THE ARTICLED

U'r Altitude is determined by Ur Attitude

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Inside...

New Directors on the Board

- Mr. Sreenivas Babu, Director

Hard work and **Perseverance** are the two keys to success. DNS has always ventured to provide varied services under one roof. The expert services rendered, range from Accounting, Auditing, Taxation also extends to Wealth Management, Business Planning and Other Management Consultancy Services. The growth has necessitated the induction of our three desirable Managers as the Directors of DNS.

I take great pleasure in introducing the three new Directors:

CA. Kantha M, FCA

Mr. Kantha qualified as a Chartered Accountant in the year 2003. He holds expertise in the field of Tax and Internal Audit, Company Law, Regulatory Services, Corporate taxation Consultancy, Transfer pricing, Accounting and Statutory Compliances.

CA. Srikanth Acharya, ACA

Mr. Srikanth Acharya qualified as a Chartered Accountant in the year 2006. He is a specialist in the area of KVAT, other Commercial Laws and Service Tax. His perception and comments on Indirect Tax laws are regularly published in the KSCAA newsletter. He has co-authored the book on KVAT Audit.

CA. Mukesh Kumar Jain, ACA, DISA

Mr. Mukesh qualified as a Chartered Accountant in the year 2006. He is a specialist in the area of Direct Taxes, FEMA and Business Valuation. He has handled business valuation for renowned property developers, large construction companies and real estate joint development projects

We heartily welcome the new Directors and wish them all the very best for their new role

Revision by the Commissioner of Income Tax

- Vinay Jain

Introduction:

Legislative history of section 263 of IT Act, 1961 corresponds to section 33B of IT Act, 1922. Since IT Act, 1961 came into force some amendments have been made to section 263.

The main objective of section 263 is to safeguard the interest of the revenue by giving power to Commissioner. Objective of this article is to understand the intricacies involved in section 263.

Section 263 in summarized form has been reproduced below for immediate reference:

The Commissioner (CIT) may call for and examine the record of any proceedings under this act and if he considers that any order passed by Assessing Officer (A.O) which are erroneous in so far as it is prejudicial to the interest of revenue, pass such order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment.

Such order can be passed only after giving the assessee an opportunity of being heard. For this purpose, the CIT may make or cause to be made such enquiry as he seems necessary.

- "Record" shall include all records relating to any proceedings available at the time of examination of the file by CIT.
- Where any order passed by the AO had been the subject matter of any appeal, the powers of the CIT shall extend to such matters as had not been considered and decided in such appeal
- No order shall be made after the expiry of 2 year from the end of the Financial Year in which the order sought to be revised was passed.
- In computing such period, the time taken in giving an opportunity to the assessee to be reheard u/s 129 and any period during which revision proceeding is stayed by Court shall be excluded.
- An order in revision may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

Intricacies in the above section can be understood by the help of following points:

1. **Erroneous & Prejudicial to the revenue:**

The expression "erroneous & prejudicial to the revenue". Erroneous order means an incorrect assumption of facts, an incorrect application of law & prejudicial to the revenue means loss of tax as prejudice to Revenue administration and does not mean orders unfavorable to Department.

2. **Conditions to invoke section 263:**

From plain reading of subsection (1) of Section 263, it is clear that the power of suo moto revision can be exercised by the Commissioner only if, on examination of records of any proceedings under this Act, he considers that any order passed by the Assessing Officer is "erroneous & prejudicial to the interests of the Revenue".

In the case of Malabar Ind. Co. Ltd. Vs CIT [2000 AIR 1855] - the Apex Court held that to invoke Section 263 the order passed by the AO has to be erroneous & prejudicial to the interest of the revenue. And further in the case of CIT Vs Max India Ltd. [2007]-TIOL-203- the Apex Court held that when the AO adopts one of the two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the AO has taken one view which the commissioner does not agree, it cannot be treated as an erroneous order prejudicial to revenue, unless the view taken by the AO is unsustainable in law.

3. Revision u/s 263 invalid:

It is important to note that to initiate section 263 in addition to above mentioned twin conditions, (erroneous & prejudicial to the interest of the revenue) the commissioner should also indicate in the show cause notice how the order of the AO was erroneous, otherwise revision u/s 263 cannot be initiated.

Further, AO made order after considering all the requisite facts and information produced by the assessee, commissioner cannot initiate section 263 on the ground that AO had not made proper enquires.

4. Difference between section 263 & section 147:

The revision under section 263 is not like the reopening of the assessment where once the assessment is reopened entire assessment is open before the Assessing Officer to be reconsidered in accordance with law. In the revision proceedings the Commissioner cannot travel beyond the reasons given by him for revision in the show-cause notice.

5. Order beneficial to interest of the assessee:

An old saying "WIN WIN SITUATION" is not possible here as order under this section should be in favour of Revenue (conditional winning situation). As per provisions of this section an order beneficial to interest of the assessee cannot be passed by the CIT as this section can be invoked only when order passed by the AO is erroneous & prejudicial to the interest of the revenue. Therefore, orders under this section should be in favour of Revenue.

6. Appeal for the CIT order:

Any assessee aggrieved from an order under this section can file an appeal to Appellate Tribunal u/s 253.

7. Term "any order":

In the case of Ralson Ind. Ltd. Vs CIT [2007 AIR 668] the Supreme Court held that the order of rectification of mistake passed by the AO u/s154, if such order is erroneous & prejudicial to the interests of the revenue than it constitute a subject for initiation of section 263 of the IT Act, 1961, by the CIT.

In other words, it can be said any order passed by the AO under any section of this Act, CIT can review, such orders, u/s 263 of the Act and if found erroneous and prejudicial to the interests of the revenue then he can pass an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

8. Term "any proceedings"-

It means not only confined to orders passed in assessment proceedings. The CIT u/s 263 can initiate any proceedings passed by the AO say refund order u/s 237 or penalty order under relevant section.

9. Power of CIT to revise intimation u/s 143(1) :-

Here, the issue is whether intimation u/s 143(1) is intimation only or can take shape of an order. In the view of Central Board of Direct Taxes "Intimation u/s 143(1) is not an order" vide circular *No.4 of 08-07-1986 & 176 of 20-08-1987*. Whereas, in the case of *Anderson Marine & Sons (P) Ltd (2006) the Bombay High Court* held that intimation sent by the AO, in law, will have to be understood as having the force of an order on self-assessment and it shall be deemed to notice of demand issued u/s156. Such intimation is also subject to revision u/s 263.

10. Orders which cannot be revised u/s 263 :-

a. When an order is passed by the commissioner.

b. When an order is passed under the direction of the commissioner.

c. Where the assessment order is passed under the supervision and direction of commissioner (Inv.).

11. Non-Initiation of Penalty :-

In the case of *CIT vs C.R.K.Swamy [254 ITR 158 2002 (Mad)]* held that penalty proceedings were independent and separate from assessment proceedings, CIT u/s 263 cannot revise. However, in the case of *Ganeshilal Ram Krishna [154 Taxmann 238 2006(All.)]* held non-initiation of penalty proceedings u/s 271(1)(a) is an erroneous & prejudicial to the revenue. Therefore, still it is not clear whether non-initiation of penalty is subject for revision u/s 263 or not.

12. Retrospective Amendment :-

Orders, which have become erroneous due to retrospective amendment of provision, constitute a subject for initiation of section 263 this has been held in the case of *CIT vs Vincast engg.(2004) (All.)*. However, in the case of *Max India Ltd 295 ITR 282 (2007)* Supreme Court held that all retrospective amendments does not constitute a subject for initiation of section 263, and depends on the facts of the cases.

13. Revision possible in "no assessment" case :–

In the case of *CIT vs Andhra Civil Cons. Ltd. 2003 (Mad)* that even in a case, where no assessment made by the AO & endorsed as "no assessment" it may be possible to treated it as an order of acceptance of the return, so that where a wrong claim has been made in the return, it can be opened by an order u/s 263 by commissioner.

14. Doctrine of merger :-

Commissioners power of revision during pendency of appeal before CIT(A) or any Court- Doctrine of merger applies- it means Commissioner can revise matters not considered and decided in appeal filed by the assessee to CIT(A) or Court. For instance in a profit or loss account there are 40 matters but in an appeal before CIT(A) or any Court only 20 matters were considered & decided. Hence, CIT u/s 263 can initiate 20 matters [40-20(matter considered & decided)] which are not considered & decided in an appeal before CIT(A) or any Court.

15. Time period within which section 263 can be invoked:

Last but not least, where the assessment completed u/s 143(3) & reassessment u/s 148 made on certain items. The commissioner sought to revise the original assessment u/s 263 on items which are not considered in reassessment. The doctrine of merger cannot apply to such a case - Sub-Sec (2) of Sec 263 - Clock of limitation starts ticking from date of assessment order and not from re-assessment order. Just because opinions differ the cases should not be subject to revision as such actions wastes time & money for the Govt. as well as the assessees. The spirit of the Act should prevail.

The only things one never regrets are one's mistakes

The Finance Ministers' Akshaya Patra

- CA Sumana Rao, ACA

The FM's Akshaya Patra viz., the Service Tax basket yields higher and higher revenue to the Government year on year. More and More services are brought into the service tax net in an attempt to accommodate all kinds of services before GST kicks start in India. The Government has introduced 7 new service heads as also to amend the existing service heads.

With an aim to remove some of the exemption granted and also expand the scope under the existing services, a series of Notifications dated 27th February 2002 were issued to bring in amendments in the Service tax law.

Amendment in Information Technology Software Services	Adding fuel to the fire

The levy of Service Tax on Information Technology Software Services came into being from 16th May 2008. In the year 2009, Notification No 22 was issued under the Central Excise Law, wherein the duty of excise was exempted on the value which represents the consideration paid or payable for transfer of the right to use such goods, if the following two conditions were fulfilled:

- Transfer of the right to use shall be for commercial exploitation including the right to reproduce, distribute and sell such software and the right to use the software components for the creation of and inclusion in other information technology software products and a declaration is made to this effect to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise.
- Person providing the right to use should be registered under Service Tax law.

On 27th February 2002, 4 Notifications were issued under Service Tax Law (2 in nos.), Central Excise Law (1 in nos.) and Customs Law (1 in nos.) with respect to the IT Software Service.

Notification 2/2010-ST and Notification 17/2010-ST seeks to grant exemption from service tax to packaged or canned software, intended for single use and packed accordingly. The conditions for this exemption are:

✓ The document providing the right to use such software is packed along with the software.

✓ In case of a manufacturer, duplicator, or the person holding the copyright to software, he should have paid the appropriate duties of excise on the entire amount received from the buyer.

✓ In case of an importer, he has paid the appropriate duties of customs on the entire amount **received from the buyer.**

✓ The benefit under Notification No. 17/2010 - Central Excise and Notification No. 31/2010 – Customs is not availed by the manufacturer/duplicator/copyright holder or importer respectively.

Remarks:

- As per the above notification, in case software is sold off the shelf along with the license then the same is not liable to service tax. In case, the customer is required to download the software, excise and customs would not have been paid on such sale/purchase of the software.

  In such a case, where the license is supplied and there being no levy of excise or customs, the value of the license to use such downloaded software is liable to service tax.

- As per the notification under Customs Act, where the license document along with packaged software is imported, the customs duty equivalent to the excise duty (Section 3(1) of the Customs Tariff Act) should have been paid. As per the Notification given under service tax, exemption is available if importer has paid the duty under section 3(1) on the amount received from the buyer!!!

- Service Tax on import of service being levied on reverse charge mechanism, the service tax should have been exempt on the amount paid by importer to the foreign software supplier.

  In case the importer is a subsequent seller of such software license and collects the consideration along with incidence of the customs duty u/s 3(1) and then he can claim exemption from service tax! We are not able to get enough clarity on this notification.

- With this Notifications, the dispute whether on right to use goods VAT or Service tax is payable is still strengthened!!!

Amendment in Commercial Training or coaching services	**Grabbing more institutions**

Vocation Training is exempt from the levy of Service Tax. The definition of Vocational Training Institute "a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self employment, directly after such training or coaching".

Notification 03/2010 has been issued to amend this definition as Vocational Training Institute means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961.

Impact:

Call centre training, computer coaching etc which were exempt till now will be taxable. The courses notified under the Apprentices Act include degree/diploma in engineering subjects and technical education.

Amendment to Transport of goods by road service	**Relief to necessity commodities**

Exemption was granted on transport of fruits, vegetables, eggs or milk by road in a goods carriage. With the issue of Notification 04/2010, food grains or pulses are also exempt.

Amendment to General Insurance Services	**Removing Exemption**

Exemption was given to Insurance Cover under the Group Personal Accident Scheme provided by Government of Rajasthan to its employees. With the issue of Notification - 05/2010, the said exemption is removed.

Amendment to Transport of Goods by Rail	**Even free hands charged**

Exemption was given to transport of goods by rail except the transport of goods in container by rail provided by any person other than by Government. The exemption is withdrawn by the issue of 07/2010.

Notification 08/2010 is issued to exempt specified goods transported by rail.

Impact:

The service of transport of all goods either in container or otherwise except the specified goods and irrespective of whether service is provided by Government or otherwise is liable to Service tax.

The Finance Ministry has decided that the levy of service tax will be effective from 01st July 2010.

Earlier abatement of 30% given for Transport of goods by containers by rail, but with issue of Notification 09/2010, abatement of 30% is given for Transport of goods by rail.

Amendment to Erection, Installation and Commissioning Services	**Relief for necessity commodities**

With the issue of Notification 12/2010, the following services are exempt:

- Erection, commissioning or installation of mechanized food grain handling systems.
- Erection, commissioning or installation of equipment for setting up or substantial expansion of cold storage.
- Installation and commissioning of machinery or equipment for initial setting up or substantial expansion of units for processing agricultural, apiary, horticultural, dairy, poultry, aquatic and marine products and meat.

Amendment to Air Travel Agent's Services	**Valuation aspect**

Under the Valuation rules, the commission received by the air travel agent from the airline was a part of value of taxable service and airfare collected by air travel agency in respect to service rendered by him was not to be included in the value of taxable service.

With the issue of Notification 15/2010, the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger is not to be included in the value of taxable service

Amendment to Technical Testing Analysis Inspection and Certification Services	**Encouraging the need to seed**

Notification 10/2010 exempts taxable service provided by a Central or State Seed Testing Laboratory and Central or State Seed Certification Agency notified under the Seeds Act, 1966.

Amendment to Online Information and database access or retrieval services and business auxiliary services	**Tax-less Information**

Notification 13/2010 provides exemption to any Indian news agency subject to fulfillment of the conditions that the news agency is notified as a news agency set up in India solely for collection and distribution of news and such news agency is specified under clause (22B) of Section 10 of the Income Tax Act, 1961. The news agency should apply its income or accumulates it for collection and distribution of news and does not distribute its income in any manner to its members.

Others:

- ✓ The Service of Mandap Keeper has been moved from Performance based service to Property based service and the from the list of services specified as performance based service the service of Chartered Accountant, Cost Accountant and Company Secretary has been removed, thereby the service will be classified as residuary service. (Notification - 06/2010).
- ✓ Service provided to any person, by any other person for transmission of electricity is exempt (11/2010).

  Remark: The question is under which head transmission of electricity charged to service tax in order to exempt the same from levy of tax and whether transmission of electricity is a service?
- ✓ The definition of "India" has been substituted to read – India includes installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purpose of prospecting or extraction or production of mineral oil and natural gas and supply thereof. The change has been effected in Taxation of Services (Provided from outside India and Received in India) Rules, 2006 (Not 16/2010 - ST) and in Export of Service Rules, 2005 (Not 6/2010 –ST).

  Only the area where installations structures and vessels located in Continental shelf and EEZ for the said purpose and not the other area is the Continental shelf and EEZ will be considered for the purpose of determining whether there is an export or import.

Interested Party Transactions

- Lakshmishree K. A.

The actions of the directors influence the survival of a Company. Directors hold a position of trust and they are required to act in utmost good faith. When the directors decide to transact in a manner beneficial to them, the company's survival might be at stake.

In order to curb this practice of directors deciding on contract entered by the company with such persons or entities whereby directors benefit directly or indirectly, the Companies Act, 1956 has provisions in form of checks and approvals under sections 297 and section 299 of the Act.

To document this control Section 301 provides for register to enter such transactions. At the very outset, let us know the transactions which are said to be interested party transactions. An interested party transaction is a contract entered between the Company and

- ✓ Director of the Company
- ✓ Relative of any Director
- ✓ A firm in which such a director or relative is a partner
- ✓ A Company in which such a director or relative is a member/ Share holder.

Section 297 of the Companies Act 1956, requires that, except with the consent of the Board of Directors, a company cannot enter into any contract with another enterprise in which director of that company or his relative is directly or indirectly interested,

- ✓ for the sale, purchase or supply of any goods, materials or services or after the commencement of the Companies Act,
- ✓ for underwriting the subscription of any shares or debentures of the company.

Section 297 does not apply to:

- ✓ Banking & Insurance companies
- ✓ Sale/ Purchase of goods and materials at prevailing market price and for cash
- ✓ Any contract for the sale, purchase or supply of goods, materials or services in which
  - Company and other party are in regular trade and;
  - The value of such contract is not more than Rs 5,000/- in aggregate in a year.

Section 299 of the Companies Act 1956 requires every director of a company who is directly or indirectly, concerned or interested in a contract or arrangement, entered by or on behalf of the company,

- ✓ should disclose the nature of his interest at a meeting of the Board of Directors and,
- ✓ to disclose at the board meeting by means of general notice or by specific notice for disclosure.

Section 299 does not apply to:

- ✓ Contracts or arrangements entered into between two companies, where any of the director of one company individually or together with the other directors holds not more than 2% of the paid up share capital of the other company.

  In other words, disclosure of interest is not required if the sole interest of one or more directors of the company is not more than 2% of the paid up share capital of the other company. As per section 301, every company shall keep one or more registers containing particulars of all contracts or arrangements covered under section 297 or section 299.

  The register of contracts should contain particulars of every contract or arrangement to which section 297 or section 299 applies and should include the following particulars:

- ✓ Date of Contract or Arrangement.
- ✓ Names of the parties into Contract or Arrangement.
- ✓ Principle Terms & Conditions applicable.
- ✓ Date on which the Contract or Arrangement was placed before board.
- ✓ Name of the Director who voted
  - in favor of Contract or Arrangement.
  - against the Contract or Arrangement.
  - neutral with regard to such Contract or Arrangement.
- ✓ In relation to each director, the names of the firms and companies of which general notice has been given under section 299.

However, section 301 is not applicable:

- ✓ for sale, purchase or supply of goods, materials or services if the value of such goods & materials or the cost of such services does not exceed rupees one thousand in aggregate in any year
- ✓ To a banking company for the collection of bills in the ordinary course of its business.

ROLE OF THE AUDITOR:

The Companies Act, 1956 provides that the requirements of Section 297, 299, 301 should be reported under the Companies (Auditors Report) Order, 2003 provides where the company's auditor conducts verification and report accordingly. The relevant paragraph under CARO 2003, are as under:

Paragraph 4 (v) (a) - Whether the particulars of contracts or arrangements referred to in section 301 of the Act have been entered in the register required to be maintained under that section;

While reporting under this paragraph:

- ✓ Auditor has an obligation to identify the transactions and report whether the particulars of contracts or arrangements referred to in section 301 of the Companies Act, 1956 have been entered.
- ✓ He has to ensure compliance with the CARO 2003 requirements, i.e., transaction which is required to be entered into the Register pursuant to section 301 of the Companies Act, 1956.
- ✓ The auditor should obtain a written representation from the management regarding the completeness of the information provided.
- ✓ He should verify the entries made in the register under section 301 with the general notice received from directors and minutes of the relevant meeting evidencing the approval of the board of directors to such transactions.
- ✓ In judging the completeness of the entries in the register maintained under section 301, the auditor should review the entity's procedures for identification of relevant parties.
- ✓ He should also review his working papers of previous years, for names of known companies, firms or other parties the particulars which are required to be entered in the register.
- ✓ The auditor should also examine wherever applicable secretarial compliance certificate issued under Section 383A with regard to the completeness of the register maintained under section 301.
- ✓ In case where the register maintained under section 301 has not been updated and the necessary declarations from the directors in Form 24AA are not available in record, the auditor should state the fact of non- maintenance of the register while reporting the clause.

Paragraph 4 (v) (b) - Whether transactions made in pursuance of such contracts or arrangements have been made at prices which are reasonable having regard to the prevailing market prices at the relevant time.

While reporting under this paragraph:

- The auditor should examine whether the prices paid for the transactions entered by the company are reasonable having regard to prevailing market prices at the relevant time and are unbiased and not being influenced by the directors.
- He should also give his opinion about the reasonableness of the prices of all the transactions which have been entered in pursuance of contracts or arrangements covered in the register maintained under section 301 of the Act.
- The requirement of reporting on reasonable prices applies only when the transactions entered into during the year with such interested parties exceeds Rs 5 lakhs.
- The auditor is not required to make a roving market inquiry to determine the prices prevailing at the time the transactions were entered into. In order to determine the transactions have been taken place at reasonable prices the auditor should obtain information like pricelists, quotations at that relevant time. While determining the same he should also consider quality and quantity of the product/ service, credit terms, delivery period etc.

Failure to comply with requirement to disclose the interest as required by Section 299 will cause vacation of the office of the Director and shall attract penalty. We have come across cases in the past where the negligence of the auditors in reporting was one of the major cause in a fraud being committed by personnel in key position severely effecting the Company, its shareholders, employees and the leaving a shock wave in the country.

The present controversy surrounding IPL on sale of stake in business to family members and friends is an appropriate example to portray how essential is the control on activities of key personnel in a Company. Therefore the auditor should be on his vigil, be honest and exercise his judgment and skill in the better interest of the stake holders.

Answers to Crossword - 34

ACROSS

3 Yield
6 Depletion
7 Trend
9 Bonds

DOWN

1 Equivalents
2 Variance
4 Credit
5 Bulletins

WRITE TO THE EDITOR

"Continuous learning process" is the vital essence of our Profession. To keep ourselves in pace with the emerging concepts, is what we have endeavored through our E-Newsletter, "The Articled". We also intend to build this into a common knowledge sharing platform for all and welcome any contributions to strengthen this common pool. Your views will help us fortify the forthcoming Issues. You can mail us at newsletter@dnsconsulting.net or write to: The Editor, #10, South Park Road, Nehru Nagar, Seshadripuram, Bangalore – 560020.

Good News : "Savings Bank customers"

- D SAILAJA, B.Sc (Agril) & LLB

Backdrop for introduction of payment of Interest on Savings Bank Account on a Daily Product Basis

- Till 31.03.2010, banks had been following the guidelines issued by RBI that in the case of savings deposits, interest should be calculated on the minimum balance to the credit of the deposit account during the period from the 10th to the last day of each calendar month and credited to the account only when it is Re.1/- or more.
- Several banks had suggested that interest on savings bank accounts may be calculated either on the minimum balances in the deposit accounts during the period from the first to the last day of each calendar month or on a daily product basis.

  When the matter was referred to the Indian Banks' Association, which opined that payment of interest on a daily product basis would be feasible only when computerization in banks is completed.
- In view of the present satisfactory level of computerization in commercial bank branches, it was decided to go ahead with the process. As per the annual policy statement announced by Governor on April 21, 2009, it is proposed that payment of interest on savings bank accounts by scheduled commercial banks would be calculated on a daily product basis with effect from **April 1, 2010**.

  In order to ensure a smooth transition, RBI issued guidelines to the banks to work out on the modalities in this regard.

Earlier method of interest rate calculation VS New method of interest rate calculation- Impact of the same.

Prior to 01.04.2010, Banks paid interest @3.5% p.a. on the Minimum balance /lowest available balance in the account between the 10th and the last day of the month.

- Thereby any deposit in the account between the 10th and the end of the month, could not earn the account holder any interest as it was not considered as a part of the interest rate calculation.
- Any withdrawal between the same period, would result in lower interest income as the minimum balance/lowest balance would be taken into account for the calculation.

April 1st, 2010 brought cheers to savings bank account holders as interest income will be higher going forward. This is due to the fact that RBI has instructed banks to change the mechanism of interest income calculation which is now going to be based on the 'daily balance method' with the rate of interest remaining the same at 3.5% p.a. i.e. prevailing interest rate of interest.

Impact of the same is illustrated as below:

Savings Bank account :Interest calculated on Daily product basis
Interest @3.50% pa

Amount : Rs.

Date	Details	Debit	Credit	Balance	No of days	Products	Interest
							3.50%
10.04.2010	Balance as on			100000	14	1400000	
15.04.2010	Proceeds of FDR		250000	350000	14	4900000	
29.04.2010	Payment	75000		275000	2	550000	
Total products						6850000	
Total interest payable to depositor							657

Interest payable as per earlier method of interest calculation prior to 31.03.2010:

- As per earlier method, interest due to Mr. Ramesh, on an amount of Rs. 1, 00,000 for 30 days @ 3.5% p.a. which would be ***Rs. 288.00*** despite having a high account balance for most period of the month. The deposit holder lost interest income for the month.
- As per earlier method of interest rate calculation in the given situation, the best thing the account holder would have done is to ensure that all transactions are made between the 1st and the 9th of the month so that he would get benefit of interest. This required proper planning.

Interest payable as per New method of interest rate calculation i.e. 01.04.2010 onwards

- Interest will be paid @3.5% p.a. on the daily balance in the account at the end of the day. So here, the account holder will get interest on the actual day end balance.
- Under this method, the total interest due to Mr. Suresh would be ***Rs. 657=00*** as per above illustration**.**
- Under this method, ***Mr. Suresh's interest income is much higher to the tune of Rs. 369=00(Rs. 657=00 minus Rs. 288=00).*** Besides, he did not have to plan his withdrawals and deposits as he would receive interest on the actual account balance.

As a savings bank account holder, one will be pleased with the latest change. Who would not like to see higher balance on account of higher interest income?

PS: Interest rate calculation Formula

Daily interest = Amount (Daily balance)* Interest (3.5/100)/ Days in the year

Daily interest on savings account to impact banks' margins

With the introduction of interest payable on daily product basis w.e.f **April 1st, 2010**, savings bank account holders are happy.

But the banks are not happy for the following reasons:

- Bank's margins are set to be impacted with the introduction of this new system of interest payable to Savings bank customers.
- Banks will also have to incorporate numerous changes, which also include new norms for pricing the loans, which is set to be introduced with the arrival of the base rate system from July 2010.
- The banks also have to get ready for adhering to the International Financial Reporting Standards, for which the RBI is contemplating to issue the guidelines in future.
- Some of the Top executives of the banks expressed apprehensions as "Assessing the additional growth in amounts in saving accounts, the outgo will be more. This poses a huge challenge".
- Many public sector banks whose Net interest margin (NIM) lies between 2.7% to 3.62% are going to have a tough time as the government is expecting them to retain their NIM at about 3%. Rising expenses will stress their margins.

A combination of above factors is going to affect the margins of the bank.

Mindbender

Almost" is the longest word in the English language with all the letters in alphabetical order

Rhythm" is the longest English word without a vowel

So little done, so much to do

IPL – A Cocktail or Mess !!!

- T Nageswar Rao

Yes, it's right to say – "IPL - a cocktail"!!! It's a combo of sports, entertainment and business, and includes players, actors, businessmen and so on. The total worth of the IPL industry today is estimated at $4 billion, according to a Brand Finance study called the event's 'eco-system.'

A brand value that has more than doubled to $4.13 billion and two new teams - Pune and Kochi, cost as much as the $700 million almost seven times what Mukesh Ambani paid for the Mumbai Indians in 2008.

Sahara Group owns Pune team and Kochi team called Rendezvous Sports World is jointly owned by Mukul Patel & Vipul Shah own Gujarat-based Shree Ram Group of Industries, which is in the ship-recycling business, Shailendra Gaikwad and Pooja Gulati; Dilip Mehta, owner of Rosy Blue Diamond and jewellery brand Orra; and Mehul Shah of Gujarat-based Anchor Switches. These business tycoons have also joined the IPL race along with actors and other businessmen.

Long episodes of 56 matches of IPL (Indian Premier League) session 3 ended up crowning Chennai Super Kings, where Dhoni proved himself again as captain. On the other hand, Mr. Modi lost his hot seat as Chairman of IPL. He was suspended on April 25 after the IPL 3 final on charges of financial irregularities in running the league and Mr. Chirayu Amin has been appointed as interim chairman in Modi's position.

BCCI president Shashank Manohar confirmed the charges against Lalit Modi, compelling the suspension of the league's chairman. The allegations involved the bids for Rajasthan Royals and Kings XI Punjab, the broadcasting deal and the reported facilitation fee, rigging of bids for new franchises in 2010, the sale of internet rights, and Modi's behaviour.

Kochi IPL documents showed that the name of Sunanda Pushkar a close friend of then Minister of State for External Affairs, Shashi Tharoor was added in the last minute to the bidders' group. Shashi Tharoor who was under a cloud for his alleged involvement in the Kochi IPL cricket franchise bid, had to resign.

Amid mounting political pressure, Prime Minister Manmohan Singh summoned the first-time Minister to his residence after a meeting of the Congress Core Group, and asked him to step down. Sunanda Pushkar, Dubai based businesswoman, has also surrendered sweat equity IPL franchise offered to her by the Rendezvous Sports world.

In a new twist to the controversy over Kochi team, Shailendra Gaikwad, CEO, Rendezvous Sports alleged that IPL Commissioner Lalit Modi had offered a USD 50 million bribe to withdraw from the race.

Among the issues that need the BCCI's immediate attention is the mass auction of players for IPL 4 slated in September 10. The two new franchises - Kochi and Pune - are not happy that there is a move to allow the eight original franchises to retain as many as seven (3 foreign and 4 Indian) cricket players.

The Pune and the Kochi teams, owned by Sahara and Rendezvous Sports respectively, feel that such a move, if allowed, will put 56 top players in the world out of their reach even before the auction begins.

IPL 4, having ten teams is expected to be a big event in the world cricket forum involving many individuals and money; however the loopholes in the existing scheme of event should be resolved at the earliest to retain the charm of the game.

****The above article is based on inputs available in various articles published on the internet and leading newspapers****

Minimum Alternate Tax (MAT): An efficiency indicator or a hardship

- **Bharath Bushan**

Introduction:

Minimum Alternate Tax had its origin in United States in 1969 where it is termed as Alternative Minimum Tax. The objective was to bring to tax net some large households who had been eligible for tax benefits resulting in no tax or very less tax payable under the tax laws of the country.

Unlike in India, the Alternate Minimum Tax ("AMT") is applicable both for households in form of Personal Income Tax and to corporate in form Corporate Income Tax. It was a kind of parallel tax system having its own method of computing income, lower tax rates and broader definition of taxable income.

I. MAT under Income Tax Act:

Minimum Alternate Tax was first introduced in India in the Finance Act, 1983, to tax 'the zero tax companies' i.e., the companies which have large profits in their books but used to escape the payment of large chunk of tax by reason of the various tax holidays / deductions which Income Tax Act, 1961 ("Act"), provided.

The basic objective was to tax the companies which earned large profits and distributed dividend to its shareholders but still paid very less income tax. It was to tax atleast the real profits which the company earned, on the basis of which it distributed dividend.

The introduction of MAT singled out the corporate as they had to pay taxes on "book profits" when they had negative or minimal profits calculated under the Income Tax Act. MAT was introduced by virtue of Section 115J of Income Tax Act. However, it was withdrawn by Finance Act, 1987 and then re-introduced in 1997. MAT is applicable only to companies and not for other entities like partnerships, sole proprietorship, etc.

Chargeability:

The chargeability of MAT under the Act is on basis of "book profits" calculated under the provisions of the Act. To arrive at book profits certain adjustments are to be made to the profit shown in the Profit and Loss account maintained as per Companies Act, 1956.

The adjustments are to add back:-

- the amount of income-tax paid or payable, and the provision therefore; or
- the amounts carried to any reserves; or
- the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or
- the amount or amounts of dividends paid or proposed;
- the amount of depreciation;
- the amount of deferred tax and the provision therefore;

and to reduce:-

- the amount withdrawn from any reserve or provision;
- the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets);

Tax is charged on the "book profits" calculated at the rates of tax specified from time to time in the Finance Act.

With the years passing on, there has been hike in the MAT rates. At present, the rate has mounted to 18% from 15% effective from the Assessment year 2011-2012.

MAT Credit:

There is some sort of relief available to MAT paying companies from the taxes paid under MAT. The companies can avail MAT credit to the extent of excess of the normal tax liability over MAT liability in subsequent years. This excess credit is available upto the period of 10 years following the year in which MAT is paid.

II. MAT under Direct Tax Code:

In the proposed Direct Tax Code Bill, 2009, there exists a shift in method of computation of MAT Liability from "Book Profit Method" to "Gross Assets method".

Under this new method, tax will be charged not on the "book profits" but on the "Gross Assets" as shown in the balance sheet at fixed percentage.

The rationale behind this is that business activities are carried out to earn profit and efficiency is ensured if profits are earned.

Thus, this ensures efficiency in carrying out business activities. As a result, the entities which have low profits as well as which have no profits are made to pay taxes by way of MAT.

Further the base chosen is Gross Assets and not Net Assets resulting in higher outflow of tax as the outside liabilities are not considered in calculation of Gross Assets.

Computation of Gross Assets:

"Gross Assets" under Direct Tax Code is sum of:-

i. aggregate value of gross block of Fixed Assets
ii. capital Work-in-progress
iii. book value of all other assets at the end of the relevant financial year*

as reduced by:-

i. the accumulated depreciation on the value of the gross block of fixed assets and
ii. debit balance of Profit and Loss account if included in the book value of other assets.

*we are not clear as to what is to be included in the book value of all other assets. For e.g. whether preliminary expenditure which is on asset side of the balance sheet should be included or not.

The company has to pay tax at the rate of 2% on the Gross Assets as MAT under DTC as calculated above or normal rate of tax applicable to a company, i.e. 25% under Direct Tax Code, whichever is higher.

Further there would not be MAT credit available in subsequent years as in Income Tax Act.

Example:

As stated above, the tax liability should be higher of 2% on Gross Assets or 25% of Normal Taxable Income. As such, the turnover should be 8% of Gross Assets so that it equals the tax under MAT of 2% of Gross Assets.

For Instance, if the value of Gross Assets is Rs. 1,000 the tax liability under MAT would come upto Rs. 20 (Refer Table 1 for better understanding).

To equate Rs. 20 as tax under normal tax liability the Income should be Rs. 80 so that tax on income would be Rs. 20 at the rate of 25%. Rs. 80 comes to 8% of Gross Assets. So it can be concluded that the company should earn a minimum of 8% on assets to escape from MAT.

The hardship is there is no credit available. Even the loss making companies have to pay from their liquid funds to meet the liability which will put additional burden on them. It can be said that the company will be taxed for the reason of not earning at all.

Analysis in a Tabular Form:

Table:- 1

Let the Gross Assets be Rs. 1,000 **(Amount in Rs.)**

Sl.	Net Income as a percentage of Gross Assets	Net Income	Tax on Income @ 25%	MAT under Direct Tax Code@ 2% on Gross Assets	Final Tax Liability
1	0%	0	0	20	20
2	6%	60	15	20	20
3	7%	70	17.5	20	20
4	8%	80	20	20	20
5	9%	90	22.5	20	22.5

The table above tells us that, even if the company has no earnings, it has to pay tax under MAT @ 2% of Gross Assets which ensures there is no avoidance of tax. If the income is less than 8% of Gross Assets the Income the tax liability will be paid under MAT. And at 8%, the tax Liability under both circumstances will be equal. However if the Income is more than 8% of Gross Assets the tax Liability will be @ 25% on Income.

Impact on companies Under Direct Tax Code:

- ❖ The chargeability of MAT under Gross Assets Method is likely to affect capital intensive projects which has a long gestation period. This will generate tax to the government exchequer even when a company is still in the developing stage where there is still no return generated from the project.
- ❖ Loss making companies will be hit by this provision. Moreover they have to pay advance tax at the rate of 2% of Gross Assets.
- ❖ The companies which have huge asset base but comparatively low sales volume and low profit margin will get affected.
- ❖ New projects which during the initial period generally incur losses or earn low income will be affected.

A Comparitive Analysis between current MAT structure and MAT under Direct Tax Code:

Notes:

- ❖ The Income Tax Act and Direct Tax Code are mutually exclusive. Both the laws cannot be there at one time.
- ❖ It is assumed that Income Tax Rate will be 25% in lines of Direct Tax Code to enable comparison in below table.

Table:- 2

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
		Under Income Tax Act				Under Direct Tax Code	
Scenario	Income	Book Profits	Income Tax @ 25%	MAT under IT Act on Book Profits @18%	MAT credit available under IT Act	Income Tax @ 25%	MAT under DTC (Gross Assets are Rs. 1,000)
1	0	10	0	1.8	1.8	0	20
2	60	70	15	12.6	0	15	20
3	70	90	17.5	16.2	0	17.5	20
4	80	120	20	21.6	1.6	20	20
5	90	70	22.5	12.6	0	22.5	20

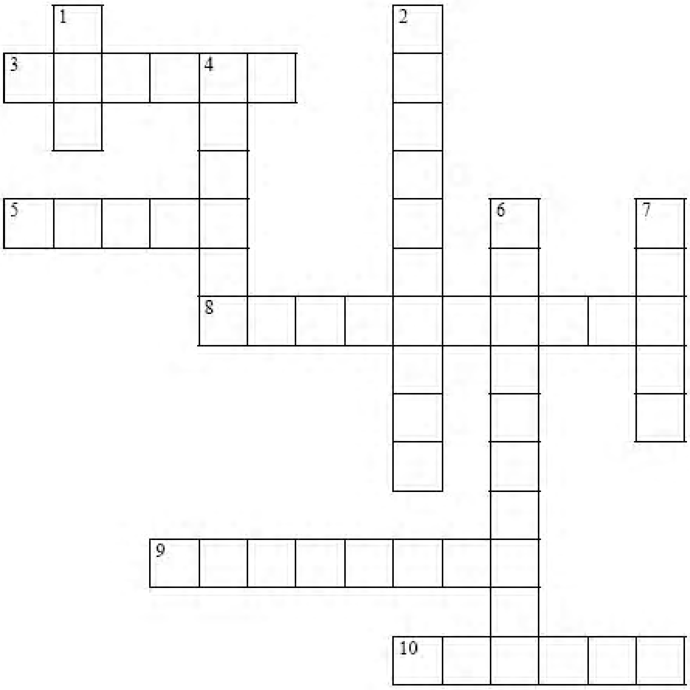
MAT under IT Act is based on book profits and under DTC will be based on Gross Assets. MAT in first scenario under IT Act is Rs. 1.5 and credit will be available in future years. However under DTC MAT is Rs. 20 calculated at 2% of Gross Assets with no credit mechanism available. In second and third scenario, under IT Act, tax has been paid calculated on Income, but, under DTC, tax is paid under MAT. Fourth scenario is indifference point under DTC as Normal tax and MAT tax are equal. In fifth scenario normal tax liability is more under both IT Act and DTC.

Under IT Act comparison between normal tax liability and MAT liability is done. If MAT is higher than the normal tax liability MAT is paid and the excess of MAT over normal tax is available as credit in future years as we see in scenario 1and 4 under Income Tax Act (column 6). Similarly, under DTC, the same comparison will be done but there will be no credit available in future when tax is paid under MAT.

Conclusion:

The government is clear and wants to increase its revenue base at the cost of companies. As the bill is not yet passed, we can expect some changes in methodology of computation and/or rates. However the fact is MAT will be inevitably a part of business and the companies have to run efficiently either by cutting the cost or increasing the sales volume or price to increase their profit. The corporate sector will have to redesign its structure, re-think for its business plan and practices in the light of changing taxation.

Crossword - 35



ACROSS

3 There is only one independent variable in __________regression analysis

5 The _____ of the total cost line is the variable cost per unit of activity

8 A statistical method for determining the equation of a line by using the least squares method

9 The range of activity where the fixed costs and expenses are not likely to change in total is the _________ range

10 The two way analysis of manufacturing overhead consists of the production volume variance and the flexible __________ variance

DOWN

1 The sales____ is the relative proportion or combination of products sold

2 The Company might borrow money by using its accounts receivable as ______ for the loan

4 _____ programming is a tool to compute the optimum mix of products per unit and specified quantities of scarce resources

6 Long run decisions are based on ___________cash flow calculations

7 Fixed costs are assumed to remain constant in total only within a reasonable or relevant ________of volume or activity

THE EDITORIAL

Currency	Rate
Australian Dollar (AUD)	40.70
British Pound (GBP)	67.02
Chinese Yuan (CNY)	6.63
Euro (EUR)	57.48
Hong Kong Dollar (HKD)	5.82
Japanese Yen (JPY)	0.49
Pakistani Rupee (PKR)	0.54
Singapore Dollar (SGD)	32.69
South African Rand (ZAR)	5.96
Swiss Franc (CHF)	40.80
UAE Dirham (AED)	12.33
US Dollar (USD)	45.29

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