadhme Ghusao = Insert After
Chabi Phalak = Key board
Choohha Ka Bisthar = Mouse Pad
Avaaz Phodney Wali Cheez = Sound Blaster
Antarjatiya Jaal = InterNet
Baath Cheeth Dabba = Dialog Box
Chale? = Exit?

(Information compiled from various sources from internet)

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ASSOCIATION NEWS

CA. Kunal A. Shah
Hon. Secretary

CA. Ashok C. Kataria
Hon. Secretary

(A) FORTHCOMING PROGRAMMES

Details of forthcoming programme is as under:-

Date/Day	Time	Programmes	Speaker	Venue
18-8-2011 Thursday	5.30 pm To 7.30 pm	2nd Study Circle meeting on Intricacies of Derivatives (Basics, Accounting & Taxation"	CA. Rajni M. Shah	Shantinath Hall, ICAI Bhawan, 123, Sardar Patel Colony, Naranpura, A'bad.

(B) IN RETROPECT

Date/Day	Time	Programmes	Speaker	Venue
6-8-2011 to 9-8-2011 Saturday to Tuesday		38TH Residential Refresher Course at Jaipur	Shri Saurabh N. Soparkar, Ahmedabad CA. Padamchand Khincha, Bangalore Shri S. S. Gupta, Mumbai CA. Kaushik C. Patel, Ahmedabad CA. Jayesh C. Sharedalal, Ahmedabad	The Gold Palace Resort. Kukas, Jaipur
12-8-2011 Friday	8.00 pm onwards	Talent Evening		Tagore Hall, Paldi, Ahmedabad

PUBLICATION FOR SALE

New Publication on "FEMA" 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

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 yrs	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
	(c) Brain Trust Meeting Fee	Rs. 500

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.

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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