CHALLENGES
AVENUES
ACTION

AHMEDABAD CHARTERED ACCOUNTANTS JOURNAL

Volume : 41 I Part : 6 I September, 2017

Chartered Accountants
Association, Ahmedabad

NSDL
Technology, Trust & Reach

NSDL eGovernance Infrastructure Limited

Follow us on

Get your business **GST-ready**

with NSDLgst Services

- **Billing/ Invoicing**
- **Sales Invoice Upload**
- **GST Returns Filing**
- **Reconciliation**
- **Easy Interface with any Accounting Software**

NSDLgst
Your trusted GST partner

NSDLgst offers a comprehensive online GST returns filing & compliance solution for businesses, Chartered Accountants & Tax consultants

At just ₹2700 per year* + GST

As a GST Suvidha Provider, NSDL e-Gov will provide the entire gamut of GSP as well as Application Services Provider (ASP) services

- Cloud Based Solution
- Zero start time
- e-Sign Facility
- Low priced and simple solution for all businesses
- Data Storage for multiple years
- Data Security

*upto 9000 invoices

FREE
www.nsdlgp.co.in

Reach us at
gstinfo@nsdl.co.in
(022) 4090 4567

Ahmedabad Chartered Accountants Journal
E-mail : caaahmedabad@gmail.com **Website** : www.caa-ahm.org - caaahmedabad
Volume : 41 **Part : 6** **September, 2017**

CONTENTS

Attention

Members / Subscribers / Authors / Contributors

1. Journals are carefully posted. If not received, you are requested to write to the Association's Office within one month. A copy of the Journal would be sent, if extra copies are available.
2. You are requested to intimate change of address to the Association's Office.
3. Subscription for the financial year 2017-18 is ` 1500/-, single copy ` 150/- (if available).
4. Please mention your membership number in all your correspondence.
5. While sending Articles for this Journal, please confirm that the same are not published / not even meant for publishing elsewhere. No correspondence will be made in respect of Articles not accepted for publication, nor will they be sent back.
6. The opinions, views, statements, results published in this Journal are of the respective authors / contributors and Chartered Accountants Association, Ahmedabad is neither responsible for the same nor does it necessarily concur with the authors / contributors.
7. Membership Fees :

	Amount in `		
	Basic	GST	Total
Life Membership	7500/-	1350/-	8850/-
Entrance Fees	500/-	90/-	590/-
Ordinary Membership Fees for the year 2016-17			
In case of Membership (of ICAI) for a period of less than or equal to five years,	600/-	108/-	708/-
In case of Membership of (ICAI) for a period of more than five years,	750/-	135/-	885/-
Brain Trust Membership Fees	1000/-	180/-	1180/-

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.

Published By

CA. Ashok Kataria,

on behalf of Chartered Accountants Association, Ahmedabad, 1st Floor, C. U. Shah Chambers, Near Gujarat Vidhyapith, Ashram Road, Ahmedabad - 380 014.

Phone : 91 79 27544232

Printed : Pratiksha Printer

M-2 Hasubhai Chambers, Near Town Hall, Ellisbridge, Ahmedabad - 380 006.

Mobile : 98252 62512 E-mail : pratikshaprinter@yahoo.co.in

CA. Ashok Kataria
ackatariaco@yahoo.co.in

Law of Karma V/s Law of Destiny

Man's every action is propelled out of desires and desires spring forth from his inherent tendencies called *Vasanas*. *Vasanas* are the prime movers of all desires and actions. As long as *vasanas* exist, desires continuously flourish creating mental agitation and discomfort, resulting in actions. These actions leave a mark or imprints in our personality as *vasanas* which is the cause of all our future actions. This cycle from *vasanas* to desires to actions and back *vasanas* is based on Law of *Karma.*

Law of Karma is based on pure scientific reasoning covering the past, the present and the future and it is as much applicable to mankind and life as any other law of nature. We are what we are because of our past actions. If man's experiences from the time of his birth to the present are pure and noble, he is today a man of chastity and dignity. However, if they are vicious and immoral, he takes those qualities. Thus, man is nothing but a product of his past actions or *karma*. This is the principle of destiny.

Therefore it is said that man is a mere victim of past actions over which he has no control. On the other hand, the law of karma allows shaping our future and reaching the goal of human existence. Destiny or *prarabdha* is the product or the effect of the past and it forms one aspect of the law of karma. Man, is in a way, influenced by his destiny since his present status is caused by the past. But at the same time he is gifted with the capacity to choose his present action, which is called self effort or *purushartha*. All along his life, he has been exercising this power gifted to him and an aggregate of all these past efforts has determined his present destiny. In other words, the sum total of all *purushartha* will be equal to his present *prarabdha*.

The law of karma goes a step ahead of the law of destiny and states that the future lies in the control of man since he has the capacity to change it by regulating his self efforts from now on. Thus, if he had chosen the path of the pleasant (*preyas*) in the past, he has to suffer the consequences of it at this moment, but his self effort today may be exercised in choosing the path of good (*shreya*) which combines the past and makes his future better than his present. The freedom to modify the past and to create a future, either for the better or for the worse, is *purusartha* or self effort.

What one meets in life is destiny and how one meets it, is self effort.

Source : Kindle Life - Swami Chinmayanada

Editorial

ackatariaco@yahoo.co.in

Why so much Stress ?

The Goods and Service Tax (GST) has brought in the tremendous professional opportunity for the tax-professionals including chartered accountants. Many practising chartered accountants who never ventured into the indirect taxes have got a perfect occasion for diversification and expansion. A lot of chartered accountants have already started into the new area which is a very healthy sign for the profession.

GST is in its initial stage. New problems and issues are emerging with the each passing day. Such issues are brought before the government; the government then tries to sort it out and by then many new snags surface to be addressed. It is understood the GST will take at least six months to get completely settled. The biggest hurdle in the GST is the procedural aspect. So much effort was put in to study the new law; unfortunately, it has been brushed aside by the complicated, mechanical and cyclic procedures. The law has been over taken by the system driven procedures.

By the time people and professionals understand and get along with the new procedures the compliance dates are regularly extended. The due date for filing income tax audit returns has already been extended by one month to 31st October. This year, the month of October has one of the biggest and auspicious festivals, Diwali and has various due dates of income tax and GST coincide to be complied with. The list goes long:

Date	Compliance
3rd October	GSTR 1 of July for assessees having turnover of more than 100 Crorers
7th October	TDS to be paid for the month of September
10th October	GSTR 1 of July for rest of the assessees
15th October	TCS statement for second quarter of FY 2017-18
31st October	TDS statement for second quarter of FY 2017-18
31st October	GSTR 2 for the month of July
31st October	Income Tax Returns for all audit cases

This is an impracticable schedule to be complied with and a reason for worry and stress amongst not just the practising chartered accountants or tax consultants but also small and medium sized businesses. Couple of incidents have been reported where young chartered accountants have committed suicide because of the work pressure. These are very unfortunate and unwarranted incidents.

Over the years, it is observed that we chartered accountants take things personally which is not a good working approach. Our job is to guide people to be tax compliant and not take onus on ourselves for every good or bad they do. We should understand that these due dates are for the clients and not for chartered accountants. It is their responsibility to get things completed in time. If for any reason an extension in time is sought, why it should be the chartered accountants begging for it. Can't the government understand on its own from the data and statistics available to them on the basis of number of returns filed? In such cases the government should extend due dates on its own. It is an irony, the businessman has to comply with the dates, the government has to get the revenue and in between chartered accountants live in worry and stress.

Even a single suicide incident of a member because of stress is unworthy of it and should not ever happen again. It is time that with various additional features added to the CA curriculum, one extra feature is added to make the next generation of chartered accountants understand life is beautiful and all power lies in us to make it more beautiful.

CA. Ashok Kataria

From the President

CA. Kunal A. Shah
cakashah@gmail.com

Dear Members,

The nine day celebrations of Navratri festival is over and Diwali Festival is approaching fast. Alongwith we will be finishing our tax audit assignments with the added responsibility of GST compliance within a strict time bound schedule.

Festival is an auspicious day or period of religious or other celebration prevalent in all societies and religious communities. Festivals are an important part of our life. Most of the festivals in India are associated with religion. The Hindus are worshipers of many deities. The effects of festivals are very wholesome for an individual and for the society. They relieve us from monotony of life. Festivals create an environment of cultural harmony. Festivals teach us to forget our enmity and embrace one another in a bond of love. Moral, ethical, social values of life mix up with entertainment through festivals.

Diwali Get-together is one of the most eagerly awaited program of the association amongst its members and their family. After three to four months of non-stop hectic professional activity, Diwali Get-together gives us the opportunity to spare some time for ourselves, our family and get socialize with fellow professional and their families. Continuing with trend of many years, the President, Vice President, Hon Secretaries and Members of the Executive Committee of the Association invite you to the Diwali Get-together function with family on 1st November, 2017.

Activities at the Association:

We organized a national conference jointly with ASSOCHAM on the Topic of New Corporate Insolvency Regime & Real Estate Regulation Act (RERA) Insolvency Resolution Process under IBC – Protects Interest of stakeholders & promoters ease of doing business. Our interested delegates attended the conference and they were enriched by the knowledge shared by various speakers on the topic. Proud to share that two of the speakers were our members ie. CA Rambhai S. Patel (Past President of CAA) and Ketul R. Patel (Past Hon. Secretary of CAA) who delivered the lecture on IBC.

After the demonetisation drive, the government has set its sight on benami property to curb black money. Now it's going to be a tough time for those who have purchased their property by violating the rules.

Looking this in mind, CAA jointly with GCCI and other professional bodies organized a program on "Benami Property Transactions". The program was addressed by Shri PC Mody (Pr. Chief CIT) (Gujarat) and Shri Amit Jain (Pr. DIT) (Inv) along with their esteemed team of senior officers. They explained the Act and impact of Benami Transactions and later answered the questions raised from the audience.

RERA- Real Estate (Regulation Amendment) Act 2016 is made effective from May 2017. As per the provision of the Act RERA Authority and Team has been established and working efficiently and effectively. The intentions of the RERA Act is to establish total transparency in the real estate market and protect the interest of the consumers. In the long run this will establish a great credibility to the trade and traders both. To overcome the teething problems and to discuss the procedures for registration and submission of documents, CAA jointly with GICEA and other bodies organized a interactive session with the RERA Authority which was was addressed by learned Dr. Manjula Subramanian, the Chairperson of RERA along with other eminent officials from the RERA Authority.

A group representation cum meeting was arranged with the Commissioner of GST department at state level wherein we on behalf of our members elaborated the difficulties faced in day to day practice of GST and in turn they asked us to spread the message of awareness of GST and register the assesses who are yet not registered or those who are registered but not filing the forms and paying the tax.

I would like to conclude with the thought, " ***Satisfaction lies in the effort, not in the attainment, full effort is full victory." – Mahatma Gandhi***

Looking forward to your support and participation in future activities of the Association.

With best regards,

CA. Kunal A. Shah
President

Whether corpus donations are subject to GST?

CA. Anuj Sharedalal
ajs@crsharedalalco.com

Levy and collection of GST in India:

As per Section 9(1) of the Central Goods and Services Tax, 2017 (hereinafter referred to as CGST Act) and Section 5(1) of the Integrated Goods and Services Act, 2017 (hereinafter referred to as IGST Act), GST shall be levied on all supplies of goods or services or both, either intra-state or inter-state.

The sections 9(1) and 5(1) from CGST Act and IGST Act respectively are quoted below for ease of reference:

"9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, …… and collected in such manner as may beprescribed and shall be paid by the taxable person."

"5. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both,…….. and collected in such manner as may be prescribed and shall be paid by the taxableperson:

……..."

Parallel provisions are there in the Gujarat State GST Act, 2017. It is hereby clarified that the SGST Acts of each state are exactly worded as the CGST Act and hence a reference to CGST Act in this article also means a parallel reference to SGST Act.

Hence, it can be said that the trigger point under CGST/IGST law for levy of GST is "supply".

The term "supply":

The term supply has been defined or explained in Section 7 of the CGST Act and Section 2(21) of the IGST Act.

As per Section 2(21) of the IGST Act, ""supply" shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act;"

Supply has been given a wide connotation in the GST law to include a wide number of transactions, activities and situations.

The section is reproduced below with emphasis and certain words therein:

"7. (1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),—

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations

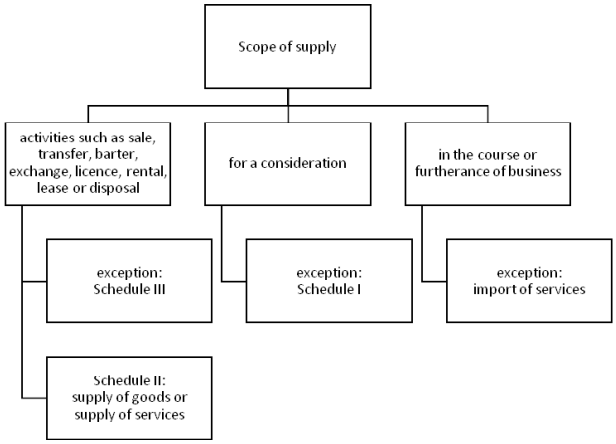
of the Council, specify, by notification, the transactions that are to be

treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods."

The same has been broken down and explained below:



There are three pillars of supply:

i. Activity by a person

ii. For Consideration

iii. Furtherance of business

The first pillar of supply, i.e. activities such as sale, transfer, barter, exchange, licence, rental, lease or disposal are nowhere defined in the CGST or IGST Acts.

The expression 'such as' indicates that the above list is not exhaustive. However, any activity cannot be added to the above list unless it is a form of supply.

Each of the above terms is explained in the table below:

Term	Meaning
Sale	Section 54 of the Transfer of Property Act defines sale as ""Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised." Thus, sale involves transfer of goods from one person to another for consideration.
Transfer	The law dictionary (the law dictionary.org) defines transfer as "The passing of a thing or of property from one person to another."
Barter	Dictionary.com defines barter as "The exchange of goods or services for other goods or services, rather than for money."
Exchange	Merriam Webster defines exchange as "the act of giving or taking one thing in return for another."
Licence	The term licence has been defined in Section 523 of the Indian Easement Act, 1882 as "Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license."
Rental	Rent can be defined as the amount paid by a user for the use of property.
Lease	Lease as per Section 105 of the Transfer of Property Act is as below:"A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."
Disposal	The term disposal is normally understood as the selling of all assets when any organization is about to discontinue operations or close down.

Section 2(31) of the CGST Act defines consideration, the second pillar of supply as below:

"(31) "consideration" in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;"

Thus, it can be said that consideration is a payment or monetary value of any act in relation to supply. Hence, it is a flow of monetary benefits to the supplier against supply.

The third pillar of supply, i.e. business is defined as below:

"(17) "business" includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit; (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;"

Thus, supply, which is a taxable event in GST, can be said to have taken place when an activity is done for a consideration by a person in the course of business.

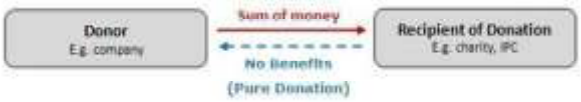
Corpus donations:

Normally, charitable organisations receive corpus donations from various donors.

Donation is the act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person, without any consideration; a gift. A donation is never perfected until it has been accepted, for the acceptance is requisite to make the donation complete. The person making the gift is called the donor and the person receiving the gift is called the donee.

Law Lexicon dictionary defines donation as "When a person who is the owner of a thing, voluntarily transfers the title and possession of the same for himself to another, without any consideration is donation."

Thus, a donation can be said to be a transaction involving transfer of property, without any consideration.



(image source: https://www.iras.gov.sg)

A donation will be treated as corpus donation only if it is accompanied by a specific written direction of the donor.

Donations have the below characteristics:

- there is a transfer of property (including money) (i.e. the property is fully transferred to donee, and the previous owner retains no rights over the property).
- the transfer is made voluntarily (e.g. is not made to settle a debt, meet a contractual obligation).
- the transfer arises by way of benefaction (i.e. the donor's motivation is genuinely charitable, and the gift will confer a benefit on the donee.)
- no benefit or advantage is received by the giver by way of return.

Donation – Absence of consideration:

As can be seen above, donation is a transfer of property without consideration.

One may argue that in certain cases the donee acknowledges the donation by giving recognition to the donor.

Such recognition is often in the form of:

- a plaque,
- thankyou line in a report,
- naming rights for a scholarship,
- certificates

It may be argued that such recognition is nothing but a benefit that accrues to the donor in respect of the donation.

Hence, it may be felt that donation is in fact a two way transaction. One part being the giving of gift by the donor, and the other part being the advertisement or recognition given by the donee.

A mere acquittal of how the funds were spent, token gestures - e.g. a plaque, thankyou line in a report, naming rights for a scholarship, certificates etc. don't constitute a "benefit" when provided by the donee to the giver in relation to a "donation".

The law relating to GST is in a nascent stage in India. Hence, there is an absence of precedents on the taxability of corpus donation under GST law in India. Therefore, it is appropriate to rely upon the following ruling in Australia, albeit under the similar legislation to GST Act of India.

The issue of donations and applicability of GST has been decided in Goods and Services Tax Ruling - GSTR 2012/2 under the Australian GST Act. The GST law, known as"A New Tax System (Goods and Services Tax) Act 1999", gained assent on 8 July 1999 and came into operation on 1 July 2000 in Australia.

Below is a relevant extract of the said ruling given on page 7 of 32:

"Example 5 – insufficient nexus – mere acknowledgement of payment

37. A local art gallery receives a financial assistance payment from a major Australian company to enable them to acquire an art work. The financial assistance payment is provided on the understanding that it be used to acquire artwork but the local art gallery is not under an enforceable obligation to use the payment in the way specified. The artwork is acquired and the director of the art gallery decides to install a plaque below the artwork to acknowledge the support of the company.

38. The mere acknowledgement of the financial assistance payment is not an act which has the character of advertising, or promoting the company. There is nothing else supplied by the art gallery. The payment by the company is not in connection with, in response to or for the inducement of any supply.

39. There will be no GST consequences for either party arising from this arrangement."

Also quoted below are a couple of more examples from the said ruling which are relevant:

"Example 13 – no consideration - mere recognition of the gift

76. Bruce Michael is a wealthy philanthropist. A public hospital in his area wants to build a new wing for people suffering from alcoholism. Bruce decides to give $5,000,000 to the hospital for this cause.

The hospital is not obligated to provide anything to Bruce.

77. To recognise Bruce's generosity, the hospital board decides that it will name the new wing in his honour. In further recognition, the hospital will also acknowledge the payment by placing a plaque in the foyer of the new building.

78. The payment is a gift because of the following:

- it is made voluntarily by Bruce;
- there is a transfer of the beneficial interest in property from Bruce to the hospital;
- the transfer arises by way of benefaction as the hospital is advantaged in a material sense as a consequence of the payment; and
- naming the wing after Bruce and the plaque are not considered to provide Bruce with a material benefit.

79. As the public hospital is a non-profit body and the payment is a gift, the exception in the definition of 'consideration' applies. Therefore the payment has no GST consequences for either party.

Example 14 - no consideration – payment is a gift

80. The Needy Persons Charity is a charity to help persons in need of shelter and food. The Charity allows persons making 'donations' to state a preference as to whether their funds should be applied to the provision of shelter or the provision of food. Triple A Accountants make a payment to the Charity. They state a preference that their funds be used for the provision of food.

81. The payment is a gift because:

- it is made voluntarily;
- there is a transfer of the beneficial interest in property – specifically, the amount of the payment;
- there is no material benefit to Triple A Accountants as a consequence of the payment; and
- the transfer arises by way of benefaction as the Needy Persons Charity is advantaged in a material sense as a consequence of the payment.

82. Though Triple A Accountants have specified a preference as to where their payment should be applied, this does not alter the fact that the transfer arises by way of benefaction. This is because the Needy Persons Charity receives the payment in its own right and has an unfettered discretion in deciding whether to apply the money in accordance with the preference expressed.

83. As the payment is a gift to a non-profit body, the exception in the definition of 'consideration' applies. There are no GST consequences for either party."

The above ruling of Australian GST office is highly relevant since the same lays down the principle of taxation of donations.

Similar principles have been laid down in the Canadian GST/HST Law and Singapore GST law too. (Canadian RC4082(E) Rev. 10/16 and Singapore IRAS e-Tax GuidePublished on 12 Jun 2015)

In a corpus donation, if the below facts are present, it will not tantamount to supply:

- Donor makes a voluntary contribution to a charitable organisation.
- Charitable organisation is not obligated to give anything in return to the donor.
- Donor has not expressed any desire for any recognition/advertisement/benefit from charitable organisation.
- The only act that charitable organisation does for the donors is acknowledgment of the payment received by way of some kind of recognition, which is not material as compared to the amount of donation.

Hence, it can be said that though there is a transfer of property (i.e. funds) involved in an act of donation, there is no consideration involved and hence there is no supply.

Thus, corpus donations received by charitable organisations are not against supplies in terms of CGST and IGST Acts and are not liable to GST.

❊❊❊

Buyer's Credit - A Non-Fund based Financial Tool

CA. Jay Shah
ahd@hiteshvshahandco.com

Introduction:

Buyer's Credit refers to loans for payment of imports into India arranged by the importer from a bank or financial institutions outside India. Based on letter of undertaking of Importer's bank, overseas bank credits the Nostro account of the importer's bank which in turn uses the funds to make payment to the Suppliers bank against the import bill.

Buyers credit can be availed for 1 year in case the Import is for trade-able goods (Raw Materials) and for 3 years if the Import is for Capital Goods (Machinery).

Benefits of Buyer's Credit:

The benefits of buyer's credit for the importer are:

- The exporter gets paid on due date; whereas importer gets extended date for making an import payment as per the cash flows.
- The importer can deal with exporter on sight basis, negotiate a better discount and use the buyer's credit route to avail financing.
- Buyer's credit helps local importers gain access to cheaper foreign funds that may be closer to LIBOR rates as against local sources of funding which are more costly.

Buyer's Credit Process flow:

1. Importer imports the goods either under Document on Acceptance / Document on Payment or Direct Documents.
2. Importer requests the Buyer's Credit Consultant before the due date of the bill to avail buyer's credit quote.
3. Consultant approaches overseas bank for indicative pricing, which is further quoted to Importer.
4. If pricing is acceptable to importer, overseas bank issue's offer letter in the name of the Importer.
5. Importer approaches his local bank to get letter of undertaking / comfort (LOU / LOC) issued in favour of overseas bank via swift.
6. On receipt of LOU / LOC, Overseas Bank as per instruction provided in LOU, will either fund the importer's local bank's Nostro account or pay to the supplier's bank directly.
7. Importer's local bank to make import bill payment by utilizing the amount credited.
8. On due date importer's local bank to recover the principal and Interest amount from the importer and remit the same to Overseas Bank on due date along with requisite interest.

Cost Involved:

The cost involved in buyer's credit is as follows:

- Interest is charged by overseas bank. Normally it is quoted as like "3M L + 350 bps". {LIBOR or ICE LIBOR is a benchmark rate that some of the world's leading banks charge each other for short-term loans. It stands for Inter-Continental Exchange London Interbank Offered Rate and serves as the first step to calculating interest rates on various loans throughout the world. LIBOR is administered by the ICE Benchmark Administration and is based on five currencies: U.S. dollar (USD), Euro (EUR), pound sterling (GBP), Japanese yen (JPY) and Swiss franc (CHF). It serves seven different maturities: overnight, one week, and 1, 2, 3, 6 and 12 months. There are a total of 35 different LIBOR rates each business day. The most commonly quoted rate is the three-month U.S. dollar rate.}
- Importers Bank will charge cost for issuing Letter of Comfort / Undertaking.
- In some banks it is mandatory for importers to book for forwards contracts and few leave the option of deciding on importers.

contd. on page no. 323

Glimpses of Supreme Court Rulings

Advocate Samir N. Divatia
sndivatia@yahoo.com.

10 Validity of Notice u/s. 153C:

Tribunal rightly permitted the assessee to raise the additional ground pertaining to validity of notice u/s. 153C on the ground that it was a jurisdictional issue taken up on the basis of facts already on record.

Search and Seizure – It was noted by the Tribunal that incriminating material which was seized had to pertain to the assessment years in question and it is undisputed fact that the documents which were seized did not establish any co-relation, documents-wise, with four assessment years in question – this reasoning is logical and valid, having regards to the provision of Sec.153C

CIT V/s. Sinhgad Technical Education Society (297 CTR 441)

11 Capital Gain - Exemption u/s. 10(37) :

Compulsory acquisition of land vis-à-vis settlement of compensation on agreed terms – Exemption is allowable even where the compensation for compulsory acquisition of land is settled on agreed terms.

UOI &ors. Vs. Info park Kerala. (297 CTR SC 219)

12 Acquisition and agreed Compensation

Even if the amount of compensation is paid on agreed terms it would not change the character of the acquisition from that of compulsory acquisition to the voluntary sale and the exemption provided under the IT Act would available and such negotiations would be confined to the quantum of compensation only.

BalkrishananVs. UOI &Ors. (294 CTR SC 6)

13 Interpretation of statues: Statement of objects and reasons and preamble –

Statement of objects and reasons accompanying a bill, when introduced in parliament, cannot be used to determine the true meaning and effect of substantive provisions of the statute - The object of a provision can certainly be used as an extrinsic aid to the interpretation of statutes and subordinate legislation where there is ambiguity in the words used.

(Laurel Energetics Pvt. Ltd. V/s. SEBI (2017) 8 SCC 541

14 Allowability of Business Expenditure (Technical Know-how Fees)

Where a new business was setup with technical know-how provided by Japanese company and lump sum royalty was paid therefor, expenditure in form of royalty paid would be in nature of capital expenditure and not revenue expenditure.

Honda Siel cars India Ltd (249 Tamann 1)

15 Deduction u/s. 80HH and 80IA Manufacture or production process of bottling LPG into gas cylinders:

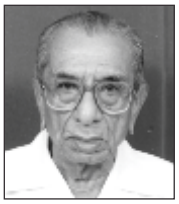
LPG obtained from the refinery undergoes a complex technical process in the assessee's plant and is clearly distinguishable from the LPG bottled in cylinders and the activity of bottling of LPG into cylinders which is a complex technical process amounts to production and therefore, claim of deduction u/s. 80HH, 80-I and 80-IA is admissible.

CIT Vs. HPCL (2017) 297 CTR 3

❊❊❊

From the Courts

CA. C. R. Sharedalal
jcs@crsharedalalco.com



CA. Jayesh C. Sharedalal
jcs@crsharedalalco.com

51 Sec. 12AA (3) : Cancellation of Registration of Charitable Trust : Conditions
CIT v/s. Institute Management Committee of Industrial Training Institute (2017) 293 CTR 167 (Bom)

Issue :

When can Registration of a Charitable Trust be cancelled u/s 12AA (3) of the I.T. Act?

Held :

Cancellation of the registration on the ground that the institutions do not satisfy the meaning of charitable purpose as given in S. 2(15) was not justified; exercise of power under s. 12AA(3) can only be done, if at least one of the two conditions specified therein, i.e. Activities of the trust or institutions are not genuine or activities of the trust or institutions are not being carried in accordance with the objects of the trust or the institutions, are found to be satisfied.

Also See:

Director of Income Tax (Exemption) v/s. The North Indian Association (2017) 293 CTR 169 (Bom)

52 Loss in derivative transactions is not Speculation Loss
Asian Financial Services Ltd. v/s. CIT (2017) 293 CTR 240 (Cal)

Issue :

Are derivative transactions speculation transactions?

Held :

A plain reading of the Explanation cannot be said to have provided otherwise. In that case the irresistible conclusion is that the assessee is entitled to set off such loss arising out of deemed business against the income arising out of business proper. Shares fall squarely within the Explanation to s. 73 but derivatives cannot be treated at par with the shares because the legislature has treated them differently. CIT v/s. DLF Commercial Developers Ltd. (2013) 91 DTR (Del) 49: (2013) 261 CTR (Del) 127 dissented from.

Loss incurred by the assessee on account of settlement of future and option, i.e. derivative transactions was not speculative loss and was eligible for set off against business profits. Shares fall squarely within the Explanation to s. 73 but derivatives cannot be treated at par with the shares because the legislature has treated them differently.

53 Reassessment Approval of Higher Authority for issuance of notice : Necessity to record satisfaction
Principal Commissioner of Income Tax v/s N.C. Cables Ltd (2017) 391 ITR 11 (Delhi)

Issue :

How and in what manner the Higher Authority should record satisfaction to issuance of notice?

Held :

That section 151 of the Act clearly stipulated that the Commissioner (Appeals), who was the competent authority to authorize the reassessment notice, had to apply his mind and form an opinion. The mere appending of the expression "approved" says nothing. The Commissioner need not record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction for the given case to be recorded could be reflected in the briefest possible manner. The exercise appeared to have been ritualistic and formal rather than meaningful, which was the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the findings by the Tribunal could not be disturbed.

54 Search proceedings : Sec. 132(4) and Sec. 271(1)(c) : Explanation 5 : No Penalty. Principal Commissioner of Income Tax v/s. Gopal Das Kothari (HUF) (2017) 391 ITR 390 (Cal)

Issue :

In a search if conditions laid down u/s 132(4) read with Explanation 5(2) to Section 271(1)(c) are satisfied whether penalty can be levied?

Held :

Pursuant to a search and seizure operation conducted under section 132 of the Income tax Act, 1961, the assessee offered additional income in a disclosure statement under section 132(4) for each of the assessment years. The Assessing Officer levied penalty in respect of the income returned, additional income offered during the assessment proceedings and income assessed under section 153A on the ground that but for the search the assessee would not have disclosed the undisclosed income. The Commissioner (appeals) found that the assessee had satisfied all the conditions stipulated in Explanation 5(2) to section 271(1)(c) and accordingly was entitled to immunity from levy of penalty as he had made disclosure statement under section 132(4) and had disclosed the income in the return filed in response to notice under section 153C. He also found that the assessee had explained the manner in which such undisclosed income had been earned and had paid the taxes due thereon. He held that penalty could not be levied and deleted the penalty. There was no contrary finding by the Appellate Tribunal.

55 Sec. 271(1)(c) : Initiation for submission of inaccurate particulars of income and levy of penalty for concealment of income validity. CIT v/s. Samson Perinchery (2017) 392 ITR 4 (Bom)

Issue :

Is it permissible to initiate penalty proceedings on one limb of the section and levy penalty on another limb?

Held :

The Assessing Officer imposed penalty upon the assessee under section 271(1)(c) of the Income Tax Act, 1961. The Tribunal deleted the penalty on the ground that the initiation of penalty by the Assessing Officer was for furnishing inaccurate particulars of income while the order imposing penalty was for concealment of income and it could not be that the initiation would be only on one limb, i.e. for furnishing inaccurate particulars of income while imposition of penalty on the other limb, i.e. concealment of income.

High Court held that the satisfaction of the Assessing Officer with regard to only one of the two breaches under section 271(1)(c) of the Act, for initiation of penalty proceedings would not permit penalty being imposed for the other breach. Thus, the order imposing penalty was to be made only on the ground on which the penalty proceedings were initiated and it could not be on a fresh ground of which the assessee had no notice. The Tribunal rightly deleted the penalty.

56 Revised Return of Income beyond time : Condonation of delay power of CBDT : Exemption u/s 10(10). S. Sevugan Chettiar v/s. Pr. CIT (2017) 392 ITR 63 (Mad)

Issue :

Whether CBDT has power to Condon delay in submission of Revised Return of Income and claim refund?

Held :

Clause (c) of sub-section (2) of section 119 of the Income Tax Act, 1961 states that the Central Board of Direct Taxes may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, relax any requirement contained in any of the provisions contained in Chapter IV or chapter VI-A of the Act. Thus if the default in complying with the requirement was due to circumstances beyond the control of the assessee, the Board is entitled to exercise its power and relax the requirement contained in Chapter IV or Chapter VI-A. If such a power is conferred upon the Board, court, while exercising jurisdiction under article 226 of the Constitution of India, would also be entitled

to consider whether the assessee's case would fall within one of the conditions stipulated under section 119(2)(c).

The Board issued a circular on April 13, 2016 with a view to grant relief to retirees of the ICICI Bank under the Early Retirement Option Scheme. The circular issued by the Central Board of Direct Taxes was in exercise of the powers conferred under section 119.

The assessee upon retirement filed his return of income for the relevant year and the assessment was finalized. Subsequently, the assessee came to know that the Supreme Court, in the case of S. Palaniappan v/s. ITO [2015] 5 ITR OL 275 (SC) held that a person, who has opted for voluntary retirement under the Early Retirement Option Scheme shall be entitled to exemption under section 10(10C) of the Income Tax Act, 1961. Following the decision, the Central Board of Direct Taxes issued a circular dated April 13, 2016 stating that the judgment of the Supreme Court be brought to the notice of all officials in the respective jurisdiction so that relief may be granted to such retirees of the ICICI Bank under Early Retirement option Scheme, 2003. The petitioner, on coming to know of it, filed a revised return referring to the decision and stating that only after the said decision came to his notice, he had been advised to file the revised return. The revised return was not accepted on the ground that it was beyond the time stipulated under section 139(5). On a writ petition:

It is held that the assessee being a senior citizen could not be denied the benefit of exemption under section 10(10C) of the Act and the financial benefit that had accrued to him, which would be more than a lakh of rupees.

57 Whether Co-operative Bank is a Co-operative Society for Income Tax Act? Pr. CIT v/s. Totagars Coop. Sale Society (2017) 392 ITR 74 (Karn)

Issue :

Whether for the purpose of Sec. 80P(2)(d), a Co-operative Bank can be considered as a Co-operative Society?

Held :

The word "co-operative society" is a word of a large extent, and denotes a genus, whereas the word "co-operative bank" is a word of limited extent, which merely demarcates and identifies a particular species of the genus co-operatives societies. Co-operative society can be of different nature, and can be involved in different activities; the co-operative society/bank is merely a variety of co-operative societies. Thus the co-operative bank which is a species of the genus would necessarily be covered by the word "co-operative society". Furthermore, section 56(i)(ccv) of the Banking Regulations Act, 1949, defines a primary co-operative society/bank as the meaning of co-operative society. Therefore, a co-operative society / bank would be included in the words "co-operative society". Therefore under section 80P (2)(d) of the Income Tax Act. 1961 the amount of interest earned from a co-operative society / bank would be deductible.

58 Transfer Pricing : Comparables Pr. CIT v/s. IHG IT Services (India) P. Ltd. (2017) 392 ITR 77 (P & H)

Issue :

For a valid comparable, is it permissible to compare with a company whose "major part is outsourced with "not a major part is not outsourced"?

Held :

For the assessment year 2006-07, the Tribunal excluded the companies N and G from the list of comparables on the ground that a substantial part of their business was outsourced and outsourcing exceeded 40 per cent., which was not so in the case of the assessee. In the case of N, the Tribunal held that it was not a valid comparable also on the ground that another company had been merged into it.

High Court held that both the companies were not appropriate comparables, since a major part of their business was outsourced, whereas the major part of the assessee's business was not outsourced. Moreover, the company V had a low employee cost of 1.25 per cent of operating revenue. The assessee's wages to sale was 53 per cent, which was not comparable to V. Thus the exclusion of N and V was justified.

59 What is the meaning of "copyright" for the purpose of Income Tax Act? CIT v/s. ZTE Corporation (2017) 392 ITR 80 (Delhi)

Issue :

What is the meaning of "copyright" for the purpose of Sec. 9(1)(vi) of Income Tax Act.

Held :

The term "copyright" is not defined: yet what works are capable of copyright protection as spelt out in the Copyright Act, 1957. Section 13 and 14 of the Copyright Act lay the essential ingredients that make copyright a property right. Section 14 categorically provides that copyright "means the exclusive right to do or authorizing the doing of any of the acts mentioned in section 14(a) to (e) or any substantial part thereof". The content of copyright in respect of computer programmes is spelt out in section 14(b). A joint reading of the controlling provisions of the earlier part of section 14 with clause(b) implies that in the case of computer programmes, copyright would mean the doing or authorizing the doing in respect of work (i.e. the programme) or any substantial part thereof-(b) in the case of a computer programme-(i) to do any of the acts specified in clause (a), (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme : Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental. The reference to clauses (a) and (b) means that all the rights which are in literary works i.e." (i) to reproduce the work in any material form including the storing of it in any medium by electronic means; (ii) to issue copies of the work to the public not being copies already in circulation; (iii) perform the work in public, or communicate it to the public (iv) to make any cinematograph film or sound recording in respect of the work; (v) to make any translation of the work; (vi) to make any adaptation of the work; (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clause (i) to (vi) inhere in the owner of copyright of a computer programme. Therefore, the copyright owner's rights are spelt out comprehensively by this provision.

60 Income Taxed under I.T. Act v/s. Lawful Source : State of Karnataka v/s. Selvi J. Jayalalitha (2017) 392 ITR 97 (SC)

Issue :

What is the value of orders passed under Income Tax Act, when income is taxed u/s 68 of the I.T. Act for determination of source which is law full?

Held :

Where charges are leveled against the assessee of having assets disproportionate to his known sources of income under the Prevention of Corruption Act, 1988, income tax returns and orders passed in income tax proceedings recording the income of the assessee as disclosed in his returns would not by themselves establish that such income had been earned from lawful sources as contemplated in the Explanation to section 13(1)(e) of the 1988 Act and independent evidence would be required to account for it.

The probative value of such returns and orders would depend on the nature of the information furnished, the findings recorded in the orders and having a bearing on the charge leveled under the 1988 Act. Such returns and orders would not ipso facto either conclusively prove or disprove the charge and can at best be pieces of evidence which have to be evaluated along with the other materials or record.

In the tax regime, the legality or illegality of transactions generating profit or loss is inconsequential qua the issue whether or not the income is from a lawful source. The scrutiny in assessment proceedings is directed only to quantifying the taxable income and the orders passed therein do not certify or authenticate the source thereof to be lawful and are thus of no significance vis-à-vis a charge under section 13(1)(e) of the Act.

Submission of income tax returns and the assessments orders passed thereon, would not constitute a foolproof defence against a charge of acquisition of assets disproportionate to the known lawful sources of income as contemplated under the 1988 Act and further scrutiny and analysis thereof is imperative to determine whether or not the offence as contemplated by the 1988 Act is made out.

❊❊❊

Tribunal News

CA. Yogesh G. Shah
yshah@deloitte.com

CA. Aparna Parelkar
aparelkar@deloitte.com

31 ITO Vs. Raghu Nandan Modi 165 ITD 522/82 taxmann.com 208 (KOL) Assessment Year: 2010-11 & 2011-12, Order Dated: June 2, 2017

Basic Facts

Assessee was acting as part-time director as well as employee of a company. He was not drawing any salary from the company during his tenure of employment. However, the company had provided rent - free accommodation to assessee. AO opined that value of rent free accommodation was taxable in hands of assessee under section 2(24)(iv) read with section 17(2)/28(iv) .The assesse contended that since he was not drawing any salary hence value of perquisites could not be determined in terms of provisions of section 17(2).However,the AOheld that that the services rendered by the assessee fell under the category of professional/vocational activities and therefore the same was taxable in the hands of the assessee under section 28(iv).The AO further found that the company had given the said flat on rent in AY 2002-03 on annual rental value of Rs.96 lacs. Considering the same to be rental value the AO made addition in the hands of the assessee u/s 28(iv). In appellate proceedings, the CIT(A) upheld the assessee's alternative plea that even if value of rent free accommodation was taxable in his hands, in the absence of Rent Control Act, the municipal valuation would be the guiding factor for the valuation of perquisites, i.e., rent free accommodation. Aggrieved, Revenue is in appeal before Tribunal.

Issue

Whether the rent free accommodation be treated as a perquisiteunder section 17(2)/28(iv) in case of a Director as well as employee not drawing any salary?

Held

The Hon'ble ITAT observed that the assessee was not drawing any salary from the company, therefore value of perquisites could not be determined in terms of the provisions of section 17(2) read with rule 3 of the 1962 Rules. Similarly, the provisions of section 28(iv) are attracted only if the benefit of perquisites is arising to the assessee from the business or exercise of the profession. As there existed employee and employer relationship between assessee and company the benefit or perquisites as defined under section 28(iv) was not applicable. Since the assessee is a director in the company therefore, perquisites derived by the assessee is taxable. The residual section where the perquisites value can be determined for the purpose of taxation of rent-free accommodation according to the tribunal was section 23(1). But since the property was not actually let out, tribunal ruled out applicability of clause (b) of section 23(1) and held that clause (a) of section 23(1) would be applicable for determination of the annual value of the property. Accordingly the Tribunal held that the perquisite of rent free accommodation could be determined as per the guidelines of Municipal Corporation. The Tribunal accordingly deleted the addition of Rs.96 lacs and upheld the order of the CIT(A).

32 Ershisanye Construction Group India (P.) Ltd. Vs. DCIT 84 taxmann.com 108 (KOL) Assessment Year: 2010-11Order Dated: April 1, 2017

Basic Facts

The assessee was a wholly owned Indian subsidiary of Chinese Holding Company. It was engaged in the business of carrying on construction of

integrated steel plant. An agreement was entered between the assessee and company Hunan for the purpose of training of engineers in China in English language and for providing legal services and consideration for the both the services was paid by Holding company which was later reimbursed by the assesse.No TDS was deducted by the assesse. Both the AO & DRP held that the payments were in nature of Fees for Technical Services and since tax was not deducted at source, denied the deduction of expenditure in computing 'Income from Business' as provided under the provisions of section 40(a)(i) of the Act

Issue

Where payment made to a Chinese company in respect of training of Chinese engineers of assessee in English language would not constitute FTS and, thus, payment routed through assessee's Chinese holding company would not be liable to TDS?

Whether income derived while rendering legal services by Chinese law firm would be governed by Article 14 of India-China DTAA or provision of article 12(4)?

Held

The Tribunal held that the payment in question cannot be regarded as purely reimbursement of expenses incurred by the Chinese holding company for and on behalf of the assessee so as to take the payment in question out of the rigors of the provisions of section 40(a)(i). The remission of payment to the holding company for finally making payment to third party will be considered as payment to third party and provision sod tax deducted at source would be applicable.

In respect of the TDS on Training expenses the tribunal held that definition as given under the Act and the DTAA in respect of Fees for Technical Services is the same. The payment would be considered as for rendering of services which are in the nature of managerial, technical or consultancy. The Tribunal relied on the decision of Mumbai Tribunal in case of Lloyd Register Industries Services wherein it was held that training expenses are not in nature of technical fees since training was a continuous process because technology is changing very fast and one needs to keep in touch with such technologies. The Tribunal also considered decision of Chennai Tribunal in case of Cosmic Global Ltd. v. Asstt. CIT wherein it was held that where an assessee got translation of the text from one language to another, same could not be said to be rendering of technical service. Based on the above, the tribunal held that the TDS provisions are not applicable since the training expenses was not in the nature of Fees for technical services. .

With regard to legal feesof Hunan Law, the question according to the Tribunal was whether the payment will fall within the Article12(4) of India China DTAA or Article 14 of India China DTA. As per Tribunal if income **falls within article 14**, then only People's Republic of China had right to levy tax on the said income and not India. To decide the applicability of Article 14 of the India-China DTAA, the Tribunal considered the decision of Maharashtra State Electricity Board v. Dy. CIT wherein it was held that the relevant article of India-UK DTAA dealing with FTS was a general provision while the relevant article of the India-UK DTAA dealing with fees for independent personal services was a specific article and that the specific article in the DTAA would override the general article. The tribunal also relied on the Mumbai Tribunal decision in case of Dy. CIT V Chadbourne & Parke LLP dealing with India – USA DTAA. On the basis of these two decision, the Tribunal concluded that Article 14 would apply to the payment made to Hunan Law and since conditions precedent for taxing such receipts in the hands of Hunan Law in India are not satisfied, the payment is not chargeable to tax in India in the hands of Hunan and hence there was not liability to deduct tax at source u/s 195. Consequently the disallowance made u/s 40(a)(i) was deleted.

33 Aligarh Muslim University vs. ITO (TDS)165 ITD 652/ 83 Taxmann.com 364 (Agra)
Assessment Year: 2015-16 Order Dated: 15th May, 2017

Basic Facts

The assessee university paid salary to its employees after deducting tax under section 192 of the Act.The AO observed that the assessee was allowing exemption under section 10(10AA)(i) on the payment of leave salary at the time of retirement/ superannuation to its employees, considering them as Central Government employees.The AO treated the assessee as an assessee in default under section 201/201(1A) for short deduction of tax due to allowing the exemption under section 10(10AA)(i) beyond the maximum limit of Rs. 3 lacs. On appeal, the CIT(A) remitted the matter to the AO to allow the assessee to adduce evidence that the deductees had themselves paid due tax on their leave salary and thereafter, recomputed the amounts in respect of the liability of the university concerning default under sections 201(1) and 201(1A). Aggrieved by the order of the CIT(A), assessee is in appeal before the ITAT.

Issue

Whether assessee could be treated as assessee-in-default when the AO had not ascertained as to whether taxes had been paid or not by recipient of income?

Held

The Hon'ble ITAT held that on bare perusal of the Explanation to section 191 of the Actmakes it clear that it is only when the employer fails to deduct the tax and the assessee has also failed to pay tax directly, that the employer can be deemed to be an assessee in default. Thus, before treating the deductor to be an assessee in default under section 201(1) of the Act, it is the bounden duty of the AO to ascertain and ensure that the assessee has also not paid due tax, for which, the assessee has to provide the requisite details to the AO. (Hon'ble Jurisdictional High Court in Jagran Prakashan Ltd.) The ITAT found that the assessment order contain a chart comprising the details of the employees to whom, leave salary was paid more that Rs. 3 lacs by the university. Further the showcause notice issued to the university contains the names of 237 person with full details of payments made. As the required details of recipients of income was in the possession of the AO at the time of issuing the notice, the tribunal held that the legislative mandate of the Explanation to section 191 was violated by the ITO (TDS), by not requisitioning before issuing the show cause notice to the university the information from the recipients of the income as to whether or not the taxes had been paid by them nor seeking such information from the concerned Income Tax Authorities. Therefore, the ITAT held the same as a foundational jurisdictional defect going to the root of the matter. In absence of such compliance, the invocation of the jurisdiction is null and void ab initio.Thus, the order of the CIT(A) was cancelled and the appeal was allowed.

34 Shyamal Gopal Chattopadhyay vs. DDIT165 ITD 437/82 Taxmann.com 209 (Kolkata)
Assessment Year: 2011-12 Order Dated: 2nd June, 2017

Basic Facts

The assessee is a Marine Engineer and was engaged with Hong Kong company in the capacity as a Master.The assessee was paid USD on different dates convertible in Indian Rupees. The assesseeclaimed the income as exempt as the above income was received from outside India in foreign currency. The assessee claimed that as hehas stayed more than 182 days outside India or on foreign water, his residential statusshould be considered as 'Non-resident'. Thus, his salary income which are received outside India in foreign currency also will not be taxable u/s 5 of the Act.The AO accepted the residential status of the assessee as non-resident. But held that salary received by the assessee was taxable u/s 5(2)(a) of the Act as all the income was remitted by the employer to the bank accounts of

the assessee maintained in India. On appeal to the CIT(A), the assessee claimed that services were rendered outside India and shipping company does not have any permanent establishment in India. The CIT(A) was not convinced with the arguments of the assessee and upheld the addition made by the AO. Aggrieved by the order of CIT(A), the assessee is in appeal before the ITAT.

Issue

Whether salary income directly credited to the NRE Bank account of non- resident seafarer for services rendered outside India be brought to tax in India in terms of section 5?

Held

The Hon'ble ITAT held that the impugned issue has been duly addressed by the CBDT Circular No. 13/2017 dated 11.4.2017. The ITAT held that Remittances of salary into NRE Account maintainedwith an Indian Bank by a seafarer could be of two types: (i) Employer directlycrediting salary to the NRE Account maintained with an Indian Bank by theseafarer; (ii) Employer directly crediting salary to the account maintained outsideIndia by the seafarer and the seafarer transferring such money to NRE accountmaintained by him in India.The latter remittance would be outside the purview of provisions of section 5(2)(a) of the Act, as what is remitted is not "salary income"but a mere transfer of assessee's fund from one bank account to another whichdoes not give rise to "Income". The ITAT further held thatCircular is vague in as much as it does not specify as to whether the Circular covers either of the situations or boththe situations contemplated above. The ITAT giving the benefit of doubt to the assessee held that the circular covers both the situations. The result of such interpretation as per the tribunal was that the provisions of section 5(2)(a) of the Act is rendered redundant. The Tribunal also held that circulars issued by CBDT are binding on the revenue authorities. The appeal was accordingly allowed.

35 DCIT. vs. ThyssenKrupp Electrical Steel India Pvt. Ltd.[2017] ITA No. 2005/Pun/ 2014 (Pune)
Assessment Year: 2005-06 Order Dated: 6th April, 2017

Basic Facts

The assessee was engaged in the business of producing the entire range of non-ageing, energy conserving Power Core Electrical steel products namely Cold Rolled Non Grain Oriented (CRNGO) in fully and semi processed varieties. Since the assessee had entered into international transactions with its associate enterprises, the AO had made reference for determination of arm's length price with reference to the transactions reported by the assessee.The assessee had followed CPM method as the most appropriate method for benchmarking the transaction of exports to associate enterprises. While in respect of receipt of commission from associate enterprises, the assessee had followed CUP method. The TPO had applied CUP method to benchmark the transaction undertaken by the assessee in the segment of export to associate enterprises and internal rate of return in order to benchmark receipt of commission from associate enterprises on the basis of small sales made by the assessee of similar components. Resultantly, the AO made an addition. Against the order of the AO in enhancing income by the said addition, the CIT(A) allowed the claim of assessee by accepting the consistency approach as in AY 2006-07 to 2010-11, the TPO had not disturbed the arm's length price of the transactions reported by the assessee. The CIT(A) also held that the transaction considered in CUP method by the TPO was not in line with provisions of Rule 10B and 10C of the Income Tax Rules, 1962. Aggrieved by the order of CIT(A), revenue is in appeal before the ITAT.

Issue

Whether a different method can be adopted to benchmark the transactions for which there is no dispute in the succeeding years?

Held

The Hon'ble ITAT held that the methodology adopted by the assessee in applying the CPM method had beenaccepted from assessment years 2008-09 to 2010-11 by the TPO himself and no adjustment had been made in the hands of assessee. Thus, the addition made by AO in applying the CUP method to benchmark the international transaction of export to associate enterprises in the hands of assessee was dismissed by the ITAT. Regarding the addition made by AO in respect of commission income, the ITAT held that in AY 2009-10 and AY 2010-11 similar transaction of commission receipts from associate enterprises were benchmarked by applying CUP method. Thus, the ITAT upheld the order of CIT(A) and dismissed the appeal of the revenue.

36 SGS India (P.) Ltd. Vs. ACIT[2017] 83 taxmann.com 163 (MUM) Assessment Year: 2008-09 Order Dated: 12th April, 2017

Basic Facts

Assessee company, a 100% subsidiary of SGS, Switzerland is engaged in the business of providing services relating to quality inspection, control, testing and verification. It had declared dividend of Rs. 35.93 crore during the year and had deducted tax as per the rate prescribed under section 115O, however an additional ground was raised to restrict DDT to 10% in view of Article-10 of the India Switzerland DTAA , since the provisions of DTAA are more beneficial. On the other hand, CIT(A) contended that Article 10(2) of DTAA relates to tax on dividend income and not relating to tax on distribution of profit by way of dividend by a company. He further observed that on analysis of section 115O, it would appear that DDT is levied on the company distributing dividend and not on the shareholders who receive the dividend. Thus DTAA provisions are not applicable.

Issue:

DDT being a tax on dividend, Whether Article 10 of DTAA between India and Switzerland would be applicable even if such dividend is payable by domestic company?

Held:

The Tribunal held that reading of the provisions, it appears that the DDT is a liability of the domestic company declaring dividend and not liability of the shareholder receiving such dividend income. Whereas, careful reading of Article-10 of India Switzerland treaty prima-facie gives an impression that it speaks of taxability of the dividend at the hands of the recipient of such dividend which is a resident of the other contracting state. Therefore, keeping in perspective the provisions contained under section 115O vis-a-vis Article-10 of DTAA,accordingly to the Tribunal it needs to be examined whether the benefit of tax treaty can be extended to the DDT paid / payable by the assessee. The Tribunal took note of the various proposition advanced by the assessee claiming benefit under Article- 10 of India Switzerland DTAA as contained in the written notes which were the submissions as made before the learned CIT(A). As per Tribunal reading of Article-10 of India Switzerland DTAA prima-facie gives an impression that it will only apply to non-resident shareholder receiving the dividend, but still there was scope for examining the claim of the assessee that DDT being a tax on dividend, Article-10 of the DTAA would be applicable even if such dividend is payable by the domestic company. Accordingly as per Tribunal it will be too simplistic to reject the contention of the assessee on the plea that it will only apply where the non-resident recipient of dividend incurs the liability in respect of dividend. In the considered opinion of the Tribunal, the CIT(A), though, was required to deal with all propositions advanced by the assessee, had not done so. Therefore, the tribunal restored the matter back to the file of the CIT(A) for fresh consideration after reasonable opportunity of being heard to the assessee.

❊❊❊

Controversies

CA. Kaushik D. Shah
dshahco@gmail.com.

Whether AO is entitled to make addition in value of stock on the basis that assessee has declared higher value of stock to the Bank authorities to avail more loan?

Issue:

M/s. ABC has valued the closing stock as on 31st March, 2017 for the purpose of Balance sheet at Rs. 10 Lacs. However, it has declared the value of same stock at Rs. 15 lacs before the bank authorities to avail more loans. The AO intends to make addition of the amount of Rs. 5 lacs being difference in the value of stock as per Balance Sheet and that declared before the Bank authorities as income from other sources.

Proposition:

It is contended by the assessee that the valuation of the stock stated by him in the declaration to the bank authorities was inflated and that he had no income from undisclosed sources and that he had not suppressed the stock, there cannot be any addition.

View against the proposition:

When the assesee itself has declared the value of the stock before the bank authorities at an inflated value the AO is entitled to infer that the assessee had income from undisclosed sources and was liable to be taxed.

The Madras High Court in the case of Coimbatore Spinning and weaving Co. Vs. Commissioner of Income Tax reported in 95 ITR 375 has held as under:

Once the assessee's explanation has not been accepted by the Tribunal, the resultant position is that there were excess stocks undisclosed in the books of account, and that the non-disclosure was only with a view to suppress the income. Once the Tribunal finds that there were excess stocks after rejecting the explanation of the assessee, the conclusion is inescapable that the excess stocks should have come from undisclosed sources. As already pointed out, the finding of the Tribunal that there were excess stocks cannot be interfered with by this court, as it is exclusively a matter for the Tribunal to accept or reject the assessee's explanation on the facts and circumstances of this case, We are, therefore, of the view that the Tribunal is justified in taking the view that the excess stocks should represent the income of the assessee from undisclosed sources.

View in favour of the proposition:

In the case of CIT Vs. N. swamy reported in 241 ITR 363 after considering the case of Coimbatore Spinning & Weaving Co. Vs. CIT (Supra) has held as under:

The assessee's income is to be assessed by the Income-tax Officer on the basis of the material which is required to be considered for the purpose of assessment and ordinarily not on the basis of the statement which the assessee may have given to a third party unless there is material to corroborate that statement of the assessee given to a third party, even if it be a bank. The mere fact that the assessee had made such a statement by itself cannot be treated as having resulted in an irrebuttable presumption against the assessee. The burden of showing that the assessee had undisclosed income is on the Revenue. That burden cannot be said to be discharged by merely referring to the statement given by the assessee to a third party in connection with a transaction which was not directly related to the assessment and making that the sole foundation for a finding that the assessee had deliberately suppressed his income. The burden is on the Revenue to prove that the income sought to be taxed is within the taxing provisions and there was in fact income.

The assessee had shown the value of the stock in its books of account. The Income-tax Officer thought that the figures relating to the value of the stocks in the books could not be regarded as the correct value of the stocks as the assessee had given a declaration to the bank from which it had obtained over-draft facilities and in its declaration valued the stock at a figure higher than that in the books of the assessee. The income tax officer computed the difference between the value as recorded in the books and that found in the declaration to the bank and treated the same as income from undisclosed sources. The assessee had contended that the value of the stocks as stated by him in the declaration given to the bank was inflated, that he had not suppressed the value of the stock, and that there was no income from undisclosed sources. The Appellate Assistant Commissioner to whom the assessee appealed, reduced the amount of the addition from Rs. 34,070/- to Rs. 26,000/-. On appeal to the Tribunal, the Tribunal deleted the addition. On a reference:

Held, that the Tribunal had accepted the explanation of the assessee. The Tribunal had exercised its jurisdiction and the question decided by it was a question of fact. Therefore, there was no scope for interference with the order of the Tribunal.

Summation:

The assessee's income is to be assessed by the Income-tax Officer on the basis of the material which is required to be considered for the purpose of assessment and ordinarily not on the basis of the statement which the assessee may have given to a third party unless there is material to corroborate that statement of the assessee given to a third party, even if it be a bank. The mere fact that the assessee had made such a statement by itself cannot be treated as having resulted in an irrebuttable presumption against the assessee. The burden of showing that the assessee had undisclosed income is on the Revenue. That burden cannot be said to be discharged by merely referring to the statement given by the assessee to a third party in connection with a transaction which was not directly related to the assessment and making that the sole foundation for a finding that the assessee had deliberately suppressed his income.

The burden is on the Revenue to prove that the income sought to be taxed is within the taxing provisions and there was in fact income, are propositions which are well settled by the Supreme Court in the case of Parimisetti Seetharamamma v. CIT [1965] 57 ITR 532 which reiterates these propositions.

Be that as it may, it is unnecessary for us to say anything further on that matter, in view of the fact that even by applying the decision in Coim-batore Spinning and Weaving Co. Ltd. v. CIT , the result reached by the Tribunal can be sustained. The Division Bench in that case accepted the argument that was advanced by the Revenue that the question whether an explanation offered by the assessee is acceptable or not is a pure question of fact, and that this court is not entitled to examine the correctness of such a finding on a reference. On the facts of that case, the Tribunal had rejected that explanation and this court after examining the facts upheld the rejection. Here the situation is reversed. The Tribunal has accepted the explanation of the assessee and it is the Revenue which wants that order of the Tribunal to be set aside on the ground that the explanation could not have been accepted. The rejection of the explanation was a matter for the Tribunal. The Tribunal has exercised its jurisdiction and the question decided by it is a question of fact.

❊❊❊

India releases Draft rules in respect of Country-by-Country reporting and Master File

CA. Dhinal A. Shah
dhinal.shah@in.ey.com

CA. Sagar Shah
sagar1.shah@in.ey.com

1. Executive summary

On 5 October 2015, the Organization for Economic Co-operation and Development (OECD) released its final report on Action 13, Transfer Pricing (TP) Documentation andCountry-by-Country (CbC) reporting, under its Action Plan on Base Erosion and ProfitShifting (BEPS). Action 13 recommended a three-tiered approach to TP documentationconsisting of:

- A "master file" that provides tax administrations with high-level information regarding the global business operations and TP policies of a multinational enterprise (MNE)
- A specific "local file" that provides the local tax administration with informationregarding material related-party transactions, the amounts involved and thecompany's analysis of the TP determinations they have made with regard to thosetransactions
- A CbC reporting template that includes information on the economic activity of the MNE group

CbC reporting was agreed as one of the minimum standards for implementing anti-BEPS measures. The Indian Government vide Finance Act, 2016 amended the Indian tax law(ITL) to introduce provisions for additional TP documentation and CbC reporting toimplement the recommendations contained in the OECD's BEPS report on Action 13. These provisions were expected to be followed up by detailed rules for implementation.

Accordingly, on 6 October 2017, the Indian tax administration has issued draft rules (Draft Rules) for CbC reporting and furnishing of master file for public comments/suggestions, which can be sent electronically by 16 October, 2017. The salient features of the Draft Rules for Master File and CbC report areoutlined below.

2. Master File

2.1 Who is required to maintain?

Under the ITL, entities being constituents of an international group, shall in addition to the information related to the international transactions (i.e. local file), also maintain such information and documents as prescribed (i.e. master file). Under the Draft Rules, the master file requirements apply to every taxpayer, being a constituent entity of an international group, if the following two conditions are satisfied cumulatively:

I. The consolidated revenue of the international group, of which such tax payer is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year preceding such previous year, exceeds INR 500 crores; and

II. Either of the below transaction threshold is achieved for the reporting year:
   - The aggregate value of international transactions as per the books of accounts maintained by the taxpayer exceeds INR 50 crores; or
   - The purchase, sale, transfer, lease or use of intangible property (IP) as per the books of accounts maintained by the taxpayer exceeds INR 10 crores

2.2 What are the content?

Under Action 13, the master file requires information on operating entities, supply chain, intangible property, inter company financing arrangements, details of rulings and Advance Pricing Agreements and information on the global TP policies.

The Indian tax administration has considered the above guidance and the Draft Rules are largely in line with the contents as prescribed under Action 13 report. The Draft Rules, however, requires the following additional information:

- Maintenance of a list of all the operating entities of the international group along with their addresses;
- A description of the functions performed, assets employed and risks assumed by the constituententities of the international group that contribute at least 10% of the revenues, assets and profits of the group;
- A list of all the entities of the international group engaged in development and management of intangibles along with their addresses;
- A detailed description of the financing arrangements of the international group, including the names and addresses of the top ten unrelated lenders

2.3 What are the filing procedures and the filing due dates

The Draft Rules prescribe a separate statutory form i.e. Form 3CEBA wherein the constituent entity should furnish the prescribed information. This form shall be furnished to the Director General of Income-tax (Risk Assessment) on or before the due date for furnishing the Income-tax return.

Further, in respect of the financial year (FY) 2016-17, the Draft Rules provide that the due date for furnishing master file information in Form 3CEBA is by 31 March 2018. In case where there are more than one constituent entities of an international group resident in India, the Draft Rulesprovide for a single filing by a designated constituent entity.

3. CbC report

3.1 When is it applicable?

CbC reporting requirements would apply to an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the preceding accounting year exceeds INR 55 billion (approx. US$846.1 million).

3.2 What are the contents?

Under Action 13, the CbC reporting template requires MNEs to report the amount of revenue, profits, income tax paid and accrued, employees, stated capital, retained earnings and tangible assets annually for each tax jurisdiction they do business. In addition, MNEs are required to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activity each entity conducts. The CbC reporting template is divided into three tables:

- Table I. Overview of allocation of income, taxes and business activities by tax jurisdiction
- Table II. List of all Constituent Entities of the MNE group included in each aggregation by tax jurisdiction, including designation of Main Business Activity
- Table III. Additional Information

The Draft Rules are in line with the above guidance and prescribe filing of economic information of the international group as per above. Further, the definition under Draft Rules are in line with Action 13 report.

3.3 What are the notification requirements and thedue dates?

CbC reports should be filed in the jurisdiction of tax residence of the ultimate parent entity and shared between jurisdictions through automatic exchange of information, pursuant to government-to-government mechanisms under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties or Tax Information Exchange Agreements.

According to the Draft Rules, every constituent entity resident in India, if its parent entity is not a resident in India, would need to notify as to whether

- it is the alternate reporting entity of the international group; or
- provide the details of the parent entity or the alternate reporting entity, as the case may be, of the international group and the country or territory of which the said entities are residents.

Such notification needs to be done in Form 3CEBB to the Director General of Income-tax (Risk Assessment). This notification should be made on or before 60 days prior to the due date for filing Income-tax return. As the due datefor filing the tax return for the FY 2016-17 is 30 November 2017, the notification due date as per the Draft Rules would be 1 October 2017. It is expected that the Indian tax administration would consider providing an extension to the due date for the FY 2016-17.

3.4 What are the filing procedures and the filing due dates?

According to the Draft Rules, every parent entity or the alternate reporting entity or a constituent entity (where there is failure to exchange CbC information), resident in India, should furnish the CbC report to the Director General of Income-tax (Risk Assessment) for every reporting accounting year. Such filing needs to be done in Form 3CEBC within the due date for filing Income-tax return. It may be noted that for the FY 2016-17, the due date would be 30 November 2017.

In case where there are more than one constituent entities of an international group resident in India, then Form 3CEBC may be furnished by that constituent entity by filing a separate notification with Director General of Income-tax (Risk Assessment) in Form 3CEBD.

Further, the Draft Rules provides that the designated tax authorities will also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information furnished under this Rule.

❇ ❇ ❇

contd. from page 307

- Arrangement fee Charged by Buyers Credit Agents / Brokers who is arranging buyer's credit for importer.
- Other charges like, A2 payment on maturity, Form 15CA and 15CB on maturity, Intermediary bank charges etc.
- For funds arranged from Foreign Bank, Importer has to pay Withholding tax (TDS) on the interest amount.

Buyers Credit on High Sea Sales Transaction

What is High Sea Sales?

High Sea Sales is a sale carried out by the carrier document consignee to another buyer while the goods are yet on high seas or after their dispatch from the port/airport of origin and before their arrival at the port/ airport of destination.

Process flow of High Sea Sales Transaction:

The following is the procedure that is followed in case of High Sea Sales:-

1. High Sea Seller places order with supplier for import of goods.
2. Supplier ships the goods to High Sea Seller and submits the documents to his bank counter. (Assumption in this case: Payment mode is Documents Against Payment)
3. High Sea Seller sells the goods to High Sea Buyer while the goods are still on High Sea by entering into an agreement of sale to effect the sale on high sea of specific goods.
4. Documents arrive at banks counter of High Sea Seller's bank. High Sea Seller makes payment from his own funds or using buyer's credit and gets documents released.
5. The document of title i.e. Bill of Lading is endorsed by the High Sea Seller in favour of High Sea Buyer and provides him with local invoice (in INR) and other documents required to file Bill of Entry.
6. High Sea Seller retains a copy of the endorsed Bill of Lading and hands over original Bill of Lading to High Sea Buyer under covering letter.
7. High Sea Buyer shall file Bill of Entry and pay customs duty, clearing charges etc. and gets the goods released.
8. High Sea Buyer hands over a Copy of Bill of Entry to High Sea Seller for further submission to his Bank.

❇ ❇ ❇

FEMA Updates

CA. Savan Godiawala
sgodiawala@deloitte.com

10 Export Data Processing and Monitoring System (EDPMS) Issuance of Electronic Bank Realisation Certificate (eBRC)

In terms of provisions contained in Master Direction No. 16/2015-16 dated January 01, 2016 related to implementation and operationalisation of Export Data Processing and Monitoring System (EDPMS) of RBI as also provisions contained in A P (DIR Series) Circular No. 15 dated July 28, 2014 in terms of which reporting of data related to realisation of export proceeds i.e. ENC and Schedule 3 to 6 files was discontinued with effect from the first fortnight of September 2014 after implementation of EDPMS. Also in terms of provisions contained in A P (DIR Series) Circular No. 74 dated May 26, 2016ADs were advised to carry out appropriate changes in their IT system / operating procedure immediately, report subsequent export transactions in EDPMS and also capture the details of advance remittances (including old outstanding inward remittances) received for exports in EDPMS.

AD Category-I banks are directed to update the EDPMS with data of export proceeds on "as and when realised basis" and, with effect from October 16, 2017 generate Electronic Bank Realisation Certificate (eBRC) only from the data available in EDPMS, to ensure consistency of data in EDPMS and consolidated eBRC.

A.P. (DIR Series) Circular No. 04,September 15, 2017

For Full Text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11119

11 Investment by Foreign Portfolio Investors in Corporate Debt Securities – Review

This is in regard to Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA.20/2000-RB dated May 3, 2000, as amended from time to time.

Currently, the limit for investment by Foreign Portfolio Investors (FPIs) in corporate bonds is Rs. 244,323 crore. This includes issuance of Rupee denominated bonds overseas (Masala Bonds) by resident entities of Rs. 44,001 crore (including pipeline). The Masala Bonds are presently reckoned both under Combined Corporate Debt Limit (CCDL) for FPI and External Commercial Borrowings (ECBs). On a review, and to further harmonise norms for Masala Bonds issuance with the ECB guidelines, the following changes are made:

a. With effect from October 3, 2017, Masala bonds will no longer form a part of the limit for FPI investments in corporate bonds. They will form a part of the ECBs and will be monitored accordingly. Eligible Indian entities proposing to issue Masala Bonds may approach Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai as required in terms of A. P. (DIR Series) Circular No.47 dated June 7, 2017.

b. The amount of ₹ 44,001 crore arising from shifting of Masala bonds will be released for FPI investment in corporate bonds over the next two quarters as specified in Table 1.

contd. on page no. 335

GST Notification

CA. Ashwin H. Shah
ashwinshah.ca@gmail.com

Sr No	IssuedUnder	Notification No.	Essence of Notification
67.	(IGST) Rate	Notification No. 15/2017 – Integrated Tax (IGST) Rate dated 30/06/2017	Notification for Exemption from Integrated Tax to SEZ.
68.	(A)(IGST) Rate (B)(UTGST) Rate(C) (CGST) Rate	(A)Notification No.16/2017 (B)NotificationNo.18/2017 (C)Notification No.18/2017	Seek to reduce the rate of Central Tax, Union Territory Tax, on fertilisers from 6% to 2.5% and Integrated Tax rate on fertilisers from 12% to 5%.
69.	(IGST) Rate	Notification No. 17/2017 – Integrated Tax (IGST) Rate dated 05/07/2017	Rescinding Notification No. 15/2017-Integrated Tax (Rate) relating exemption to SEZ from Integrated tax dated 30.06.2017
70.	(IGST) Rate	Notification No. 18/2017 – Integrated Tax (IGST) Rate dated 05/07/2017	IGST exemption to SEZs on import of Services by a unit/developer in an SEZ.
71.	(IGST) Rate	Notification No. 19/2017– Integrated Tax (IGST) Rate dated 18/08/2017	Seeks to reduce IGST rate on specified parts of tractors from 28% to 18%.
72.	(IGST) Rate	Notification No. 20/2017– Integrated Tax (IGST) Rate dated 22/08/2017	Seeks to amend notification No. 08/2017-IT(R) to reduce IGST rate on specified supplies of Works Contract Services, job work for textile & textile products, printing service of books, newspapers etc, admission to planetarium, and, also to provide option to GTA & transport of passengers by motor cab service providers to avail full ITC & discharge IGST @ 12%.
73.	(A)(IGST) Rate(B) (UTGST) Rate(C) (CGST) Rate	(A)Notification No.21/2017 (B)Notification No.21/2017 (C)Notification No.21/2017	Seeks to amend notification No. 09/2017-IT(R), notification No. 11/2017-UTT(R) and notification No. 12/2017-CT(R) to exempt services provided by Fair Price Shops to Government and those provided by and to FIFA for FIFA U-17. Also to substitute RWCIS & PMFBY for MNAIS & NAIS, and insert explanation for LLP.
74.	(A)(IGST) Rate(B) (UTGST) Rate	(A)Notification No.22/2017 (B)Notification No.22/2017	Seeks to amend notification No. 10/2017-IT(R) and notification No. 13/2017-UTT(R) to amend RCM provisions for GTA and to insert explanation for LLP.
75.	(IGST) Rate	Notification No.23/2017–	Integrated Tax (IGST) Rate dated 22/08/2017 Seeks to amend notification No. 14/2017-IT(R) to make ECO responsible for payment of GST on services provided by way of house-keeping such as plumbing, carpentering etc.

76.	(IGST)	NotificationNo. 7/2017–	Integrated Tax (IGST) dated 14/09/2017 The Central Government hereby specifies the job workers engaged in making inter-State supply of services to a registered person as the category of persons exempted from obtaining registration under the said Act. Provided that nothing contained in this notification shall apply to a job-worker –(a) who is liable to be registered under sub-section (1) of section 22 or who opts to takeregistration voluntarily under sub-section (3) of section 25 of the said Act; or(b) who is involved in making supply of services in relation to the goods mentioned against serial number 151 in the Annexure to rule 138 of the Central Goods and Services Tax Rules,2017.
78.	(UTGST) Rate	Notification No.20/2017–Union Territory Tax (Rate) dated 22/08/2017	Seeks to amend notification No. 11/2017-UTT(R), to reduce UTGST rate on specified supplies of Works Contract Services, job work for textile & textile products, printing service of books, newspapers etc, admission to planetarium, and, also to provide option to GTA & transport of passengers by motor cab service providers to avail full ITC & discharge UTGST @ 6%.
81.	(CGST) Rate	Notification No. 11/2017–Central Tax(Rate) dated 28/06/2017	To notify the rates for supply of services under CGST Act.
82.	(CGST) Rate	Notification No. 12/2017–Central Tax (Rate) dated 28/06/2017	To notify the exemptions on supply of services under CGST Act.
83.	(CGST) Rate	Notification No.13/2017–Central Tax (Rate) dated 28/06/2017	To notify the categories of services on which tax will be payable under reverse charge mechanism under CGST Act.
84.	(CGST) Rate	Notification No.14/2017–Central Tax (Rate) dated 28/06/2017	To notify the supplies which shall be treated neither as a supply of goods nor a supply of service under the CGST Act.
85.	(CGST) Rate	Notification No.15/2017–Central Tax (Rate) dated 28/06/2017	To notify the supplies not eligible for refund of unutilized ITC under CGST Act.
86.	(CGST) Rate	Notification No.16/2017–Central Tax(Rate) dated 28/06/2017	To notify specialized agencies entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them under CGST Act.
87.	(CGST) Rate	Notification No.17/2017–Central Tax(Rate) dated 28/06/2017	To notify the categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator.
89.	(CGST) Rate	Notification No.19/2017–Central Tax(Rate) dated 18/08/2017	Seeks to reduce CGST rate on specified parts of tractors from 14% to 9 %

90.	(CGST) Rate	Notification No.20/2017–Central Tax(Rate) dated 22/06/2017	Seeks to amend notification No. 11/2017-CT(R) to reduce CGST rate on specified supplies of Works Contract Services, job work for textile & textile products, printing service of books, newspapers etc, admission to planetarium, and, also to provide option to GTA & transport of passengers by motorcab service providers to avail full ITC & discharge CGST @ 6%.
91.	(CGST)	Notification No.35/2017 – Central Tax dated 15/09/2017	Last Date for filing of return in FORM GSTR-3B 1. August, 2017 - 20th September, 2017 2. September, 2017 - 20th October, 2017. 3. October, 2017 - 20th November, 2017 4. November, 2017 - 20th December, 2017. 5. December, 2017 - 20th January, 2018.
92.	(CGST) Rate	Notification No.22/2017–Central Tax (Rate) dated 22/08/2017	Seeks to amend notification No. 13/2017-CT(R) to amend RCM provisions for GTA and to insert explanation for LLP.
93.	(CGST) Rate	Notification No.23/2017–Central Tax (Rate) dated 28/06/20173	Seeks to amend notification No. 17/2017-CT(R) to make ECO responsible for payment of GST on services provided by way of house-keeping such as plumbing, carpentering etc.
94.		03/2017 Compensation Cess (Rate), dated 18/07/2017	Seeks to amend notification No. 1/2017-Compensation Cess (Rate), dated 28th, June, 2017 so as to increase the Compensation Cess rates on cigarettes as mentioned in the notification with effect from 18th, July, 2017.
95.		04/2017 Compensation Cess (Rate), dated 20/07/2017	Seeks to exempt intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the goods and services tax compensation cess on the value of outward supply of such second hand goods, as determined under sub-rule (5) of rule 32 of the Central Goods and Services Tax Rules, 2017, from any supplier, who is not registered, from the whole of the goods and services tax compensation cess leviable thereon under section 8 of the Goods and Services Tax (Compensation to States) Act, read with sub-section (4) of Section 9 of the Central Goods and Services Tax Act

❊ ❊ ❊

Corporate Law Update

CA. Naveen Mandovara
naveenmandovara@gmail.com

MCA Updates:

1. National Company Law Appellate Tribunal (Amendment) Rules, 2O17:

Following are the changes made in the National Company Law Appellate Tribunal Rules, 2016:

For Rule 63, the following rule has been substituted, namely:-"63. Appearance of authorized representative-

(1) Subject to provisions of section 432 of the Act, a party to any proceedings or appeal before the Appellate Tribunal may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Appellate Tribunal.

(2) The Central Government, the Regional Director or the Registrar Companies or Official Liquidator may authorise an officer or an Advocate represent in the proceedings before the Appellate Tribunal.

(3) The officer authorized by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator shall be an officer not below the rank of Junior Time Scale or company prosecutor."

[F. No. 1/30/2013-CL-V dated 23.08.2017]

2. Notification in respect of Provisions of Sub Section (8), (9) and (10) of Section 212

The Ministry has appointed the 24.08.2017 as the date on which the provisions of sub-sections (8), (9) and sub-section (10) of section 212 of the said Act shall come into force.

These provisions provide for the provisions with respect to Investigation into Affairs of Company by Serious Fraud Investigation Office.

[F. No. 1/12/2013 CL-V dated 24.08.2017]

3. The Companies (Arrests in connection with Investigation by serious Fraud Investigation Office) Rules, 2017:

These rules shall come into force on the date of their publication in the Official Gazette.

- These rules provide for the powers of arrest by Additional Director or Assistant Director with the prior written approval of the Director SFIO and if the arrest of a person is to be made in connection with a Government company or a foreign company under investigation, such arrest shall be made with prior written approval of the Central Government.
- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to arrest shall be applied mutatis mutandis to every arrest made under this Act.
- A Form for the "Arrest Order" to be issued by the Director, Additional Director or Assistant Director as stated under rule 4 and 5, while exercising powers under sub-section (b) of section 212 of the Companies Act, 2013 has also been appended to these rules.

[F. No. 1/12/2013 CL-V dated 29.08.2017]

4. MCA advised person who are disqualified u/s 164(2) (A) not to Act as a Director:

Ministry Of Corporate Affairs has advised that any person who has been disqualified under section 164(2) of the Companies Act, 2013, not to act as director during the period of the disqualification.

The ministry has also advised that such person shall not file any document or application with MCA as the same shall be summarily rejected.

Furthermore, the MCA has also stated that this shall be without prejudice to the liability of the said person for violation of section 164(2) read with section 167 of the Companies Act, 2013 including the action under section 448 read with 447 of the wherever warranted.

5. Exemption given to certain Public Companies under the Companies (Appointment and Qualification of Directors) Rules, 2014:

The amended Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, inter-alia provided that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors.

In this regard the Ministry has clarified that a "Joint Venture" would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement; have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards. "

[F. No. 1/22/2013-CL-V dated 05.09.2017]

6. Delegation of Powers and Functions to Regional Directors' Under Section 66(2) of Companies Act, 2013:

The Central Government has delegated its powers and functions to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong, as vested under sub-section (2) of Section 66 of the Companies Act, 2013 with effect from the date of its publication in the Official Gazette i.e. September 6, 2017.

The powers has been delegated, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said subsection, if in its opinion such a course of action is necessary in the Public interest.

The provision of sub-section (2) of Section 66 of the Companies Act, 2013 provides:

"The Tribunal shall give notice of every application made to it under sub-section (1) [i.e. an application made by the company for reduction of share capital] to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction."

[F. No. 1/06/2014-CL-V dated 06.09.2017]

❊ ❊ ❊

Allied Laws Corner

Adv. Ankit Talsania
ankittalsania@gmail.com

In case of no dispute raised by the Corporate Debtor regarding of existence amount of debt or quality of goods supplied, application filed by the Operational Creditor under section 9 of CIRP is complete and matter has to be admitted.

Bhagwati Corporation vs. Shrinidhi Laminates Limited 85 taxmann.com 304 (Ahd.)

A. Facts of the Case :

1. Bhagwati Corporation, a Proprietorship Firm, styling as 'Operational Creditor' filed this Application against Shrinidhi Laminates Limited describing it as 'Corporate Debtor' under Section 9 of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as "IB Code"] read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ["IB Rules" for short] to trigger 'Corporate Insolvency Resolution Process'.

2. Respondent Company placed an oral order with Applicant for supply of Lignite Coal. Accordingly, Applicant supplied Lignite Coal under different debit notes since several years. Applicant is maintaining a running account towards the cost of the supplies made and the amounts credited by the Respondent Company. In the said running account, a sum of Rs. 42,42,466.49 ps. as on 31st September, 2016 was due from the Respondent towards Principal amount and an amount of Rs. 7,00,486/- towards interest at the rate of 18% per annum till 30th September, 2016 due and payable by the Respondent Company. Applicant filed Ledger Account of the Respondent as 'Annexure A'. According to the Applicant, Respondent made use of the goods supplied by the Applicant without any complaint. Respondent failed to make payment for the goods supplied inspite of several oral requests. On the other hand, Respondent issued 11 cheques for payment of the outstanding amount, but all the relevant cheques given by the Respondent were dishonoured on 18.10.2016 and for such dishonour of cheque criminal complaints have been filed against the Respondent Company under Section 138 of the Negotiable Instruments Act which are registered as Criminal Case Nos. 51/2016. 52/2016, 53/2016 and 58/2016. Applicant issued a Notice dated 25th October, 2016 Annexure 'B' to the Application demanding payment of outstanding amount. Applicant got issued a legal notice dated 8th December, 2016 to the Respondent calling upon it to make payment of the outstanding amounts within 21 days vide Annexure 'C'. Respondent gave Reply Notice dated 3rd January, 2017 vide Annexure 'D'.

3. Applicant issued Demand Notice dated 26.4.2017 under Section 8(1) of the IB Code vide Annexure "I". Respondent did not give any reply to the Demand Notice. Applicant filed Debit Notes dated 15.4.2015 to 31.3.2016. Applicant also filed Interest Calculation Sheet. Applicant also filed account from the Banks maintaining the account of the Operational Creditor confirming that there is no payment of relevant unpaid operational debt by the Operational Debtor. Applicant named the 'Insolvency Resolution Professional' Shri Nimai Shah. Applicant also filed the Written Communication by the proposed Interim Resolution Professional as set out in Form No. 2 of the IB Rules. Applicant filed copy of the Certificate from the financial institution maintaining the account of the Operational Creditor along with an Additional Affidavit. Applicant filed proof of despatch of copy of Application on the Respondent. The

acknowledgment of the Respondent is there on the letter dated 10th July, 2017. Hence, it was delivered by hand.

4. The Application was listed before this Adjudicating Authority for the first time on 9.8.2017. On that date, the Authority, having noticed that Certificate issued by the financial institution in compliance with Section 9(c) of the IB Code had not been filed, directed the Applicant to rectify the above said defect within one week and listed the matter on 17.8.2017. Applicant filed Affidavit stating that it complied with Section 9(c) of the Code. Applicant was again directed to file copy of Reply Notice dated 17.11.2016 issued by the Respondent. Accordingly, Applicant filed copy of Reply Notice dated 17.11.2016 issued by the Respondent to the notices dated 25.10.2016 got issued by the Applicant.

5. The Adjudicating Authority directed the Applicant to issue Notice of date of hearing and accordingly and the same was issued to the Respondent and Applicant filed proof of service.

B. Averments of Counsels :

1. Respondent appeared through learned Counsel and filed Objections and Further Objections. In the First Objections filed, it is stated that in response to the Demand Notice by way of a communication dated 12.5.2017 Respondent requested the Applicant to have reconciliation. In the letter dated 12.5.2017 Respondent informed that the management of the Respondent was changed somewhere in May 2016 and the claims that have been raised in the Demand Notice dated 26.4.2017 are prior to the taking over of the Company by the present management. It is further stated that the new management of the Company at the time of taking over paid 50% of the debts to all the Creditors. At that time, Applicant did not present and did not make any claim.

2. In the Further Objections, it is stated that in reply to the statutory notice dated 8.12.2016 under Sections 433 and 434 of the Companies Act issued by the Applicant, Respondent issued a Reply dated 3.1.2017. In the said Reply dated 3.1.2017, Respondent mentioned about the dispute which is existing between the directors of company but not about existence of debt. In the Reply to the statutory notice issued under Section 138 of the Negotiable Instruments Act Respondent has raised a dispute with regard to the authority of the person that signed the cheques, but not about debt. Another objection raised is that there is a dispute with regard to the amount claimed by the Applicant and there is no clarity as regards the date of cause of action. According to the applicant, the Applicant is entitled to claim interest only 6 months after the date of Invoice since 6 months' time was given for making payment but Applicant claimed interest from the date of Invoice.

C. Issues arose to be addressed by the NCLT :

1. Whether any dispute has been raised by the Respondent/Corporate Debtor within the meaning of sub-section (6) of Section 5 or sub-section (2) of Section 8 of the IB Code, and if, there is any such dispute, whether it is a bona fide dispute on substantial grounds.

2. Whether there is sufficient compliance of Section 9(c) of the IB Code

D. Findings of the NCLT

1. Whether any dispute has been raised by the Respondent/Corporate Debtor within the meaning of sub-section (6) of Section 5 or sub-section (2) of Section 8 of the IB Code, and if, there is any such dispute, whether it is a bona fide dispute on substantial grounds.

1.1 In relation to this Point, admittedly, Bhagwati Corporation/Applicant issued four Notices to Durolam Limited, Rohit Rajkumar Agrawal, Manojkumar M. Jain, Gautambhai Gopaldas Patel of Ahmedabad under Section 138 of the N.I. Act in relation to dishonour of cheques issued by one Shri Rajkumar Agrawal on behalf of Durolam Limited. Admittedly, the name of Durolam Limited was changed as 'Shrinidhi

Laminates Limited' (Respondent) with effect from 16.6.2016.

1.2 Admittedly, in reply to the statutory notice dated 25.10.2016 issued by the Applicant under Section 138 of the NI Act on 17.11.2016 on behalf of Durolam Limited and others, it is clearly stated that Rajkumar Agrawal who signed the impugned cheques is not a Director from 1st May, 2016 and the same was informed to the Applicant by E-Mail dated 10.8.2016. The main dispute raised in the Reply Notice dated 17.11.2016 is that the cheques were not issued by the Authorised Signatory of Durolam Limited and they were issued by one Rajkumar Agrawal who reported to the Company that the cheques were lost. In the said Reply Notice it is also alleged that the Applicant Company in collusion with Rajkumar Agrawal created false documents i.e., cheques and committed offences under Sections 406, 420, 465, 467 and 471 IPC.

1.3 Admittedly, on 8.12.2016, Applicant issued a statutory notice under Section 433 of the Companies Act and it was replied by Shrinidhi Laminates Ltd., previously known as Durolam Limited. In that notice, it is clearly mentioned that there was an understanding between the Respondent and the Applicant and his father, that 50 per cent to be paid first, and remaining amount should be in 20 equal monthly instalments. It is also stated that Respondent paid Rs. 14,00,000 in cash on 22.6.2016. In the said notice it is clearly mentioned that there was a dispute with the earlier Director Shri Rajkumarji and due to those disputes there was an understanding to pay the amount in 20 equal instalments. In that notice there was a reference to the Reply Notice dated 16.11.2016 for the statutory notice issued under Section 138 of the NI Act. In the reply to the Demand Notice issued, a suggestion for reconciliation was made by the Respondent.

1.4 The Hon'ble National Company Law Appellate Tribunal, in Kirusa Software (P.) Ltd. v. Mobilox Innovations (P.) Ltd. [2017] 82 taxmann.com 191/142 SCL 310, held in Paragraph No. 31 as follows;

"31. The dispute under I&B Code, 2016 must relate to specified nature in clause (a), (b) or (c), i.e., existence of amount of debt or quality of goods or service or breach of representation or warranty. However, it is capable of being discerned not only from in a suit or arbitration from any document related to it. For example, the 'operational creditor' has issued notice under Code of Civil Procedure Code, 1908 prior to initiation of the suit against the operational creditor which is disputed by 'corporate debtor. Similarly notice under Section 59 of the Sales and Goods Act if issued by one of the party, a labourer/employee who may claim to be operation creditor for the purpose of Section 9 of I&B Code, 2016 may have raised the dispute with the State Government concerning the subject matter i.e. existence of amount of debit and pending consideration before the competent Government. Similarly, a dispute may be pending in a Labour Court about existence of amount of debt. A party can move before a High Court under writ jurisdictions against Government, corporate debtor (public sector 19 undertaking). There may be cases where one of the party has moved before the High Court under Section 433 of the Companies Act, 1956 for initiation of liquidation proceedings against the corporate debtor arid dispute is pending. Similarly, with regard to quality of foods, if the 'corporate debtor' has raised a dispute, and brought to the notice of the 'operational creditor' to take appropriate step, prior to receipt of notice under sub-section (1) of Section 8 of the 'I&B Code', one can say that a dispute is pending about the debt. . . . . "

1.5 In view of the above said finding of the Hon'ble Appellate Tribunal, the dispute raised in the Reply Notice dated 17.11.2016 and the dispute

raised in the Reply Notice dated 3.1.2017 amount to dispute. Now, it has to be seen whether such a dispute is in connection with Clause (a), (b) or (c) of sub-section (6) of Section 5 i.e. existence of amount of debt or quality of goods or service or breach of representation or warranty. In the case on hand, the dispute does not pertain to the quality of goods or service or breach of representation or warranty. Therefore, it has to be seen whether the dispute raised in reply notices dated 17.11.2016 and 03.01.2017 relate to the existence of the amount of debt.

1.6 One of the basis for the claim made by the Applicant is the dishonour of the cheques apart from the Debit Notes. In the Reply issued to the statutory notice issued under Section 138 of the NI Act, the validity of the issuance of cheques by Rajkumar Agrawal, who happened to be not a Director with effect from 1st May, 2016, has been disputed. It may be said that the claim is not solely based on dishonour of cheques but it is based on debit notes which has been admitted.

1.7 In fact, learned Counsel appearing for the Applicant contended that there is no dispute about the existence of debt. He also pointed out that in the Reply Notices as well as in the Reply to the Demand Notice; they have admitted the existence of debts and sought for reconciliation. A part of the argument of the learned Counsel for the Applicant that is in respect of agreeing for reconciliation is correct. But, as can be seen from the Reply Notices dated 17.11.2016 and 3.1.2017 that were placed on record that due to the dispute amongst the Directors there was an understanding among family members of the Respondent Company and the Applicant family people to pay 50 per cent of the amounts and rest of the amount in 20 equal monthly instalments. In view of the said statement in the Reply Notices, it cannot be said that there is any dispute regarding the existence of amount of debt. It only suggests that there is an understanding between the family of the Applicant and the family of the Respondent to pay 50% at once and pay rest of the amount in instalments. Such understanding cannot be treated as a dispute regarding the existence of the amount of debt. More so, it confirms the existence of debt. The dispute raised in reply notice dated 17.11.2016 is only in respect of the authority of the person has signed the cheques but not to the existence of debt.

2. Whether there is sufficient compliance of Section 9(c) of the IB Code

2.1 In relation to this Point, this Adjudicating Authority directed the Applicant to comply with Section 9(c). The Applicant filed Additional Affidavit along with Certificate of the Banker. In the Affidavit, it is stated by the Deponent that he is enclosing a copy of the Certificate from the Financial Institution maintaining the account of the Operational Creditor confirming that there is no payment of unpaid operational debt by Corporate Debtor. The Certificate reads as to what are the cheques received from Durolam Limited for clearing. The Applicant party also filed Statement of Account from the Bank and therefore there is sufficient compliance of Section 9(c) of the IB Code.

2.2 The Application is complete in all respects. There is no dispute raised by the Respondent regarding the existence of the amount of debt, or quality of goods supplied.

2.3 In view of the above said findings, the Application deserves admission and accordingly the Application is admitted under sub-section (5) of Section 9 of the Code. This Adjudicating Authority hereby appoint Shri Nimai Shah, as Interim 'Insolvency Resolution Professional' having office at 605-606-607, Silver Oaks, Near Mahalaxmi Char Rasta, Paldi, Ahmedabad-380007 and having Registration No. IBBI/IPA-001/IP-POO 154/2017-18/10323 under Section 13(1)(c) of the Code.

2.4 The Interim Insolvency Resolution Professional is hereby directed to cause public

announcement of the initiation of 'Corporate Insolvency Resolution Process' and call for submission of claims under Section 13(l)(b) read with Section 15 of the Code and Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

2.5 This Adjudicating Authority hereby order moratorium under Section 13(1)(a) of the IB Code prohibiting the following as referred to in Section 14 of the Code;

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(i) However, the order of moratorium shall not apply in respect of supply of essential goods or services to Corporate Debtor.

(ii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.

(iii) The order of moratorium comes into force from the date of the order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.

2.6 This Application is disposed of accordingly. No order as to costs.

❊ ❊ ❊

contd. from page 325

Table 1-Limit for FPI Investments in Corporate Bonds

	Amount(Rs. crore)
1. Current FPI limits for corporate bonds (including masala bonds)	2,44,323
(a) of which Masala bonds (including pipeline)	44,001
2. FPI limit after shifting Masala bonds to ECB (1-(a))	2,00,322
3. Additional limit for Q3 FY18	27,000
4. FPI limit for corporate bonds from 3-10-17 (2+3)	2,27,322
of which reserved for investment by long term FPIs in infrastructure	9,500
5. Additional limit for Q4 FY18	17,001
6. FPI limit for corporate bonds from January 01, 2018 (4+5)	2,44,323
of which reserved for investment by long term FPIs in infrastructure	9,500

An amount of ₹ 9,500 crore in each quarter will be available only for investment in infrastructure sector by long term FPIs (i.e., Sovereign Wealth Funds, Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks). The definition of 'Infrastructure' shall be the same as defined under the Master Direction on ECBs issued by the Reserve Bank of India. Long term FPIs will continue to be eligible to invest in sectors other than infrastructure.

All other existing conditions for investment by FPIs in the debt market remain unchanged.

A.P. (DIR Series) Circular No. 05,September 22, 2017

For Full Text refer to https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11127&Mode=0

❊ ❊ ❊

From Published Accounts

CA. Pamil H. Shah
pamil_shah@yahoo.com

Accounting Standard 10-Property, Plant & Equipment

Notes Forming Part of Financial Statements For the year ended March 31, 2017

WIPRO Limited

a) Recognition and measurement

Property, plant and equipment are measured at cost less accumulated depreciation and impairment losses, if any. Cost includes expenditure directly attributable to the acquisition of the assets. General and specific borrowing costs directly attributable to the construction of a qualifying asset are capitalized as part of the cost.

b) Depreciation

The company depreciates property, plant and equipment over the estimates useful life on a available for use. Assets acquired under finance lease and leasehold improvements are amortized over the shorter of estimated useful life of the assets or the related lease term. Term licenses are amortized over their respective contract term. Freehold land is not depreciated. The estimated useful life of assets are reviewed and where appropriates are adjusted, annually. The estimated useful lives of assets are as follows;

Category	Useful life
Building	28 to 40 years
Plant and machinery	5 to 21 years
Computer equipment & software	2 to 7 years
Furniture, fixtures & equipment	3 to 10 years
Vehicles	4 to 5 years

When parts of an item of property, plant and equipment have different useful lives, they are accounted for as separate items (major components) of property, plants and equipments.

Subsequent expenditure relating to property, plant and equipments is capitalized only when it is probable that future economic benefits associated with these will flow to the company and the cost of items can be measured reliably.

The cost of property, plants and equipment not available for use as at each reporting date is disclosed under capital work –in-progress.

VRL Logistics Limited

B) Property, Plant and Equipment

Freehold land is carried at historical cost. All other items of property, plant and equipment are stated at historical cost less depreciation. Historical cost includes expenditure that is directly attributable to the acquisition of the items.

Subsequent cost are included in the asset's carrying amount or recognized as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the Company and the cost of the item can be measured reliably. The carrying amount of any component accounted for as a separate assets is derecognised when replaced. All other repairs and maintenance expenses are changed to profit or loss during the reporting period in which they are incurred. Assets acquired but not ready for use are classified under capital work in progress and stated at cost comprising direct cost and related incidental expenses.

On transition to Ind AS, the Company has elected to continue with the carrying value of all of its property, plant and equipment recognized as at 01 April 2015 measured as per the previous GAAP and use that carrying value as the deemed cost of the property, plant and equipment.

Orient Green Power Company Limited

3.9 Property plant and equipment(PPE)

Property, plant and equipment are carried at cost less accumulated depreciation and impairment

losses, if any. The cost of property, plant and equipment comprises the purchase price net of any import duties and other taxes (other than those subsequently recoverable) and includes interest on borrowings attributable to acquisition of qualifying property, plant and equipment up to the date the asset is ready for its intended use and other incidental expenses incurred up to that date. Subsequent expenditure relating to property, plant and equipment's is capitalised only if such expenditure results in an increase in the future benefits from such assets beyond its previously assessed standard of performance. Property, plant and equipment acquired and put to use for project purpose are capitalised and depreciation thereon is included in the project cost till the project is ready for its intended use. Any part or components of property, plant and equipment which are separately identifiable and expected to have a useful life which is different from that of the main assets are capitalised separately, based on the technical assessment of the management.

Projects under which assets are not ready for their intended use and other capital work-in-progress are carried at cost, comprising direct cost, related incidental expenses and attributable interest.

Property, plant and equipment retired from active use and held for sale are stated at the lower of their net book value and net realisable value and are disclosed separately.

For transition to Ind AS, the Company has elected to continue with the carrying value of all of its property, plant and equipment recognized as of April 1, 2015 (transition date) measured as per the previous GAAP and use that carrying value as its deemed cost as of the transition date.

Capital work in progress represents projects under which the property, plant and equipment's are not yet ready for their intended use and are carried at cost determined as aforesaid.

Endurance Technologies Limited

2.11 Property plant and equipment (PPE)

Property, plant and equipment are stated at cost of acquisition or construction where cost includes amount added/ deducted on revaluation less accumulated depreciation / amortization and impairment loss, if any. All costs directly relating to the acquisition and installation of assets are capitalised and impairment loss, if any. All costs directly relating to the acquisition and installation of assets are capitalised and include borrowing costs relating to funds attributable to construction or acquisition of qualifying assets, up to the date the assets / plant is ready for intended use. The cost of replacing a part of an item of property, plant and equipment, if it is probable that the future economic benefits embodies within the part will flow to the Company and its cost can be measured reliably within the carrying amount of the replaced part getting derecognized. The cost for day-to-day servicing of property, plant and equipment are recognized in Statement of Profit and Loss as and when incurred.

Depreciation on property plant and equipment has been provided on straight-line method as per the useful life prescribed in Schedule II to the Companies Act, 2013 except in respect of following categories of assets, in whose case the life of the assets has been assessed as under based on technical advice, taking into account the nature of the assets, the estimated usage of the assets, the operating conditions of the assets, past history of replacement, anticipated technological changes, manufacturers warranties and maintenance support, etc.

i.) Plant & Equipment – 7.5 years/10 years.
ii.) Vehicles – 5 years/7 years
iii.) Dies and moulds are depreciated over their estimated economic life determined on the basis of their usage or under straight line method in the manner specified in Schedule II, whichever is higher.

For transitional to Ind AS, the Company has elected to continue with the carrying value of all the property, plant and equipment recognised as of 1st April, 2015 (transition date) measured as per the previous GAAP and use that carrying value as its deemed cost as on the transition date.

❊❊❊

From the Government

CA. Kunal A. Shah
cakashah@gmail.com

Income Tax

1) TDS on interest on deposits made under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased - reg.-

In exercise of the powers delegated by the Central Board of Direct Taxes (Board) under sub-rule (5) of Rule 31A of the Income-tax Rules, 1962, the Principal Director General of Income-tax (Systems) hereby specifies that in case of deposits under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased:

i). TDS on the interest income accrued for and up to the period of death of the depositor is required to be deducted and reported against PAN of the depositor, and

ii). TDS on the interest income accrued for the period after death of the depositor is required to be deducted and reported against PAN of the legal heir, unless a declaration is filed under sub-rule(2) of Rule 37BA of the Income-tax Rules, 1962 to that effect. **(Notification No. 08/ 2017,Dt.13.09.2017)**

2) Voluntary reporting of estimated current income and advance tax liability

A taxpayer who is liable to discharge part of its tax liability by way of advance tax has to bear additional burden of interest for default of advance tax, in case total advance tax paid for the year falls short of the assessed tax by ten percent or more. This interest is levied as per the provisions of section 234B of the Income-tax Act, 1961 ("the Act"). Such taxpayers are further liable to pay interest for deferment of advance tax, in case any quarterly instalment of advance tax paid falls short of the prescribed percentage of total advance tax paid. This interest is levied in accordance with the provisions of section 234C of the Act.

In order to address these concerns, it is proposed to create a mechanism for self-reporting of estimates of current income, tax payments and advance tax liability by certain taxpayers (companies and tax audit cases) on voluntary compliance basis. The proposed reporting mechanism is sought to be created by way of inserting a new Rule 39A and Form No. 28AA in the Income-tax Rules, 1962. The proposed draft notification has been placed in public domain on the website of Income Tax Department (www.incometaxindia.gov.in) for inviting comments from stakeholders and general public. The comments and suggestions on the draft Rule and Form may be sent electronically at the email address dirtpl4@nic.in by 29th September, 2017. (**Press Release, Dt.19.09.2017)**

❊❊❊

Association News

CA. Riken J. Patel
Hon. Secretary

CA. Maulik S. Desai
Hon. Secretary

1 **Forthcoming Programmes**

Date/Day	Time	Programmes	Venue
01.11.2017	7.00 p.m. onwards	Diwali Get-together	Ratnamani Party Plot, Opp. Star Bazar, Satellite, Jodhpur, Ahmedabad.
25.11.2017		Cricket Match with Rajkot Branch of WIRC of ICAI	At Rajkot

Glimpses of Past Events

Ladies Wing Programme on Use of Tally for "GST & Filing of Trans 1
by CA. CS Silva Shah & CA. Sonal Jain

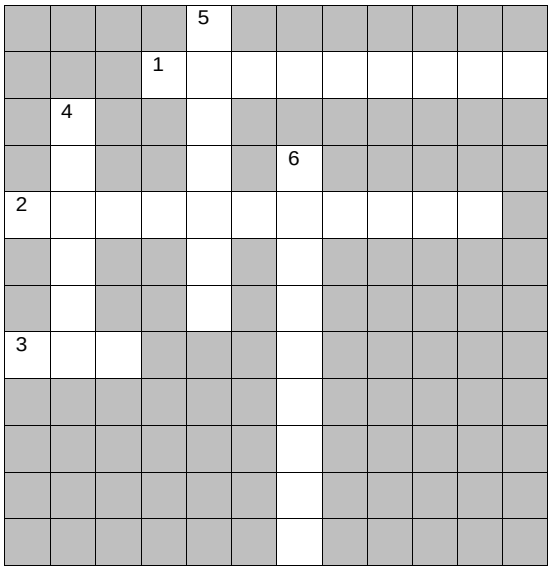
ACAJ Crossword Contest # 41

Across

1. Assessee is entitled to get the benefit of tax deducted even though the rent realized belonged to the assessee only _____.
2. India is among a handful countries with fundamental right to _____.
3. A person shall not be allowed to take credit where he has not furnished all the returns required under the existing law for the period of _____ months immediately preceding the appointed date.

Down

4. Where a person buys a property with his own money but in the name of another person without any intention to benefit such person, the transaction is called _____.
5. It is of utmost importance that any proceedings which is likely to affect the civil rights of a party is conducted strictly in accordance with the principle of _____ justice.
6. If FORM REG-26 is not filed, provisional registration shall be _____ by the GST officer.



Notes:

1. The Crossword puzzle is based on previous issue of ACA Journal.
2. Two lucky winners on the basis of a draw will be awarded prizes.
3. The contest is open only for the members of Chartered Accountants Association and no member is allowed to submit more than one entry.
4. Members may submit their reply either physically at the office of the Association or by email at caaahmedabad@gmail.com on or before 30/10/2017.
5. The decision of Journal Committee shall be final and binding.

Winners of ACAJ Crossword Contest # 40
1. CA. Virang Mehta
2. CA. Raj Shah

ACAJ Crossword Contest # 40 - Solution

Across

1. Five
2. Mandatory
3. Advance

Down

4. Human
5. Enhance
6. Identity

❊ ❊ ❊

TAPAS ELEGANCE

EXCLUSIVE OFFICE SPACES

INCOME TAX & GST Bhavan @ 3 Mins walk | Nehrunagar BRTS Stand @ 4 Mins walk

3 Level Parking - Basement, Ground Floor & Mechanical Stack Parking

Typical Floor Plan

FOR INQUIRY:

9925203831 , 9724343963

9327566428

Site Address

Lane Behind GathiyaRath, Opp. L Colony, Nehrunagar Cross Road, Ahmedabad-15.

SBI

CAR LOAN

Upgrade your life!

- Low interest rate
- Low processing fee
- No pre-payment penalty

Visit bank.sbi

T&C Apply