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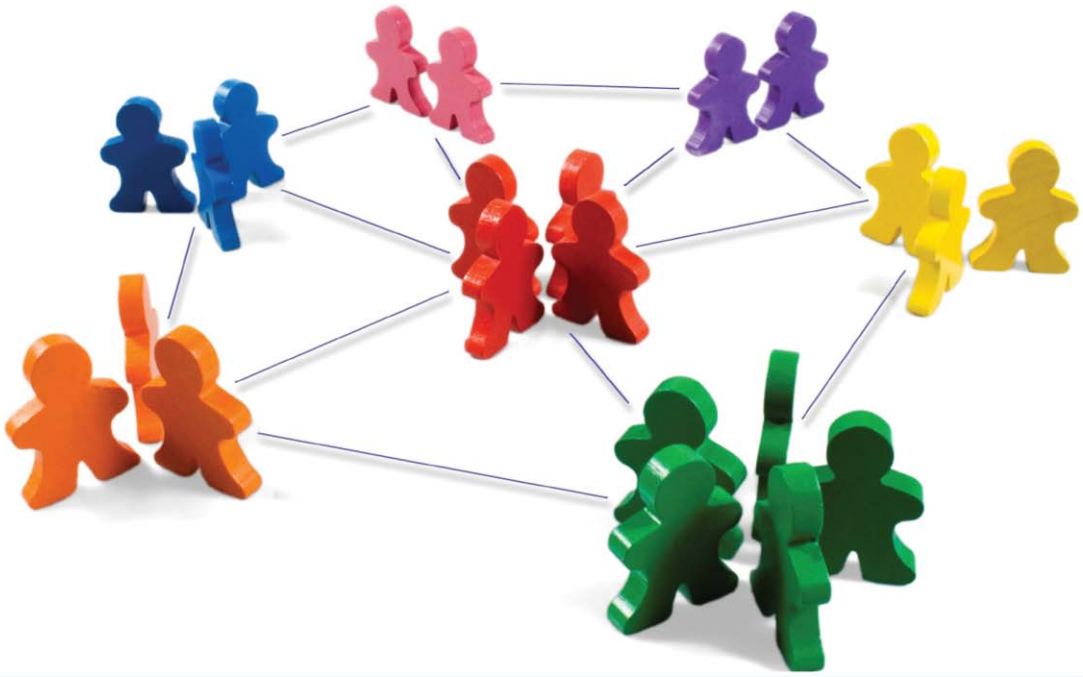
TURN CHALLENGES INTO OPPORTUNITIES

Capacity building for CA Firms Networking & Merger

on 22nd October 2010



Practice and Procedures before the CESTAT

on 9th October 2010

Workshop on Direct Tax Code

from 18th to 22nd October 2010

From the desk of Chairman

Dear Professional Colleagues,

Hearty greetings to you and your family on the occasion of Dussehra festivals. I am sure the hectic audit season has come to a state of little relaxation and festive season is ahead for spending time with family and friends; and of course, it is also a time to hone our professional skills.

CAPACITY BUILDING FOR CA FIRMS-NETWORKING & MERGER

A lot of ink has been spilled on historical debate ***"Small is beautiful Vs Bigger is better",*** including on our approach to practice, whether to continue to practice as a small firm or to grow bigger & reap the benefit of scale. The developments in the recent years have thrown challenges to our professional practice in the form of increasing dependence on technology, paradigm shift from personal to professional client relationship, shift from compliance related to value added work, dwindling of traditional tax/audit practice, specialization & niche area of practice, need to provide multi-discipline services, retaining clients who are growing big, recruiting & retaining quality staff, risk management & litigation etc. For meeting these challenges and for achieving an orderly and sustainable growth of CA firms, a movement has been started to incorporate the spirit of corporate world and to imbibe the consultation creed, by bringing together the CA firms beginning with networking and then culminating into mergers. During the networking phase, once the firms develop sufficient confidence in each other then they can venture into a marriage which is the form of mergers. The mergers should be effected to develop core competencies and to render better professional services of a larger range spread over bigger geographical area. In this direction, for the first time our Branch is hosting a ***'Meeting and Interactive Session with Partners of CA Firms in Bangalore followed by live Networking session'*** on 22nd October at Hotel Bangalore International, under the aegis of The Committee for Capacity Building of CA Firms and Small & Medium Practitioners of ICAI. It is our endeavor that the members make use of this unique opportunity and request to register well in advance to make this program as an effective exercise for capacity building for practitioners.

DIRECT TAX CODE

After a series of deliberations and consultations, including two Discussion Papers, now a Bill on the Direct Taxes Code has been tabled in the Parliament. The bill, which will also replace the Wealth Tax Act besides the Income Tax Act, has been referred to a parliamentary committee for scrutiny and suggestions. The new code will have 319 sections and 22 schedules as against 298 sections and 14 schedules of the existing Income Tax Act. Needless to mention, this policy document is a major exercise in redrafting a legislation that stood the test of time for almost five decades and a new innings for practitioner of Direct Taxes would be started on the implementation Direct Taxes Code. This new legislation is one more challenge to be faced by members and in this direction the Bangalore Branch has planned to have series of programs in the days to come. As a first step to familiarize these new provisions, we would be conducting Five days ***'Workshop on Direct Tax Code'*** in the evenings from 18th October to 22nd October at Bangalore Branch premises, the details of which are published in this Newsletter.

GLIMPSES OF SEPTEMBER

The month of September popularly known as Tax Audit month amongst our fraternity has passed unknowingly in a lightning speed, and witnessed limited programmes at the Branch.

I am happy to inform you all that after a gap of four years we had successfully conducted on 4th September, the **XIII Badminton Tournament,** between our members and the officials of the Income Tax department, Bangalore. We won the Tournament and retained the Shield in spite of tough fight, which demonstrated a sportive spirit by the players. The tournament was inaugurated by Sri G Rajeswara Rao, Director General of Income Tax, Bangalore and valedictory session was graced by Sri Agrawall M L, CCIT-1, Bangalore. On behalf of the committee, I thank both the dignitaries, the coordinator of the tournament CA Vinay Mruthyunjaya, sponsors and all the participants.

The **Campus Placements** at Bangalore organized from 15th to 17th September 2010 was a grand success with participation by 17 companies and as many as 109 placement offers were made to candidates. The maximum salary per annum offered was Rs.10.8 lakh and average salary offered was 5.5 lakh. Heartiest congratulations to all the candidates who got placements and wish them a bright career ahead.

We had also organized a One day **Seminar on Transfer pricing** on 18th September 2010, which was addressed by eminent experts from Bangalore and Chennai and the deliberations were really very helpful and informative. I, on behalf of the Committee, thank the Chief Guest, Resource Persons and participants for making the seminar successful.

FOR THE MONTH OCTOBER

October month being without major statutory deadlines, is relatively free, and as per the adage ***"A wise man in time of peace prepares for war",*** we have chalked out many programs of professional interest with total 39 CPE hours' credits. Apart from workshops on Networking/Mergers, Direct Tax code mentioned earlier, a one day practice oriented Seminar with a mock Tribunal on Central Excise & Service Tax is planned as ***"Practice & Procedures before the CESTAT".*** Bangalore being a hub of software development units and major chunk of them are coming under Software Technology Park scheme are looking forward what would lie in store for them when sunset clause of section 10A/10B of Income tax Act sets in within next 6 months; and to address this topic we have planned a half day workshop on ***"STPI- beyond March 31st, 2011".*** Of course, above programs are apart from free Wednesday Study circle meets with topics of professional interest.

Wish you all again a very happy festive season ahead.

With warm regards

CA. SHAMBHU SHARMA H.
Chairman

CPE AND OTHER PROGRAMS - October-November 2010

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
06.10.10 Wednesday	Greed & unbridled financial innovation led to an evaporation of confidence **CA. Dinesh Agrawal**	Branch Premises 06.00pm to 08.00pm	**2 hrs**
09.10.10 Saturday	One Day Seminar on "Practice & Procedures before the CESTAT" Delegate fee: ₹ **700/-** *Details on Back Inner Cover*	Branch Premises 09.30am to 05.30pm	**6 hrs**
13.10.10 Wednesday	Discussion on Foreign Contribution Regulation Act (FCRA) - 2010 **CA. Mark A D'Souza**	Branch Premises 06.00pm to 08.00pm	**2 hrs**
18.10.10 to 22.10.10 Monday to Friday	Workshop on "Direct Tax Code Delegate fee: ₹ **1000/-** *Details Page No: 18*	Branch Premises 04.00pm to 08.00pm	**20 hrs**
22.10.10 Friday	Seminar on "Capacity Building Measures for CA Firms" Delegate fee: ₹ **250/-** *Details on Back Inner Cover*	Hotel Bangalore International, Race Course Road, Bangalore 09.30am to 05.30pm	**3 hrs**
27.10.10 Wednesday	Discounted free Cash Flow method under new FDI Rules **CA. Amithraj A N** & **CA. Krishna Prasad**	Branch Premises 06.00pm to 08.00pm	**2 hrs**
30.10.10 Saturday	STPI – Beyond March 31, 2011 … Structuring options Delegate fee: ₹ **250/-** *Details Page No: 18*	Branch Premises 09.30am to 01.30pm	**4 hrs**
03.11.10 Wednesday	Life in taxing world: A dilemma of tax collector and tax practitioner **Dr. Sibichen K Mathew, IRS, Addl Commissioner of Income Tax**	Branch Premises 06.00pm to 08.00pm	**2 hrs**

Note : High Tea at 5.30 pm for programmes at 6.00 pm at branch premises.

Editor : **CA. Shambhu Sharma H.**

Sub Editor : **CA. Prasad S.R.**

TAX UPDATES AUGUST 2010

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

VAT, CST, ENTRY TAX, PROFESSIONAL TAX

PARTS DIGESTED:

a) 2010-11(15) KCTJ Part 5
b) 2010 69 Kar. L. J. Part 7
c) 27 VST – Part 2 to 7
d) 31 VST – Part 5
e) 32 VST – Part 1 to 5
f) 4 GST – Part 1

Reference/Description

2010-11 (15) KCTJ 226 : Order No. KSA. CR. 178/09-10 dated 05-08-2010 (Proceedings of the CCT) The aforesaid proceeding was pursuant to the judgement of the Honourable High Court of Karnataka in the case of Suman Enterprises, Shimoga v. State of Karnataka & another 2010 (69) Kar. L. J. 1 (HC). In the said case, the High Court held that Section 18-A of the KVAT Act was violative of Article 19(1)(g) of the Constitution of India. Having so held, the said Section has become inoperative and consequently, all the notifications issued by the Commissioner of Commercial Taxes under the said Section have also become legally not enforceable. Therefore vide the aforesaid order all the notifications previously issued under the Section have been withdrawn.

2010 (69) Kar. L. J. 1 (HC) : Suman Enterprises, Shimoga v. State of Karnataka & another In the instant case the High Court of Karnataka held Section 18-A of the KVAT Act to be violative of Article 19(1)(g) of the Constitution of India and ultra vires the provisions of the Act. It further held that the Notification No. KSA. CR 76/2008-09, dated 28-07-2008 (dealing with purchase of iron & steel, hardware, timber, plywood, veneers, particle board, laminated sheets, panel boards and similar articles of wood for use in the executive of civil works contract) issued by the Commissioner of Commercial Taxes vide powers conferred by the said Section had to be quashed as being violative of Articles 14 and 19(1)(g) of the Constitution of India and being ultra vires the provisions of the Act. It may be noted that Section 18A of the KVAT Act is a provision dealing with deduction of tax at source in the case of certain goods. The said Section requires a registered dealer in the State purchasing specified goods from another registered dealer in the State to deduct from amount payable to selling dealer, amount of tax mentioned in "tax invoice" issued by selling dealer and remit the said amount to the Revenue. Further the said Section called upon the purchasing dealer to issue a certificate of deduction to selling dealer, to enable selling dealer to claim refund if due. This according to the High Court resulted in injustice both to purchasing dealer and selling dealer, inasmuch as tax collected from them exceeded their tax liability. The High Court further observed that the provision for refund of tax collected in excess from selling dealer did not mitigate initial injustice of collecting tax in excess of the actual tax liability. *In aforesaid case, the Karnataka High Court rendered a welcome decision ruling that mere possibility of refund at a later stage does not justify deduction of tax at source when the impugned amount is not chargeable to tax at all.*

[2010] 32 VST 489 (Karn) : T. V. Sundaram Iyengar & Sons Ltd. State of Karnataka & another In the instant case the High Court of Karnataka held that the Rule 3(2)(c) of the KVAT Rules requiring the disclosure of discounts allowed, on a sale, in the tax invoice, was not unconstitutional and the same was valid.*However, the division bench in the case of State of Karnataka v. Reliance Industries Ltd., Bangalore 2010 (68) Kar. L.J. 337 (HC) (DB) has held that discounts allowed through a credit note would be eligible for deduction and this decision was not noted in the aforesaid case.*

INCOME TAX

PARTS DIGESTED:

a) **325 ITR – Part 4 & 5**
b) 326 ITR – Part 1 to 3
c) 191 Taxman – Part 4 & 5
d) 192 Taxman – Part 1 to 3
e) 4 ITR(Trib) – Part 5 to 8
f) 5 ITR(Trib) – Part 1
g) 122 ITD – Part 1 to 3 & Part 6 to 8
h) 123 ITD – Part 1
i) 125 ITD – Part 5 to 7
j) 131 TTJ – Part 4 to 6
k) 132 TTJ – Part 2
l) 42-A BCAJ – Part 5

Reference/Description

[2010] 325 ITR 451 (Karn) : CIT & another v. Indo Nissin Foods Ltd. In the instant case the High Court of Karnataka dealing with the aspect of deduction of tax at source under Section 192(1) in the case of employees of a Japanese Company

working for an Indian assessee, held that the Indian assessee was not liable to deduct tax at source on salary received by the Japanese employees from their Japanese employer. The reasoning of the Court was that since in the instant case when the payment was not made by the respondent/ assessee or the amount was not paid by the foreign company through the assessee, the assessee was not required to deduct the tax at source under Section 192(1) of the Act.*It may be noted that the decision of the Supreme Court in the case of Eli Lilly 312 ITR 225 was not referred to by the Karnataka High Court. Therefore, although the decision of Karnataka High Court seems reasonable, considering the fact that the said decision has been rendered without applying the binding precedent case law, the same may not stand the test of scrutiny in the Supreme Court.*

[2010] 325 ITR 456 (Ker): CIT v. Nelson Trust In the instant case the Trust deed provided for operation of the Trust till the beneficiary attained 21 years of age. However the sole beneficiary on attaining majority (i.e. 18 years of age) revoked the Trust and carried on business as a proprietor. In the said circumstances the Kerala High Court held that the assessment on the Trust was not permissible thereafter (i.e. post such revocation). The Court observed that Section 78(a) of the Indian trusts Act, 1882, provides for the revocation of Trust and states that where the beneficiaries to a Trust are competent to contract, the same may be revoked by consent of all of them. In the instant case there was only a single beneficiary and therefore the Department could not insist that the Trust would operate till the said beneficiary attained 21 years of age when the said beneficiary had opted out of it on attaining the age competent to contract (18 years of age).

[2010] 325 ITR 535 (Delhi) : CIT v. Shambhu Mercantile Ltd. In the context of Section 94 dealing with avoidance of tax by certain transactions in securities and particularly in the context of sub-section (7), the Delhi High Court held that the 3 conditions as stipulated under clause (a), (b) and (c) of the said sub-section were to be treated cumulatively for the purpose of disallowance of loss, if any, which was occasioned as a result of the purchase and sale of such security or unit to the extent the same exceeded the amount of dividend or income received or receivable. Therefore as per the said judgement both the purchase of the securities/units and the sale of the same have to be within the stipulated period from the record date.***Thus, the aforesaid provision dealing with dividend stripping and bonus stripping would apply only if all the conditions of the said provision of satisfied.***

[2010] 325 ITR 550 (Bom): CIT v. Smt. Alka Bhosle The said case gain dealt with a similar aspect of reading the provisions of Section 94(7) and its sub-clauses. The assessee had purchased certain units within a period of 3 months from the record date and the sale of the same had taken place after the expiry of a period of three months from the record date. Therefore the High Court of Bombay held that Section 94(7) would not be applicable since the conditions prescribed in clauses (a) (b) and (c) of sub-section 7 were cumulative in nature.

[2010] 325 ITR 610 (Mad) : Tube Investments of India Ltd. & another v. Asst. CIT (TDS) & Others In the instant case the Madras High Court held that the Section 40(a)(ia), dealing with disallowance of interest, commission or brokerage, rent, royalty etc. in cases where tax was deductible on the said payments and the same has not been deducted or after deduction has not been paid to the Government exchequer, was not discriminatory or arbitrary. The provision was valid and not ambiguous and the same could not be read down. It was not against Article 14 of the Constitution of India.*Ironically, while upholding the constitutional validity, the High Court seems to have been carried away by the proviso and assumed that the proviso is the cure for all the ills of the provision. The various circumstances where such proviso may not really help the taxpayer had not been considered. Further, what was forgotten was that the deductor was in fact discharging onerous responsibility and is helping the state in collecting its revenue. There are already sufficient provisions to take care of situation where he fails to discharge the obligation. Therefore, the disallowance sought to be brought by the impugned section 40a(ia) is totally uncalled for and same cannot be defended merely on the basis that a similar provision like section 40a(i) remained unchallenged for a few decades*

[2010] 326 ITR 193 (AAR) : Timken Company, In re In the instant case the applicant was a US based Company. After an initial joint venture between Timken USA and TISCO, the applicant undertook a maiden public issue in 1991 and started commercial production one

year later. Timken USA acquired the equity shares of the applicant from TISCO. The applicant proposed to transfer certain equity shares in Timken India, which it has held for more than 12 months, to Timken Mauritius.On the aforesaid facts, the Authority for Advance Ruling held that Section 115JB was not designed to be applicable in the case of the applicant, a foreign company, which had no presence or permanent establishment in India. The provisions of Section 115JB were not applicable to the sale of shares of a listed company, Timken India, which had suffered securities transaction tax and accordingly tax exempt under Section 10(38) of the Act.*It is then accordingly held that the MAAT provisions do not apply to the case of a foreign company unless such foreign company has a permanent establishment in India*

[2010] 326 ITR 229 (Mad) : N. Meenakshi v. Asst. CIT In the instant case the assessee sold its property to a Government concern. However, the valuation adopted by the stamp duty authorities was higher than the consideration received by the assessee. At the request of the assessee a reference was made to the valuation officer under Section 50C during the course of the assessment proceedings. However the assessing officer passed the order of assessment by adopting the higher value even before the valuation report was submitted by the valuation officer. In the said circumstance the Madras High Court held that such an assessment order was liable to be quashed.*Another instance of intervention of the judiciary to check the brazen high-handedness of the department.*

[2010] 191 Taxman 439 (Mad) : CIT, Chennai v. A.K. Khosla The instant case reviewed Section 17(3) of the Act dealing with 'profits in lieu of salary'. In the said case the assessee was a chartered electrical engineer employed as chief executive officer in a Company. He retired from the said Company on 31-1-2001 and received certain amount as non – compete fee, for not taking employment in any competing organization. In the said circumstances the High Court of Madras observed that if the object of payment was unrelated to the employer-employee relationship, then the same would not fall within expression 'profit in lieu of salary' under Section 17(3)(i). Further since Section 17(3)(iii) which deals with joining bonus/severance pay came into effect only from the Assessment year 2002-2003 onwards, the same has only prospective effect and therefore would not apply to the instant case of the assessee.

[2010] 6 taxmann.com 41 (Mum - ITAT): Dy. CIT v. Starlite In the instant case the Mumbai Tribunal held that is was mandatory for the assessee to follow one of the prescribed methods and demonstrate that the international transaction entered into by it with an associated enterprise was on arms length price (ALP). The Tribunal observed that the assessee was not absolved of its statutory duty in determining the ALP by merely stating that none of the methods as prescribed under Section 92C could be applied to it by citing 'excuses' for the same!*However, the aforesaid decision does not throw any light on what should be the approach when no method prescribed is suitable and no comparable uncontrolled transactions available*

[2010] 192 Taxman 65 (Delhi) : CIT v. ILPEA Paramount (P) Ltd. In the context of determining the book profit under Section 115JB of the Act, the Delhi High Court held that, provision for doubtful debts and provision for doubtful advances were nothing but provisions for diminution in the value of asset. The same were specifically covered under clause (g) of Explanation to the said Section and consequently the aforesaid provisions were to be included in the book profit while making computation under Section 115JB.

[2010] 192 Taxman 67 (Punj & Har): CIT, Faridabad v. Smt. Shweta Bhuchar In the instant case the Punjab & Haryana High Court held that the value adopted or assessed by any authority of the State Government for the purpose of payment of stamp duty in respect of land or building at the time of execution of the transfer deed could not be taken as the sale consideration received for the purpose of Section 48 of the Act. Therefore it was held that no additions could be made by the assessing officer merely because the State Government assessed the price of the property at a much higher value for the purposes of payment of stamp duty.*Thus, it was held that section 50 C cannot be used for the purpose of making addition under section 69. The role of section 50 C is confined to computation of capital gains.*

[2010] 192 Taxman 80 (Kar): CIT, International Taxation, Bangalore v. Sonata Information Technology Ltd. In the context of Section 248 of the Act dealing with the appeal by a

person denying liability to deduct tax in certain cases and Section 195, the High Court of Karnataka observed the assessing authority has not been conferred with the power to assess the income of the non-resident assesses in the course of examination of an application under Section 195(2). Therefore the scope of an appeal under Section 248 could never be beyond the scope of examination of nature of obligation under Section 195(2) cast on a resident payer. Therefore in an appeal under Section 248, dispute relating to chargeability alone could be the subject matter and not a possibility of assessing income of a non-resident in the hands of a resident payer. In the course of its judgement the High Court observed that it was an obvious case that where an application was made by the resident payer under Section 195(2), the chargeability of the receipt was conceded and it was only in such a situation an application was envisaged under Section 195(2). If however the chargeability itself was in dispute, the same was a question which was within the scope of sub-section (1) of Section 195 and the same did not have to travel to sub-section (2) of the said Section.*One may note the complete U-turn as compared to the Samsung case.*

[2010] 192 Taxman 309 (Delhi) : DIT (Exemption) v. Bagri Foundation In the instant case the Delhi High Court held that the additional condition by way of Explanation to Section 11(2) inserted with effect from 1-4-2003 was intended to apply only to accumulations in excess of 15% under Section 11(2) and not accumulations upto 15% under Section 11(1)(a). Therefore, even if donations are made by the assessee-trust to another Trust from out of the accumulations from previous years and not out of surplus reserves, the same would still not be liable to be included in the income of the assessee so far as the said accumulations were not beyond the accumulation of 15% permitted by Section 11(1)(a).*Further, there is no prohibition in making such donations from out of the current income and as long as the said donations are in pursuance of objects of the trust, the same may be treated as application of income*

[2010] 192 Taxman 317 (Delhi) : Maruti Suzuki India Ltd. v. Addln. CIT, TPO In the context of reference to the Transfer Pricing Officer (TPO) under Section 92CA of the Act, the Delhi High Court held that in a case where the TPO/AO proposes to make adjustments to income of the assessee by revising the arm's length price computed by him, he needs to give a notice the assessee conveying the grounds on which the adjustment is proposed to be made, followed by an opportunity to reply to that notice and produce evidence to controvert the grounds on which the adjustment is proposed. In this decision, the High Court also specified circumstances under which adjustment will had to be made in respect of use of marketing intangibles and expenditure on advertising and sales promotion

[2010] 5 ITR (Trib) 57 (Bangalore): Advanta India Ltd. v. Dy. CIT In the instant case the assessee was engaged in the business of research, production and sale of hybrid seeds. It carried out research to find out the suitable generic composition of seeds in the respective local environment. All the primary operations were carried on by the assessee in its own lands or the lands leased by it, under its own direct supervision and guidance engaging casual labour and the hybrid seeds were grown by the farmers in their own lands but leased out to the assessee-company. In the said circumstance the Bangalore Tribunal held that both the basic as well as secondary agricultural operations were carried on by the assessee and therefore the entire income was agricultural income as per Section 2(1A) of the Act. The Tribunal observed that the method of contract farming did not take away the character of the basic operations which were agricultural in nature. Further it observed that the fact that the assessee was following international technology, marketing expertise, integrated scientific and commercial activity did not have any role in deciding the nature of income.

[2010] 5 ITR (Trib) 96 (Bangalore): Intellinet Technologies India P. Ltd. v. ITO In the instant case the Bangalore Tribunal held that in the determination of export turnover under Section 10A, the brought forward loss and unabsorbed depreciation of the earlier years had to be set off before allowing the deduction under the said Section.*Ironically, while deciding so, the honourable tribunal did not choose to follow the line of similar decisions taken by the same bench in the past. The judicial propriety demands that wherever a division bench disagrees with the view of another division bench, a reference ought to have been made to the special bench.*

[2010] 5 ITR (Trib) 106 (Delhi) : Perot Systems TSI (India) Ltd. v. Dy. CIT In the instant case dealing with

international transaction under Section 92B and the determination of the ALP under Section 92C, the Delhi Tribunal observed that in the case of interest free loans advanced to foreign associated enterprises, the said transactions were in the nature of debt and not quasi-equity. Lending or borrowing money between two associated enterprises was covered within the ambit of international transaction. Further the Tribunal observed that the RBI's approval on the said transaction was not a seal on the true character of the transaction from the perspective of transfer pricing regulations.*In this landmark decision, the tribunal held that the foreign associated enterprise would be liable to pay tax in India in respect of assumed interest computed on arm's-length basis even in respect of interest free advances given to the Indian subsidiary. Interestingly, no corresponding expenditure could be allowed in the hands of the Indian subsidiary in terms of section 92 (3).*

(2010) 131 TTJ (Chennai) 472: Lohia Metals (P) Ltd. v. Asst. CIT In the instant case the assessee held shares as stock-in-trade till 31st March, 2004 which were converted into investments on 1st April, 2004. The assessee claimed exemption of capital gains on sale of shares as long-tem capital gains under s. 10(38) on the ground that the shares were owned from the date of allotment and therefore, the holding period had to be counted from the date of allotment of shares and not from the date they were converted from stock-in-trade into capital asset. The Chennai Tribunal held that the claim of the assessee was not sustainable. It observed that the capital asset came into existence only from 1st April, 2004, before which it was merely a stock-in–trade which could not be treated as a capital asset. Further it also observed that the definition Section of 'capital asset' under Section 2(14) specifically excluded stock-in-trade. It was therefore held that the holding period prescribed in s. 2(42A) had to be reckoned when the shares became capital asset and since in the instant case the period of holding was a per the aforesaid Section, the same was a short-term capital asset and therefore it was correct to deny the claim of exemption under Section 10(38).

(2010) 132 TTJ (Ahd) 233: Madhu Industries Ltd. v. ITO In the context of depreciation and classification of asset, the Ahmedabad Tribunal observed that electrical installation consisting of electrical wires, switches, plugs, cables, MCB box and electrical items could not function independently and so they were a part of plant and machinery. It was therefore held that the aforesaid items could not be classified under furniture and fittings. The assessee was therefore eligible for depreciation @ 25 per cent and not @ 15 per cent.*Logical extension of the nexus between the functioning of the asset and its classification.* ■

RECENT JUDICIAL PRONOUNCEMENTS IN INDIRECT TAXES

CA. N.R. Badrinath, Grad C.W.A., F.C.A.,
CA. Madhur Harlalka, B. Com., F.C.A.

SERVICE TAX

Cenvat Credit of Service Tax

- The appellants were registered as providers of advertisement services and had availed credit on the documents which were not addressed to them but addressed to other premises of the appellants. Hence show cause notice was issued demanding the reversal of such service tax credit with interest and penalty which was confirmed by the Adjudicating Authority. However, it was held that if a person is discharging service tax liability from his registered premises, the benefit of Cenvat credit on the service tax paid cannot be denied on the ground that the said invoices are in the name of branch offices. Accordingly, the impugned order was set aside and the appeal was allowed with consequential relief. *[Manipal Advertising Services Private Limited v CCE, Mangalore. 2010 (19) STR 506 (Tri-Bangalore)]*
- The appellants were engaged in the manufacture of non-alloy steel ingots chargeable to central excise and had availed Cenvat credit of various inputs, capital goods and input services. The appellants had also availed credit of the service tax paid on GTA service used in the transportation of inputs to the factory. The appellant subsequently cleared the inputs as such and reversed the credit of excise duty. The department contended that the credit of the service tax paid on GTA service should also be reversed and the Assistant Commissioner confirmed the demand of service tax credit along with interest and penalty. However, it was held that under Rule 3 of Cenvat Credit Rules, 2004, at the time of removal of any inputs, as such, an amount equal to the credit of excise duties availed in respect of such inputs has to be paid. There is no mention that the credit of service tax in respect of services availed in bringing the inputs to the factory also has to be paid. Hence the impugned order was set aside relying on the decision of the Tribunal in the case of *Chitrakoot & Power Ltd v CCE, Chennai. [AR Castings (P) Ltd v Commissioner of Central Excise and Service Tax, Chandigarh. 2010 (19) STR 384 (Tri-Delhi)]*
- The appellants were engaged in the manufacture of sponge iron and other iron and steel products chargeable to central excise and had availed Cenvat credit on various inputs, capital goods and input services in terms of Cenvat Credit Rules, 2004. The department issued show cause notice for the recovery of service tax credit availed on Marine Inland Transit Insurance service in connection with the procurement of plant and machinery. However, it was held that inward transportation of input or capital goods is covered by the definition of input services and hence the insurance during the inward transport of capital goods would be eligible for credit. The Revenue's plea that the power plant has not been used for manufacture of dutiable goods, but has been used to generate electricity which is not excisable does not hold good. Accordingly, the appellants were allowed the credit of service tax paid on Marine Inland Transit Insurance. *[Monnet Ispat & Energy Limited v Commissioner of Central Excise, Raipur. 2010 (19) STR 417 (Tri-Delhi)]*
- The appellants were engaged in the manufacture of electronic and electrical goods such as colour television sets, computer monitors, air conditioners, etc. chargeable to central excise and also were providing taxable services such as repair and maintenance, installation and commissioning, consulting engineers etc. The appellants were availing the Cenvat credit of central excise and service tax paid under Cenvat Credit Rules, 2004. The appellants had availed credit in respect of the service tax on GTA service availed in outward transportation of the finished goods from the factory gate to the customer's premises of from factory to depots and from there to customer's premises. The

department was of the view that GTA service availed for transportation of goods from factory gate to customer's premises is not covered under input service and accordingly issued show cause notice. However, it was held that when a finished product is taxed, credit of duty paid on all input goods, capital goods and input services has to be allowed. The assessable value of goods under section 4 of the Excise Act is not confined to manufacturing cost but also includes marketing, selling, advertisement etc. which have contributed to the value of the goods. All expenses including transport expenses up to the customer's premises are includible in the assessable value for charging duty. The input credit cannot be confined only to the services used in completion of manufacturing process. Hence the impugned order was set aside and the matter was remanded to the Commissioner for adjudication. *[LG Electronics (India) Private Limited v Commissioner of Central Excise, Noida. 2010 (19) STR 340 (Tri-Delhi)]*

- The appellants had taken credit of duty paid on capital goods which was not backed by any duty paying documents or receipt of capital goods. On pointing out the irregularity, the appellant reversed such credit except to the extent which was utilized for the payment of education cess. The Commissioner concluded that the appellants had taken such credit by misstatement with intent to evade payment of duty and imposed equal amount of penalty. The appellant challenged that the penalty provisions shall be applied to cases where an assessee had taken irregular credit by suppression of facts, fraud etc. However, it was held that the impugned order does not give any reliable finding that the assessee had taken the irregular credit with an intention to evade payment of duty. Hence penalty imposed under section 11AC of the Central Excise Act, 1944is not sustainable. As regards the payment of interest, in the *Maruti Udyog Limited.,* case, it was held that in a case where the assessee had taken modvat credit but had not utilised the same, the assessee was not liable to pay interest. Accordingly, the impugned order was vacated and the appeal was allowed. *[Bill Forge Private Limited v Commissioner of Central Excise, Bangalore. 2010 (256) ELT 587 (Tri-Bangalore)]*

Stay/ Dispensation of Pre-Deposit

- The appellants are engaged in promotion of sales of computers and peripherals of M/s. IBM, USA and also engaged in provision of call centre services. The appellants had disclosed the receipts from export of services in their ST-3 returns. The Commissioner decided that the impugned activity did not constitute export of services and issued show cause notice demanding the service tax along with interest. However, it was held that the benefit of the impugned services rendered has accrued in USA. In terms of Circular No. 111/05/2009-ST dated 24/02/2009, the impugned services were exported. Accordingly, the appellants were not liable to pay service tax and interest thereon and penalty. Hence the pre-deposit was waived and the recovery of dues adjudged was stayed. *[IBM India (P) Limited v CCE, Bangalore. 2010 (19) STR 520 (Tri-Bangalore)]*

Demand

- The assessee had carried out testing activities at Mettur Dam to their Marikal unit. The department demanded service tax on such testing activity based on the fact that mettur dam unit is a separate legal entity from the Karikal unit of the assessee as laid down by the Tribunal in *Government Ceramic Service Centre, Cannanore v Collector of Central Excise, Cochin [1983 (13) ELT 115 (CEGAT)].* However, it was held that in the context of service tax liability, the different units of a corporate entity will not make them separate legal entities for the purpose of leviability of service tax and when one renders service to oneself service tax is not leviable. The above decision has been followed in *Indian Oil Corporation Limited v Commissioner of Central Excise, Patna [2007 (8) STR 527 (Tri-Kolkata)].* Hence the impugned order was set aside. *[Chemplast Sanmar Limited v Commissioner of Central Excise, Salem. 2010 (19) STR 424 (Tri-Chennai)]*
- The issue in the present case was the entitlement of benefits of composition scheme. The assessee was engaged in the execution of on going works contract and had availed the benefit of CBEC Circular No. 98/1/200/-ST. The petitioner was denied the benefits under the composition scheme in relation to the on going works contract in respect of which the petitioner had paid service tax.

The petitioner contended that the impugned circular is irrational, discriminatory, *ultra vires* the Finance Act, 1994 and inconsistent with the objects of Rule 3 of the 2007 Rules. However, it was clarified that a service provider who paid service tax prior to 1/6/2007 for the taxable services such as erection, commission or installing services, commercial or industrial construction services, as the case may be, is not entitled to avail the composition scheme under the 2007 Rules and the impugned circular is wholly in conformity with the provisions of Rule 3 of the 2007 Rules. The nature of works executed by the petitioner fall within the services classified as works contract does not entitle them to the benefits of composition scheme. The entitlement to such scheme arises only after exercise of option as per rules and such option cannot be exercised after the payment of service tax on works contract. *[Nagarjuna Construction Company Limited v Government of India. 2010 (19) STR 321 (AP)]*

- The appellants were engaged in fabrication of structures at site for their various clients and had also executed work order for fabrication of structure/ pipes/ equipments and erection of fabricated structures, piping and equipments. The appellants had not registered themselves for rendering erection, commissioning services but were registered for maintenance and repair services. The department issued show cause notice proposing levy of service tax on the services rendered by the appellants. However, it was held that the activity undertaken by the appellants amounted to manufacture under section 2(f) of Central Excise Act based on the decision of the Larger Bench in the case of *Mahindra & Mahindra Limited 2005 (190) ELT 301 (Tri-LB).* Hence the appellants are not liable to pay any service tax on the activities undertaken by them. Accordingly, the impugned order was set aside and the appeal was allowed. *[Neo Structo Construction Limited v Commissioner of Central Excise and Customs, Surat-I. 2010 (19) STR 361 (Tri-Ahmedabad)]*
- The assessee firm was engaged in export of various goods on commission basis. The assessee contended that the services provided by him were covered under the category of export service and therefore he was not liable to pay service tax. The department contended that the assessee has received commission in Indian currency and therefore the exemption in terms of Rule 3 of Export Services Rules, 2005 is not available. However, it was held that arrangements were made between the buyer and sellers to pay the commission in Indian currency directly to the assessee to minimize the cost relating to the transfer charges by foreign banks since the amount of commission was very small. The amount was received in relation to the export of goods and the arrangement was only to make the transactions commercially viable. Hence the appeal filed by the department was set aside. *[Commissioner of Central Excise, Rajkot v Shelpan Exports. 2010 (19) STR 337 (Tri-Ahmedabad)]*
- The appellants had entered into a contract for the purpose of rendering services of loading, standardisation, unloading, stacking etc. On scrutiny of the documents, the department noticed that the appellants had also supplied labourers in addition to the provision of the said services. The revenue was of the view that services rendered by the appellants would fall under manpower recruitment and supply agency and accordingly issued show cause notice. However, it was held that on the basis of the case papers, the contract which has been given to the appellants is for execution of work of loading, unloading, bagging, stacking etc. and the supply of labourers has not been mentioned in the contract and the invoices. Hence the impugned order was set aside and the appeal was allowed. *[Divya Enterprises v Commissioner of Central Excise, Mangalore. 2010 (19) STR 370 (Tri-Bangalore)]*

Refund/ Refund Claim

- The petitioner is in the business of running retail stores by taking shops/ premises on rent or on license. The petitioner is aggrieved by the provisions of section 66(105)(zzzz) as amended by the Finance Act, 2010 whereby the renting of immovable property is brought within the ambit of service tax. The petitioner contended that the renting of immovable property would not constitute any value addition and the provisions of the said section as amended are inconsistent with the service tax provisions of the Finance Act, 1994 based on the decision of the Delhi High Court

in the case of *Home Solution Retail India Limited v Union of India and others 2009 (14) STR 433 (Delhi).*However, since the applicability of the said section as amended retrospectively was not decided, the respondents were directed not to initiate any coercive steps for the recovery of the service tax on renting of immovable property by the petitioners for the earlier periods. However, the petitioners were required to pay service tax on such renting in the subsequent periods. *[Trent Limited v Union of India. 2010 (19) STR 336 (AP)]*

CENTRAL EXCISE

Valuation

- The revenue filed these appeals against the impugned order of the Commissioner (Appeals) wherein the cost of packing was excluded from the assessable value of the final product based on the decision of the Supreme Court in the case of *Union of India v Bombay Tyre International Limited 1983 (14) ELT 1896 (SC).* The department contended that packing is essential for marketing of the goods and therefore the value of the same is to be included in the assessable value of the goods. However, it was held that the goods are cleared at factory gate without packing which is only provided by the respondents at the request of the buyers for safe transportation of the goods. Hence the value of the packing materials does not form part of the assessable value and the appeals filed by the revenue were dismissed. *[Commissioner of Central Excise, Kolkata-IV v Lagan Jute Machinery Company Limited. 2010 (256) ELT 284 (Tri-Kolkata)]*

- The assessee was engaged in the manufacture of coated fabrics. The price declared by the assessee in the price list was approved by the Revenue. Later the assessee revised the price to exclude the post manufacturing expenses such as cost of packing the fabrics in hessian cloth which, was rejected by the Adjudicating Authority. However, it was held that the fabric manufactured by the assessee was sold to the wholesalers at the factory gate only in polythene bags. The further packing of the fabric in hessian cloth was not in the course of normal delivery to the customers and was, therefore not required to make the product marketable. The additional packing was done for the purpose of convenience of the up-country customers in the transportation of the goods manufactured by the assessee. Hence the cost of secondary packing in hessian cloth cannot be included in the value of the goods. Accordingly the appeal was allowed leaving the parties to bear their own costs. *[National Leather Cloth Manufacturing Co Limited v Union of India. 2010 (256) ELT 321 (SC)]*

Manufacture

- The assessee was carrying on the business of producing and selling tarpaulin made-ups. The assessee was of the contention that the process of mere cutting, stitching does not amount to manufacture. However, the department issued show cause notice as to why the process does not amount to manufacture and demanded the duty. However, it was held that the process of cutting, stitching of tarpaulin does not change the basic characteristic of the raw material and end product. The process does not bring into existence a new and distinct product with total transformation in the original commodity. The original material used i.e. tarpaulin is still called tarpaulin made-ups even after undergoing the said process. Hence, it cannot be said that the process is a manufacturing process. Accordingly, there can be no levy of central excise duty. *[Commissioner of Central Excise, Chennai-II v Tarpaulin International. 2010 (256) ELT 481(SC)]*

CUSTOMS

Export duty

- The issue in the present case was whether export duty is applicable on the SEZ supplies made by DTA units. By virtue of Finance Act, 2008, 20% *ad valorem* duty was imposed on all iron and steel items. The notifications issued under section 25 of the Customs Act, 1962 enabled the levy of customs duty on transactions treated as exports. The Development Commissioners were made aware that export duty had been levied on export of steel products and therefore they were to allow supply of steel products to SEZs on submission of a bond and bank guarantee. The petitioners contended that the impugned action has the effect of levying customs duty on goods which are not physically moved out of India. However, it was held that Rule 23 of the SEZ Rules, 2006 indicates that supplies from

the DTA to a SEZ would be eligible for export benefits. Rule 27 permits a unit to import or procure from the DTA all types of goods without payment of duty or after availing export entitlements. Hence duty drawback and other export benefits would be available to either the SEZ unit or DTA supplier at their option. It is thus clear from the statement of objects to the SEZ Act that the intention of the Legislature was to make available goods and services to the SEZ unit free of taxes and duties. Hence the instructions issued by the respondents under the impugned notifications are wholly illegal and cannot be sustained and all the proceedings initiated in this regard are liable to be quashed. *[Shyamaraju & Co (India) Private Limited v Union of India. 2010 (256) ELT 193 (Kar)]*

VALUE ADDED TAX

- The petitioners were engaged in undertaking turnkey projects and other works contract for third parties and were assessed to tax under the Karnataka Value Added Tax Act, 2003 ('KVAT Act') and offered the turnover of iron and steel for tax at the rate of 4%. The revenue contended that works contract of civil works is a distinct entry in the 6th schedule and therefore, tax is attracted on the said turnover at the rate of 12.5%. However, it was held that a registered dealer shall be liable to tax on the taxable turnover relating to transfer of property in goods involved in the execution of works contract specified in the 6th schedule of the Act at the rates specified therein. Such levy is subject to the provisions of sections 14 and 15 of the Central Sales Tax Act relating to declared goods. In respect of the declared goods involved in the execution of works contract, the rate of tax shall be 4% inspite of the fact that the tax rate applicable is 12.5% in respect of composite works contract involving transfer of property in goods. Thus as regards iron and steel products, used in the execution of works contracts, levy of tax shall be at 4% on the value thereof. Section 4(1)(c) of the Act read with 6th schedule to the Act does not enable the respondents to levy tax at the rate of 12.5% in respect of declared goods used in the execution of works contract. Consequently, proceedings initiated in respect of the petitioners to levy the tax were quashed. *[Nagarjuna Construction Company Limited, Bangalore v State of Karnataka and Others. 2010 (69) Kar.L.J.97 (HC)]*
- The issue in the present case related to the exemption available for penultimate sale under the Central Sales Tax Act, 1956. The assessee was requested to build bus bodies by the exporter in accordance with the specifications provided by the foreign buyer. The assessee claimed exemption on sale of bus bodies as penultimate sales in the course of export which, was rejected on the ground that the 'bus bodies' and 'buses' are two different commodities and the bus bodies as such were not exported. However, it was held that if it is clear that the local sale or purchase between the parties is inextricably linked with the export of the goods, then a claim under Section 5(3) for exemption from State sales tax is justified, in which case, the same goods theory has no application. The bus bodies constructed and manufactured by the assessee could not be of any use in the local market and in the Purchase Order placed on the assessee by the exporter, it is specifically indicated that the bus bodies have to be manufactured in accordance with the specifications provided by the foreign buyer, failure to do so, the export order would have been cancelled. Therefore, the assessee was entitled to claim exemption under Section 5(3) of the CST Act. *[State of Karnataka v Azad Coach Builders Private Limited. 2010-TIOL-70-SC-CST-CB]*
- The issue for discussion in the present case was whether software amounts to goods and if so, when it is supplied to a customer pursuant to the End User Licence Agreement, the transaction is liable to be treated as sale or service. The petitioner is a society registered under the Societies Registration Act with its headquarters at Mumbai, praying to declare section 65(105)(zzzze) of Chapter V of Finance Act, 1994 (as amended by Finance No.2 Act of 2009) to be null and void. The said section was amended to bring information technology software under the meaning of taxable service. The petitioner contended that whenever software is sold, they are treated as goods regardless of the nature of transaction and in such event the goods are liable to sales tax. The respondents argued that the original manufacturer, who creates the software, only licenses

the software for the private use of the end user and at no stage the end user becomes absolute owner of the software. The end user cannot tamper, modify, improve or rectify errors in the software. Hence it is clear that the software is not sold, but only licensed for the limited use. Hence, the writ petitions holding that the software is goods were dismissed and whether the transaction would amount to sale or service would depend upon the individual transaction and for that reason, the amended provision cannot be held to be unconstitutional so long as the Parliament has the legislative competency to enact law in respect of tax on services. *[Infotech Software Dealers Association v Union of India. 2010-TIOL-620-HC-MAD-ST]*

- The issue in the present case was whether freight and insurance charges are includible in turnover and taxable turnover for TNGST/ CST. The appellant is a dealer registered under the provisions of the Tamil Nadu General Sales Tax Act, 1959 as well as the Central Sales Tax Act, 1956 and manufactures electric meters and supplies it to the Electricity Boards. The Revenue passed orders holding that such freight and insurance charges were liable to be taxed and the same are to be included in the turnover. The appellants contended that since the contract separates the ex-factory price and the insurance and freight charges, and, under Rule 6(c) of the Tamil Nadu General Sales Tax Rules, the freight when specified by the dealer separately, without including the same in the price, the freight charged could not have been treated as part of the sale price and subjected to tax. However, it was held that amount of freight and insurance charges incurred by the dealer forms part of the sale price. As per the clause contained in the contract, the transfer of title to the goods was to take place only on delivery of goods at the customer's place and that the customer's obligation to pay would arise only after the delivery had been so affected. Hence it was held that the freight and insurance charges were to be included in the turnover and taxable turnover and the appeals were dismissed. *[India Meters Limited v State of Tamil Nadu. 2010-TIOL-69-SC-CT]* ■

RENTING OF IMMOVABLE PROPERTY SERVICE – FAQ's

CA. Rajesh Kumar T R, B Com, LL B, FCA, DISA
CA. Chandra Shekar B D, B Com, LL B, FCA, DISA

Taxability of Renting of Immovable Property is one among the various activities on which service tax is levied and being objected and contested in the court of law and still to attain finality. Meanwhile in this article the papers writers have made an attempt to bring out the aspects of taxability of renting of immovable property and certain issues which are generally prevailing in the industry on this taxability.

1. **Which is the service covered under the provisions of Sec 65(105)(zzzz)?**

   Ans. Any service provided to any person by any other person, by renting of immovable property or any other service in relation to such renting for use in the course of or, for furtherance of, business or commerce. (after the retrospective amendment vide Finance Act, 2010)

2. **From when this category was brought to tax net?**

   Ans. This service was initially brought to tax net w.e.f. from 01-06-2007.

3. **What are the inclusions and exclusions in the definition of renting of immovable property?**

   Ans. Includes – Renting, letting, leasing, licensing or other similar arrangements and also includes permitting the use of space in an immovable property irrespective of the transfer of possession or control of the immovable property.

   Excludes –

a. Renting of immovable property **BY** a religious body or **TO** a religious body or,

b. renting of immovable property **TO** an educational body imparting skill or knowledge or lesson on any subject or field other than a commercial training or coaching centre.

4. **What is immovable property as per Finance Act, 1994?**

   Ans. Immovable property definition is merely inclusive definition and it **Includes –**

- Building and part of building and the land appurtenant thereto
- Land incidental to the use of such buildings or part of a building
- Common or shared areas and facilities relating thereto and
- In case of building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate
- Vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce.

Excludes

- Vacant land soley used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes
- Vacant land
- Land used for education, sports, circus, entertainment and parking purposes and
- Building solely used for residential purposes and buildings used for purpose of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

5. **What are the major amendments with regard to this service?**

   Ans.

a. Amendment to definition wef 16-05-2008 – Explanation was inserted 'allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property is renting of immovable property.

b. Retrospective amendment in the definition w.e.f. 01.06.2007 made vide Finance Act, 2010 – The definition of taxable service was amended to include specifically renting along with service in relation to renting. Whereas earlier it was only covering services in relation to renting. The Hon'ble High Court of Delhi in the case of Home Solutions Retail I Pvt Ltd had held the coverage is only with regard to services in relation to renting and not renting perse.

c. Amendment w.e.f. 01.07.2010 – The definition of immovable property was expanded to include "Vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce."

6. **Land mark judgements?**

   Ans.

a. Home Solutions Retail I Pvt Ltd & Others 2009 (14) STR 433 (Delhi High Court) – Held renting *per se* is not taxable only services in relation to renting is taxable.

b. Home Solutions Retail I Pvt. Ltd., - Stay was granted for the amendment made in the Finance Act, 2010.

c. Trent Ltd Vs Union of India (Andhrapradesh High Court)– Stay partly granted for retrospective collection of tax. But did not stay the current collections after enactment.

d. Maharastra Chambers of Housing Industry V/s Union of India (Mumbai High Court) – Stay Granted.

7. Whether landlord has to pay the service tax with effect from 01-06-2007?

As per the retrospective amendment, the landlords have to discharge the service tax liability. The service tax is to be either collected from the tenants or borne by the landlord itself. But the landlords can take a contention even today based on the following grounds:

a. Renting per se does not involve any service

b. Considering List II of the Seventh Schedule of Article 246 of the Constitution of India, renting is a state subject and not a central subject.

If the landlord wants to take a conservative view then it is suggested in the opinion of the paper writers that the service tax is paid under protest. By this the landlord can avoid paying penalty at a later date.

8. Is interest and penalty leviable?

Ans. As discussed above landlord has to discharge the taxes else he shall be liable to interest and penalty according to Finance Act, 1994, subject to litigation.

9. Can landlord claim the service tax from tenants?

Ans. As service tax on renting is an indirect tax, the same can be collected from the tenant. But it depends on the terms of contract, in few cases it is inclusive of taxes and in few cases it is exclusive of taxes.

10. In case of common facilities and amenities are provided to tenants like electricity, water charges, etc?

Ans. There could be two types of arrangement-

a. Single agreement – In case of a single composite contract for both renting and amenities then as service has to be classified as per the classification rules under the head which defines the character of service.

b. Separate agreement – In case there are separate agreements for both renting as well as amenities then renting falls under the service of renting of immovable property service and the amenities fall under the services management, maintenance and repair service. Here again the terms of the agreements would guide the classification.

11. Can we take credit on input service/inputs in relation to construction of building for output service in relation to renting of immovable property service?

Ans. As per the Board Circular No. 98/08-ST dated 04-01-2008 as per immovable property is neither goods nor service, therefore tax paid on inputs/input services used in relation to construction of immovable property is not eligible for CENVAT Credit.

However the paper writers are of the view that as far as input services are concerned, the said services are used in relation to setting up of premises of service provider and the credit on the same should be eligible. As regards to the inputs, the said inputs are used for construction of building which is in turn used for providing taxable services as per the statute. Therefore even the credit on the inputs should also be available.

12. Whether immovable property letout is partly for residential purpose and business purposes?

Ans. Service tax need not be charged for the portion used for residential portion. If there is a composite contract as per the explanation, it would deemed to be used for business purposes.

13. Whether the Use of immovable property is allowed for placing vending/dispensing machines in malls and other commercial premises and erection of communication towers on building?

Ans. This type of activities were specifically brought under tax net w.e.f. 16.05.2008 as definition was amended to include providing of any space/part of building even without giving control or possession of entire immovable property. But the condition is that it has to be used for commercial or business purpose to call it a taxable service. Hence the same is taxable under the head 'renting of immovable property service.'

14. Whether Ownership of property is necessary?

Ans. As per the definition the person need not be the owner of the property.

15. Mr X & Mr Y are co-owners of property. Each of them getting a rent of Rs 6 lakhs each per year. Are X & Y liable under the provision of service tax?

Ans. If the co-ownership is recognized and also the terms of

lease/rent also recognizes such fact and there is a clear distinction and independence between X and Y are co-owners, in the view of papers writers both are eligible for claiming the benefit of Small service provider exemption u/n 6/2005-ST and need not pay service tax.

16. With a small variation to the previous query. Mr X has another property and getting a rent of Rs 5 lakhs?

Ans. In this scenario, Mr X has to collect service tax to his portion of his property ie. He has to collect service tax on Rs 11 lakhs. But Y is still exempt from service tax if he avails small service provider exemption.

17. If there is some other service, such as air-conditioning service provided along with the renting of immovable property?

Ans. As the scope of definition specifically covers any other services in relation to such renting, the same would get covered within the scope of taxable service under this category of service. However in view of paper writers, if the terms of agreement are for renting movable property separately independent of immovable property, the movable property would be liable for sales tax and considered as tax on sale of goods and cannot be brought under service tax net.

18. Whether renting of such immovable property by itself constitutes a service and, thereby, a taxable service?

Ans. This is the issue which is still to be finally decided by Hon'ble Supreme Court as well as Delhi High Court in the case of Home Retail Solutions I Pvt. Ltd., case. ■

OBITUARY

CA. C. NANDAKUMAR
M. No. 022129
passed away on 31.08.2010
May his soul rest in peace

ICAI CAMPUS INTERVIEW AT BANGALORE – A SNAPSHOT

CA. K. Raghu, *Chief Coordinator – Placement Programme.*

The Committee for Members in Industry of the Institute conducted campus interviews at Hotel Bangalore International from 15th to 17th, September 2010. 17 Companies participated in the placement programme at Bangalore Centre.

The organizations participating were as under –

Public Sector Companies	IT/ ITES Companies	Other Companies
• BEL	• Infosys Technologies	• Bosch
Banking Sector	• Wipro Ltd	• Britannia
• Syndicate Bank	• IBM India Pvt Ltd	• Axis Consulting
CA Firms	• WIPRO	• Titan Industries
• S.R Baliboi & Associates	• Accenture	• JSW Steel
• PWC	• Capgemini	• Narayana Hrudayalaya
• Deloitte		

Highlights:

1. 230 candidates attended the Campus Interviews and received 109 offers. 104 offers were accepted by the candidates.
2. The candidates were mostly from the States of Karnataka, Kerala, Tamilnadu, Andhra Pradesh, Maharashtra, West Bengal, Uttar Pradesh and Rajasthan.
3. The highest pay package offered was Rs 10.8 lacs by Britannia Industries Ltd and average pay package offered was Rs 5.5 lacs.
4. CA Subodh Kumar Agarwal, Chairman CMII of ICAI honored the occasion on 17th Sep 2010 and interacted with the executives of the companies & the candidates.

Workshop on Direct Tax Code

20 Hrs CPE

Monday, 18th October 2010 to Friday, 22nd October 2010
between 4.00 PM and 8.00 PM, Venue : Branch Premises

Date / Day	Topic	Sections	Speaker
18.10.10 Monday	1. Charge & Scope of Income Tax 2. Residence in India 3. Income Deemed to accrue in India/to be received	2-3 4 5-6	**CA. H Padamchand Khincha**
	1. Computation of Total Income 2. Classification of sources of income 3. Computation from Ordinary Source and Special Source	12 13 14 15	**CA. S Ramasubramanian**
19.10.10 Tuesday	1. Salary 2. Tax Incentives 3. Exemption	20-23 68-79 10	**CA. Vishnumurthy S**
	1. House Property 2. Clubbing 3. Dividend Income 4. Tax Incentives	24-29 8-9 7 80-86	**CA. Narendra J Jain**
20.10.10 Wednesday	Income from Business	30-45	**Mr. H Naginchand Khincha**
	Capital Gains	46-55	**CA. K K Chythanya**
21.10.10 Thursday	1. Income from residuary Sources 2. Aggregation of Income	56-59 60-67	**CA. D Devaraj**
	Computation of Total Income of Non-Profit Organization	90-103	**Dr. Suresh N**
22.10.10 Friday	1. Minimum Alternate Tax 2. Dividend Distribution Tax 3. Wealth Tax	102-103 108-110 112-114	**CA. Vishnumoorthi H**
	1. General Anti-Avoidance Regulations 2. Authority on Advance Ruling & Dispute Resolution Procedures	115-125 256-267	**CA. M Vishweshwar Mudigonda**

Workshop Co-ordinator: **CA. K K Chythanya**

Delegate Fee: Rs.1000/- **Restricted to 200 participants**

Topic: STPI – Beyond March 31, 2011 ...

4 Hrs CPE

Date: **October 30, 2010, Saturday**

Time : **09.30 am to 01.30. pm, Venue : Branch Premises**

Duration	Topic	Speakers
09.30 am	Basic Concepts covering Income-tax Act / Direct Tax Code, Foreign Trade Policy and related regulations	**CA Shashishekhar Chaugule** **CA Sudhakar G**
10.30 am	Industry perspective	**CA Umesh NV**
11.45 am	Structuring options from a tax and regulatory perspective	**CA Sanath Ramakrishna**
12.45 pm	Open House [Q&A] Session	

Delegate Fee: Rs.250/- **Restricted to 200 participants**

Mode of payment: Cash / Cheque in favor of "Bangalore Branch of SIRC of ICAI" payable at Bangalore
For further details please contact: Mrs. Roopashree, Tel: 080-30563511/512/513, Email: blrregistrations@icai.org

One day Seminar on

"Practice and Procedures before the CESTAT"

6 Hrs CPE

Organized by

The Central Indirect Taxes Committee of The Institute of Chartered Accountants of India

Hosted by

Bangalore Branch of SIRC of ICAI

On **Saturday, 09th October, 2010** between **09.30am and 05.30pm** at **Branch Premises**

Timings	Topics	Speakers
09.30 am to 10.15 am	Inaugural & Keynote Address	**Mr. K S Ravi Shankar,** *FCA* *Advocate, Bangalore*
10.15 am to 11.45 am	Drafting of Appeal, Stay Petition & Miscellaneous: Applications before CESTAT	**Mr. B.N. Gururaj** *Advocate, Bangalore*
11.45 am to 12.00 pm	TEA BREAK	
12.00 pm to 01.15 pm	CESTAT Rules and submission of additional evidence / additional grounds	**CA. Anand N** *Advocate, Bangalore*
01.15 pm to 02.15 pm	LUNCH BREAK	
02.15 pm to 03.45 pm	Representation before CESTAT including written submissions	**Mr. K.S. Naveen Kumar** *Advocate, Bangalore*
03.45 pm to 04.00 pm	TEA BREAK	
04.00 pm to 05.30 pm	Mock Tribunal by practicing CAs & Advocates: **Mr. K. S. Naveen Kumar, CA. Anand N, CA. B G Chidanand Urs, CA.Rajesh Kumar T.R, Mr. R Dakshina Murthy, Mr. Anirudha R J Nayak, Mr. Bhagban Panda**	

Delegate Fees: **Rs.700/-** *(Cash/Cheque in favour of **"Bangalore Branch of SIRC of ICAI"** payable at Bangalore)*

Seminar Co-ordinator:
CA. T. R. Rajesh Kumar

For further details please contact: **Mrs. Roopashree,** Tel: **080-30563511/512/513**
Email: **blrregistrations@icai.org**

Seminar on Capacity Building Measures For CA Firms

Organized By: **Committee for Capacity Building of CA Firms and Small & Medium Practitioners**

Hosted By: **Bangalore Branch of SIRC of ICAI**

3 Hrs CPE

Date & Time : **22nd October, 2010, 9:30 a.m. to 5:30 p.m.**

Venue : **Hotel Bangalore International,** Race Course Road, Bangalore

Theme: With advent of globalization and challenges posed by the liberalization process taking place worldwide, a need is felt for strengthening competencies of CA firms and small practitioners. ICAI's initiative is to enlarge visibility of CA profession and to rejuvenate practice portfolio of Small and Medium Practitioners. ICAI has formed CCBCAF&SMP Committee for popularizing effective union of CA firms by facilitating consolidation through Networking, Mergers and setting up Management Consultancy Services etc. Committee's focus is on enriching SMPs through Capacity Building measures for bringing up world class competency and brand image. This seminar will concentrate on issues & impediments related to capacity building as well as highlight emergent issues of profession.

9:30 a.m. to 10:30 a.m.	***Inaugural & First Session*** Capacity Building Measures - Networking, Merger & De-merger and Corporate Form of Practice Speaker: **CA. Sanjeev Maheshwari,** *Central Council Member* *Chairman - Committee for Capacity Building of CA Firms and Small & Medium Practitioners*
10:45 a.m. to 12:00 p.m.	***Second Session*** Limited Liability Partnership-Benefits to the Profession Speaker: **CA Sanjay Kumar Agarwal,** *Central Council Member* *Member-Committee for Capacity Building of CA Firms and Small & Medium Practitioners*
12:00 p.m. to 01:15 p.m.	***Third Session*** Strategies for Practice Development Speaker: **CA K. Raghu,** *Central Council Member,* *Member - Committee for Capacity Building of CA Firms and Small & Medium Practitioners*
2:30 p.m. to 5:30 p.m.	***Networking Session*** Networking Session for Merger and Acquisition of CA firms – one-to-one meetings

Registration Fees: **Rs. 250/-**

For registration and further details, please contact: **Bangalore Branch of SIRC of ICAI,**
'ICAI Bhawan', # 16/O, Millers Tank Bed Area, Bangalore – 52,Tel : **3056 3500/541/542/543**, e-mail : **bangalore@icai.org**

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XIII Badminton Tournament between Bangalore Branch of ICAI and Income Tax Officials, Bangalore

Inauguration by Sri G. Rajeshwar Rao, Director General of Income Tax, Bangalore

Players from Income Tax Department, Bangalore

Players from Bangalore Branch of ICAI

Valedictory and Prize distribution by Sri Agrawall M.L., CCIT-1, Bangalore

Seminar on Transfer Pricing

CA. H. Padamchand Khincha

CA. D. Devaraj

CA. K.K. Chythanya

CA. G.S. Prashanth

CA. Sivam Subramanian

CA. Rishi Harlalka

Cross section of participants

Campus Interview at Bangalore - September 2010

Chairman CA. H. Shambhu Sharma and Central Council Member CA. K. Raghu addressing the participants

Interaction with the representatives of participant organizations

CA. Subodh Kumar Agarwal and CA. K. Raghu addressing the participants

Chairman CA. H. Shambhu Sharma, Secretary CA. K. Babu and Central Council Member CA. K. Raghu interacting with participants

Campus Interview at Bangalore - September 2010

Cross Section of participating candidates in Campus Interview

Speakers at Study Circle Meetings

CA. Shruthi B.N.

CA. Gopalkrishna Raju

CA. Vikas Kumar Oswal

CA. Naveenraj Purohit

Students Programmes at Bangalore Branch

CA. Naveen Khariwal and CA. Nithin M., Chairman, SICASA

CA. Harish C.

Cross section of student participants

Participants of 77th Batch of GMCS

Published by CA. H. Shambhu Sharma, Chairman, Bangalore Branch of SIRC of ICAI, 'ICAI BHAWAN', # 16/O, Millers Tank Bed Area, Bangalore - 560 052.
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