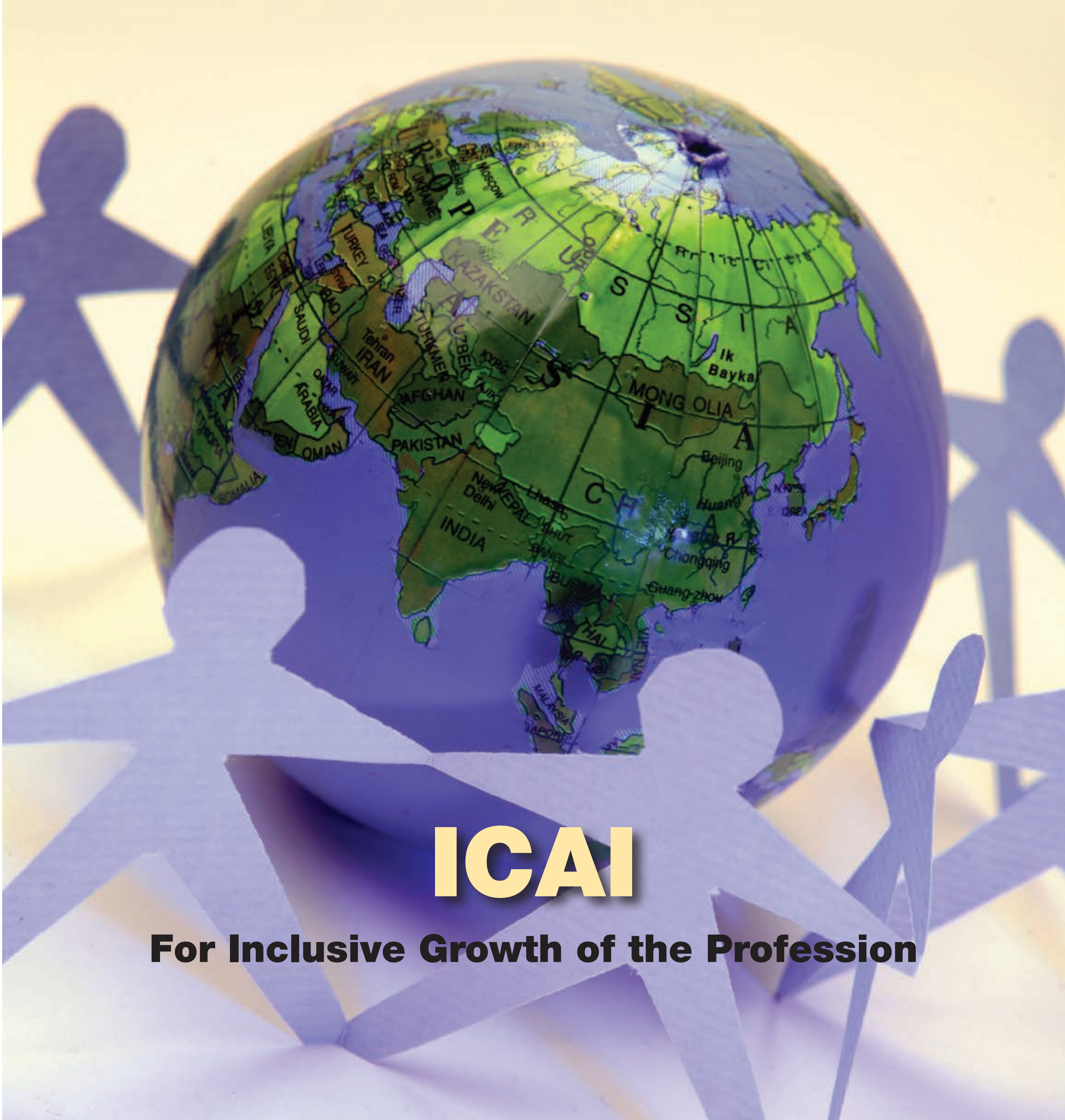
VOLUME 63 | NO. 12 | PAGES-164 | JUNE 2015 | ₹100

THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SET UP BY AN ACT OF PARLIAMENT



ICAI

For Inclusive Growth of the Profession

VOLUME 63 | No. 12 | PAGES-164 | JUNE 2015

The Chartered Accountant Journal

₹100

Parliament Paves Way for Ease of Doing Business

Taking forward its commitment with respect to ensuring and facilitating ease of doing business in India, the Government got passed in the Rajya Sabha the much awaited and needed Companies (Amendment Bill), 2014, which was earlier passed by the Lok Sabha. Coming as a welcome relief to corporate India, as many as 16 amendments have been made to the Companies Act, 2013, mainly removing various practical difficulties in the law. Primarily, the requirement of minimum capital is being done away with, common seal is optional now, transactions between holding company and wholly-owned subsidiary are exempt, and except offences of fraud, all other offences are bailable and winding up cases would be heard by a two-member bench instead of three-member bench, *etc.*

These amendments were the need of the hour as there have been complaints from the corporates about the problems ever since the law had been enacted in 2013. The Finance Minister mentioned that various queries were received that are being addressed through issuance of Notifications/Amendment in Rules and some of them have been addressed through these amendments.

However, these 16 amendments are not enough to cover everything. As such, it is welcome that the Finance Minister has stated: *...a broad-based committee will continue to go into this question for the next few months as to where the shoe pinches, and this may not be the last amendments which we are bringing in.* The Expert Committee comprising representatives of bodies of company secretaries, chartered accountants, industry chambers and officials will look into the discrepancies and suggest changes.

From the perspective of accountancy profession, provisions with respect to auditors being required to report suspected frauds at the companies audited by them are particularly important. It includes a major amendment for the auditors which The Institute of Chartered Accountants of India was pursuing, *i.e.*, an amendment in Section 143 (12) of the Act which prescribes that the auditor is required to report to the Central Government any fraud which is above the threshold. The Finance Minister in his speech mentioned that earlier even a small fraud of ₹20 was required to be reported to the Central Government, now fraud above only a threshold is required to be reported to the Central Government. This would bring great relief to both corporate as well as auditors.

For ease of doing business, some amendments have also been made in Section 185- Inter-company Loans and Section 188- Related Party Transactions which is the major area of concern.

Section 134(3)(ca) provides details in respect of frauds reported by auditors under sub-Section (12) of Section 143 other than those which are reportable to the Central Government. In Section 134 sub-Section (3) after clause (c) additional clause has been inserted.

In a nutshell, other amendments pertain to prohibition of public inspection of Board Resolutions with the Registrar of Companies that would help the company to protect its confidential and competitive information. Also, allowing related parties to vote on the resolutions where they are interested would help the companies to take the decision on the contracts or arrangements. Further, maximum penalty of rupees 10 crore is provided for acceptance of deposits in violation of the Companies Act, 2013.

The onerous provisions were dissuading entrepreneurs to incorporate companies and prompting them to set up limited liability partnership (LLP) firms for carrying out business. Among the major concerns of stakeholders were protecting confidentiality of board resolutions as the practice of public scrutiny of board resolutions was not being followed anywhere in the world.

An amendment approves prescribing specific punishment for raising illegal deposits from public, a condition that was left out in the act inadvertently.

Among other amendments, the Companies (Amendment) Bill includes the winding up of companies that would be heard by a two-member instead of three-member bench. Also, the bail restrictions will apply only for offence relating to fraud under Section 447 of the Companies Act, 2013. Now, except in case of serious frauds, normal CrPC (code of criminal procedure) provisions would apply. It is welcome that the changes have also been cleared to fast-track the approval process for draft notifications aimed at granting exemptions from various provisions of the Companies Act.

All in all, the amendments in Companies Act, 2013 come at a very opportune time when corporate India was craving for speeding up of reforms and ease of doing business. However, as also stressed by the Finance Minister, this should be taken as just a beginning and the proposed "broad-based committee" should do more to repair the areas "where the shoe pinches" as promised.

Editorial Board ICAI – *Partner in Nation Building*

Contents

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
ICAI Bhawan, Post Box No.7100, Indraprastha Marg,
New Delhi-110002, Tel: +91 (11) 39893989.
E-mail: icaiho@icai.in, Website: www.icai.org

SUBSCRIPTION RATES

Inland subscribers :	₹1,000 per annum
Overseas:	$170 per annum (subscribers by air mail)

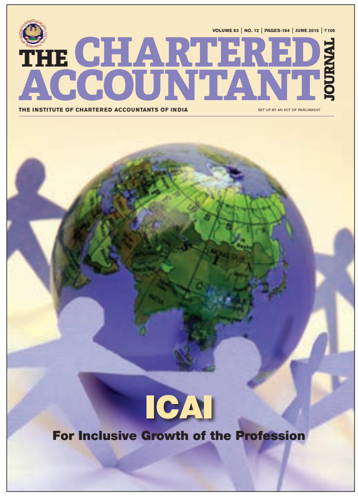
For Overseas Members/Subscribers
•Air Mail Surcharge : ₹2,100 per annum

CA Students	: ₹1,400 for 3.5 years ₹400 per annum
Other students & faculties	: ₹600 per annum

CLASSIFIEDS:
Minimum ₹1,000/- for the first 25 words or part thereof and ₹250/- for five words or part thereof over and above first twenty five words. Please contact: The Journal Section at ICAI Bhawan, A-29, Sector-62, Noida or call at +91(120) 3045955 or e-mail at eboard@icai.in

EDITORIAL SUPPORT, DESIGN, ADVERTISEMENT & MARKETING SPENTA MULTIMEDIA PVT LTD
V. Kalidasan, Kankshi Mehta, Nilesh Juvalekar, Ganesh Waradkar.
MUMBAI: Spenta Multimedia, Peninsula Spenta, Mathuradas Mill Compound, N. M. Joshi Marg, Lower Parel. Mumbai-400013. Tel: +91 (22) 24811022/24811025, Telefax: -91(22) 24811021.
DELHI: No.7, 1st Floor, Nizamuddin (West) Market. New Delhi-110013. Tel: +91 (11) 4669 9999.
BENGALURU: No.606, 1st Floor, Rear Building, 80 Feet Road, 3rd Cross, Opp. Koramangala Police Station, Bengaluru-560 095. Landmark - Behind Boca Grande Restaurant. Tel: +91(80) 4161 8966/77.
KOLKATA: 206-Jodhpur Park, Kolkata - 700068. Tel: +91(33) 2473 5896. Telefax: +91(33) 2413 7973.
CHENNAI: 1st Floor,#5 Montieth Road Egmore, Chennai 600 028. Tel: +91-44-4218 8984/85
ICAI RESERVES THE RIGHT TO REJECT ADVERTISEMENTS
Printed and published by V. Sagar on behalf of The Institute of Chartered Accountants of India (ICAI)
Editor – CA. Manoj Fadnis
Published at ICAI Bhawan, P. O. Box No. 7100, Indraprastha Marg, New Delhi - 110 002 and printed at SPENTA MULTIMEDIA PVT LTD., Plot 15,16 & 21/1, Village Chikhloli, Morivali, MIDC, Ambernath (West), Dist. Thane

TOTAL CIRCULATION: 2,61, 877
Total No. of Pages: 164 including Covers
Inside images and Graphics: www.shutterstock.com



JUNE 2015
IN THIS ISSUE...

VOICE

MEMBERS

UPDATES

ICAI NEWS

EVENTS

Contents

VOLUME 63 | NO. 12 | PAGES-164 | JUNE 2015 | ₹100
THE CHARTERED ACCOUNTANT JOURNAL
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
SET UP BY AN ACT OF PARLIAMENT

AUDITING

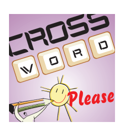
ACCOUNTING

INTERNATIONAL TAXATION

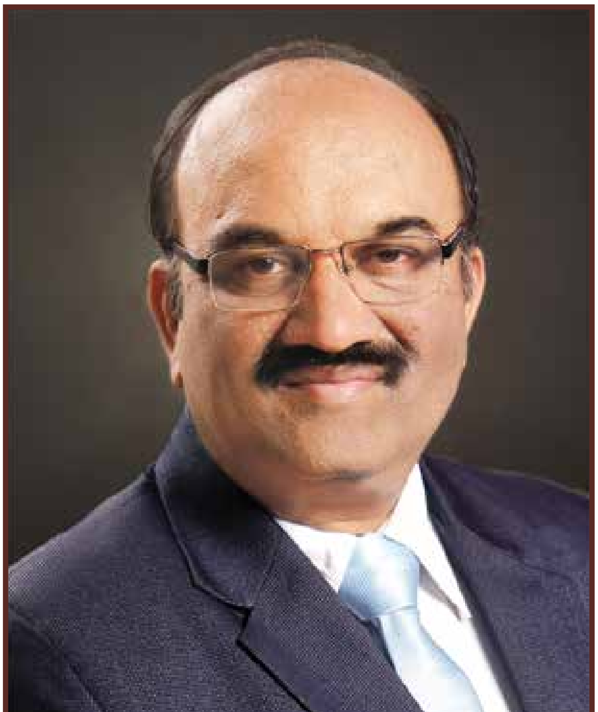
TAXATION

CORPORATE GOVERNANCE

BACKPAGE



From the President



CA. Manoj Fadnis, President, ICAI

Dear Friends,

Change is inevitable and is the only thing that is constant. But it is the sheer pace of change that makes it a big challenge in the present hi-tech era of liberalisation, privatisation and globalisation, which has put sharper focus on the role of accounting profession. We professionals need to take this challenge head on, to take our age-old tradition of excellence into a prosperous future. Remember: *Continuity gives us roots; change gives us branches, letting us stretch and grow and reach new heights*. Obstacles may come in our way, but as the saying goes: *Obstacles are those frightful things you see when you take your eyes off your goal.*

Primary qualification of a Chartered Accountant must be commitment to a lifetime of learning and to change with times. In a time of drastic change, it is the learners who inherit the future. In today's integrated world, information is the gateway to success. Let us be *information and decision specialists* and help our clients comply with rules and take enlightened decisions. Let us be a bridge between fiscal administration and business community.

Let me recall the saying: *Success is a journey, not a destination*. So let's continue with our journey with professional panache. The best way to predict the future is to invent it. You can never plan the future by the past. As the saying goes: *The future is not a result of choices among alternative paths offered by the present, but a place that is created--created first in the mind and will, created next in activity. The future is not some place we are going to, but one we are creating.*

Amid all this, we should also inculcate the habit of introspection that helps in straightening out our experiences and emotions—what we perceived, learnt and expressed in the past. Each of us should introspect in order to benefit from our own experiences. We grow as we introspect. And the answers to questions that we ask ourselves change and evolve us. Eventually, this helps in knowing and actualising the self.

We Welcome Passage of GST Bill in Lok Sabha

I am happy to say that India is now closer to the biggest tax reforms since independence as the Constitution (122nd Amendment) Bill relating to the Goods and Service Tax (GST) has been passed by the Lok Sabha. GST will replace a patchwork of levies by the Central and State Governments with a single nationwide tax on goods and services. As rightly pointed out by our Finance Minister, the GST could indeed add up to 2 percentage points to the growth of our country, Asia's third largest economy. GST will integrate the State economies and boost overall growth. It will create a single, unified Indian market to make the economy stronger besides boosting tax collections. It is estimated that India will gain $15 billion a year by implementing the GST as it would promote exports, raise employment and boost growth. The GST would subsume Central Excise Duty, Service Tax, Central Sales Tax, State Value Added Tax (VAT), Entry Tax, Octroi and other State levies, and pave the way for formation of a national market.

Indian accountancy profession is convinced about the immense benefits of GST and is committed to its smooth roll-out and implementation. The implementation of GST will immensely expand our professional horizons and bring tremendous opportunities to the profession. On our part, we have offered the CBEC, our unconditional support in paving the way for its implementation. We have proposed to organise awareness and training programmes for the Excise and Service Tax officials across the country. The background material on GST brought out by the Indirect Tax Committee is being highly appreciated by all.

National Financial Reporting Authority (NFRA)

As Members are aware, the Council has been continuously persuading that the present provisions of National Financial Reporting Authority need reconsideration. The representations were made before the Hon'ble Chairman and Members of the Standing Committee on Finance. It is heartening to note that the Parliamentary Standing Committee on Finance (2014-15) stated in its 13th report that it would like the NFRA to function as an oversight body without any jurisdictional conflict or overlap. It has desired that this aspect may be addressed, when the rules governing NFRA are finalised by the Ministry.

Let us Extend Relief to Nepal Quake Victims

As you are aware, the massive earthquake which rocked Nepal on 25th April 2015 has left more than 8,000 persons dead and several thousands homeless besides destroying property worth billions. Nepal is a member of SAARC and is part of South Asian Federation of Accountants of which India is a founder member. ICAI had in the past helped Nepal in forming a parallel professional institute, *i.e.* Institute of Chartered Accountants of Nepal (ICAN). A large number of Chartered Accountants settled in Nepal are in fact members of the ICAI. Over 4,000 students are pursuing the Indian CA course from Nepal. Our government has launched a massive relief and rescue operation. Being closely associated with Nepal and its professionals, we must contribute our mite for our beleaguered brothers and sisters in Nepal. As such, the ICAI has decided to stand with the affected members and students of Nepal, and actively participate in the national effort to support them in these difficult times. The ICAI has opened a bank account exclusively for the purpose of collecting donations from its members, students, *etc.*, so that the same can be effectively transferred to the ICAN. I appeal to all members and students to donate generously. Detailed announcement including information on bank account, *etc.*, has been hosted on our website.

Convocations 2015-16: Celebrating Covetous Status as CA

Nelson Mandela has rightly said: *Education is the most powerful weapon which you can use to change the world.* Our comprehensive CA education has the same potential, and when a student completes this education, the occasion deserves celebration. Our convocations serve this purpose of celebration. Additionally, these go a long way in promoting bonhomie among the new members as well as bring them closer to their *alma mater, i.e.* ICAI, and their professional fraternity. With this spirit, the first round of convocations 2015-16 were conducted in Ahmedabad and Mumbai this month. More of such events are scheduled in Chennai, Jaipur, Hyderabad, Kolkata, New Delhi and Kanpur in June and July. I am happy to inform that a large number of new members are taking part in these ceremonies, which mark a beginning of their responsible and professional life. I wish all newly-qualified Chartered Accountants a successful professional life ahead.

Four Accounting Standards for Local Bodies issued

The Council of the Institute at its 342nd meeting has approved and issued four Accounting Standards for Local Bodies (ASLBs), viz., ASLB on *Financial Reporting under Cash Basis of Accounting, ASLB 3, Accounting Policies, Changes in Accounting Estimates and Errors, ASLB 19,*

From the President

Provision, Contingent Liabilities and Contingent Assets and ASLB 31, *Intangible Assets*. To ensure public accountability and transparency, it is imperative for investors to know the financial position and operating activities of local bodies. Formulation of the Accounting Standards will facilitate implementation of the accrual based accounting by Local bodies, which is the Government's key agenda.

The ICAI has been extending guidance to the local bodies in preparing and presenting their financial statements under cash-based accounting as well as their smooth transition to accrual-based accounting. So far, since 2005, the ICAI has issued 11 (eleven) ASLBs. These ASLBs provide accounting guidance under accrual-based accounting and help local bodies in harmonising their financial reporting practices.

Accrual Accounting—Our Role

I see accrual-based accounting as an important initiative to reform the system of accounts and financial reporting in the Government. A transition from cash-based to accrual-based accounting would make the financial reporting more transparent and meaningful leading to financial statements of Government bodies reflecting the full economic impact of the decisions taken. Through this reform, our Central and State governments can demonstrate their commitment to achieving greater transparency and accountability, and producing better information for decision-making–which in turn should lead to a better use of public resources.

We at the ICAI not only support this move but have been deeply involved in taking this reform agenda forward in various Government entities and departments. We are working as an enabling arm of the Government Accounting Standards Advisory Board (GASAB) of the Comptroller and Auditor General (CAG) of India, which is spearheading the transition from the cash-based to accrual-based accounting system in India. Besides regularly taking part in the meetings of GASAB, we have conducted pilot studies in this regard in the Department of Post and certain units of Central Public Works Department. In the recent past, we have also held discussions with the Ministry of Railways and the Ministry of Defence in this regard.

Report of Electoral Reforms Group

Elections to the Regional and Central Council of the Institute are around the corner. In this regard, the Council of the Institute at its 342nd meeting has accepted the following recommendations:

- Setting up of polling booth in chapters abroad having more than 500 voters, subject to feasibility and permission to be obtained from MEA, MHA and MCA.
- Ballot papers will include membership no. of candidate along with photograph.
- Polling Officers will be given clear instructions as to which documents to be verified for identification of voter.
- Office to try to make arrangement for display through website of votes cast every two hours.
- Office to host draft list of voters and seek voters to point out errors if any.
- Office to explore possibility of getting confirmation from postal voters that they have posted their vote.

New Certificate Course on *Anti Money Laundering Laws*

The Council of the Institute at its 342nd meeting approved a new Certificate Course, *i.e.* Certificate Course on Anti Money Laundering Laws (Anti Money Laundering Specialist) for the membership fraternity.

100 Poor but Meritorious Students to Get Scholarship

Students are the lifeline of our profession. As such their interests are high on priority. We at the ICAI have launched a series of measures and initiatives in their interest. One such initiative is scholarships from S. Vaidyanath Aiyar Memorial Fund of ICAI. I am happy to inform you that the managing committee of S. Vaidyanath Aiyar Memorial Fund has decided to award scholarships to 100 poor and needy but meritorious students, who are undergoing articled training in accordance with the Chartered Accountants

Regulations, 1988. Detailed announcement has been hosted on our website.

Stage Set for Mega International Conference in Indore

I am happy to inform that the stage is set to bring together leading global personalities from accounting profession on to the ICAI stage in a three-day mega International Conference. The Conference will be held in the historic city of Indore on 7th-9th August 2015. Titled *Accountancy Profession: Spearheading Excellence*, this high-profile event, spread over in 11 technical sessions and panel discussions, will witness a mammoth gathering of more than 2,500 national and international delegates. Details of the conference have been published in this Journal. Since such events add tremendously to our global professional outlook, I will request all of you to take out time and actively participate in this Conference. It will offer 14 hours of CPE credit. I invite all of you to enjoy the famous hospitality of the historic Indore, which traces its roots to its 16th century founding as a trading hub. Housing India's third oldest stock exchange, it is the commercial capital and the largest city of Madhya Pradesh, which is area-wise second largest state of India. Often referred to as *Mini Mumbai*, Indore is replete with historical splendour.

CA Day Celebrations

CA Day, July 1, is approaching. With this, we are reminded of our professional responsibility with which the foundation of accountancy profession in India had been led by our great responsible forefathers. We take pride to accept that we have been responding quite responsibly to the call of our nation on all instances, whether it is a case of responding to a natural calamity or to the Government's appeal for professional help. 1st July is celebrated as *Chartered Accountants Day* across the nation by the Institute. Let us celebrate this Day this year too with enthusiasm. We shall undertake some activities at pan-India level so that through our united efforts, our nation witnesses the impact and our profession gets the due visibility. With the coordination of our Regional Councils, Branches and other programme organising units, we will celebrate this auspicious CA Day in a structured manner. Let us join hands and show our solidarity. I sincerely request you to send your suggestions on how we can celebrate in a more socially- and professionally-relevant way.

Upholding the dignity of the profession

It is a solemn duty to ensure that we uphold the dignity of the profession by way of rendering high quality professional services. At times, a few of our members may be unknowingly circulating emails which are against the dignity of the profession. Such emails tarnish the image and bring disrepute to the profession. The Council has decided to take action against such members who send malicious emails undermining the dignity of the profession.

Before I conclude, let me remind you that the future belongs to those who live intensely in the present. So we need to intensify our core competence, add more and more value to our services and become total business solution providers. Let's try to tap even the most distant of the emerging opportunities, many of which may come in the garb of challenges.

Pre-conditions of success are definitive vision, daring leadership and decisive action. Strategies that emerge most successful in the long run are those which are based on today's commitments and best aligned with tomorrow's requirements. As such, it is absolutely important that we focus on the big picture and accordingly define our professional objectives. Let's enhance our ability to remain unperturbed by distractions, adapt quickly and move forward with speed to retain our competitive advantage in all times to come.

Best Wishes

CA. Manoj Fadnis
President, ICAI
New Delhi, May 22, 2015

Photographs

Meeting with RBI Governor

ICAI President CA. Manoj Fadnis and Central Council member CA. Anuj Goyal present bouquet and welcome RBI Governor Shri Raghuram Rajan while ICAI Vice-President CA. M. Devaraja Reddy and Central Council member CA. Pankaj I. C. Jain share the moments (28th April 2015)

ICAI at Global Exhibition of Services in New Delhi

ICAI President CA. Manoj Fadnis cuts the ribbons to launch the ICAI stall, in the presence of Vice-President CA. M. Devaraja Reddy, Central Council members CA. Vijay Kumar Gupta, CA. Naveen N. D. Gupta, CA. Dhinal Ashvinbhai Shah, CA. Sumantra Guha and CA. Prafulla Premsukh Chhajed, ICAI Acting Secretary Shri V. Sagar, NIRC Chairman CA. Raj Chawla and past-Chairman CA. Radhey Shyam Bansal, among others (24th April 2015)

ICAI President CA. Manoj Fadnis presents a memento and welcomes Ministry of Commerce & Industry Addl. Secretary Shri J. S. Deepak, while Vice-President CA. M. Devaraja Reddy, past-President CA. Ved Jain, Central Council member CA. Naveen N. D. Gupta, among others, share the dais (24th April 2015)

ICAI President CA. Manoj Fadnis, Vice-President CA. M. Devaraja Reddy and Central Council member CA. Naveen N.D. Gupta at the venue (Hall No. 18 of Pragati Maidan) (24th April 2015)

ICAI President CA. Manoj Fadnis and Vice-President CA. M. Devaraja Reddy along with Central Council members CA. Sumantra Guha, CA. Vijay Kumar Gupta, CA. Naveen N. D. Gupta and CA. Prafulla Premsukh Chhajed, ICAI Acting Secretary Shri V. Sagar and NIRC past-Chairman CA. Radhey Shyam Bansal, among others, on the occasion (24th April 2015)

Photographs

CIRC Chairmen Meet & Orientation Programme in Agra

ICAI President CA. Manoj Fadnis addresses the Chairmen, while Vice-President CA. M. Devaraja Reddy along with Central Council members CA. Nilesh Shivji Vikamsey, CA. Anuj Goyal, CA. Shyamlal Agarwal and CA. Mukesh Singh Kushwah, CIRC Chairman CA. Umesh Kumar Garg and Branch Chairman CA. Pramod Singh Chauhan, among others, share the dais (24th-25th April 2015)

ICAI President CA. Manoj Fadnis, Vice-President CA. M. Devaraja Reddy, Central Council members CA. Nilesh Shivji Vikamsey, CA. Anuj Goyal, CA. Shyamlal Agarwal and CA. Mukesh Singh Kushwah, CIRC Chairman CA. Umesh Kumar Garg and Branch Chairman CA. Pramod Singh Chauhan, among others, rise to the ICAI Motto song (24th-25th April 2015)

Orientation Programme for Chairmen and Secretaries of SIRC Branches

ICAI President CA. Manoj Fadnis and Vice-President CA. M. Devaraja Reddy, along with Central Council members CA. V. Murali, CA. G. Sekar and CA. Babu Abraham Kallivayalil, SIRC Chairman CA. P. Ramalingam Aruloli and past-Chairman CA. P. V. Rajarajeswaran, among other SIRC members, after lighting the lamp (26th April 2015)

ICAI President CA. Manoj Fadnis and Vice-President CA. M. Devaraja Reddy share the dais with Central Council members CA. V. Murali and CA. Babu Abraham Kallivayalil, and SIRC Chairman CA. P. Ramalingam Aruloli, among other senior members (26th April 2015)

ICAI President CA. Manoj Fadnis and Vice-President CA. M. Devaraja Reddy get together with Central Council members CA. Babu Abraham Kallivayalil, CA. G. Sekar and CA. V. Murali, and SIRC Chairman CA. P. Ramalingam Aruloli, among other Managing Committee and other members of the Region (26th April 2015)

Photographs

EIRC Chairmen and Managing Committee Members Meet in Kolkata

ICAI President CA. Manoj Fadnis lights the lamp to inaugurate the Meet, while ICAI Vice-President CA. M. Devaraja Reddy, Central Council members CA. Sumantra Guha, CA. Abhijit Bandyopadhyay, and CA. V. Murali, EIRC Chairman CA. Pramod Dayal Rungta and past-Chairmen CA. Subhash Chandra Saraf and CA. Ranjeet Kumar Agarwal, among other EIRC Managing Committee members, share the moments (20th March 2015)

Members Meet at Ahmedabad Branch of WIRC

ICAI President CA. Manoj Fadnis and Vice-President CA. M. Devaraja Reddy receive a warm welcome; they walk together with ICAI past-President CA. Sunil Talati and Branch Chairman CA. Amrish Jashvantlal Patel, among others (18th April 2015)

ICAI President CA. Manoj Fadnis and Vice-President CA. M. Devaraja Reddy share the dais with Central Council member CA. Dhinal Ashvinbhai Shah, CA. S. Santhanakrishnan and CA. V. Murali, Branch Chairman CA. Amrish Jashvantlal Patel and past-Chairman CA. Aniket S. Talati, among other members (18th April 2015)

Guntur Branch of SIRC Felicitates ICAI Vice-President

ICAI Vice President CA. M. Devaraja Reddy being felicitated by Branch Chairman CA. M. Divakara Sarma and other Managing Committee and senior members of the Branch on the occasion (9th May 2015)

Members Meet at Tirupati Branch of SIRC

ICAI Vice-President CA. M. Devaraja Reddy during the meet, while Branch Chairman CA. G. V. Pradeep Kumar and SIRC Secretary CA. E. Phalguna Kumar, among other members, accompany on the occasion (22nd April 2015)

Photographs

Interactive Meet at Hyderabad Branch of SIRC

ICAI President CA. Manoj Fadnis and Vice-President CA. M. Devaraja Reddy along with Central Council members CA. Babu Abraham Kallivayalil, CA. Shiwaji Bhikaji Zaware, CA. J. Venkateswarlu, CA. Shyamlal Agarwal, CA. Charanjot Singh Nanda, CA. Vijay Garg, CA. Sumantra Guha and CA. Atul Kumar Gupta, and Branch Chairman CA. V. Raghunandan, among others (11th-12th April 2015)

ICAI President CA. Manoj Fadnis supports the ICAI green initiative and plants a tree, while Vice-President CA. M. Devaraja Reddy, Central Council members CA. Atul Kumar Gupta, CA. Prafulla Premsukh Chhajed, CA. Sanjeev Krishnagopal Maheshwari and CA. Nilesh Shivji Vikamsey, among others, share the moments (11th-12th April 2015)

Members Meet at Vijayawada Branch of SIRC

ICAI Vice-President CA. M. Devaraja Reddy at the Branch premises along with Branch Chairman CA. Srinivas Agnihotram and Managing Committee and other members of the Branch on the occasion (10th May 2015)

1st Regional Residential Seminar at Vellore Branch of SIRC

ICAI Vice-President CA. M. Devaraja Reddy along with past Central Council member CA. P. Rajendra Kumar, SIRC Chairman P. R. Aruloli and Branch Chairman CA. B. S. Surya Narayanan, among other members on the occassion (2nd May 2015)

Know Your Ethics

Ethical Issues in Question-Answer Form

Q. What is Engagement Period?

A. The period of the engagement starts when the assurance team begins to perform assurance services and ends when the assurance report is issued, except when the assurance engagement is of a recurring nature.

Q. Whether a Professional Accountant in Public Practice may pay or receive a referral fees or commission?

A. A professional accountant in public practice may receive a referral fee or commission relating to a client and may pay a referral fee to obtain a client. A professional accountant in public practice should not pay or receive a referral fee or commission, unless the professional accountant in public practice has established safeguards to eliminate the threats or reduce them to an acceptable level.

Q. What is Financial Statement Audit Client?

A. Financial Statement Audit client means an entity in respect of which a firm conducts a financial statement audit engagement. When the client is a listed entity, financial statement audit client will include its related entities, wherever applicable.

Q. Whether a loan, or a guarantee of a loan to the professional accountant/any partner of the firm/firm from an assurance client, or deposits made by, or brokerage accounts of a firm or a member of the assurance team with an assurance client, creates any threats to Independence?

A. A loan, or a guarantee of a loan to the professional accountant/any partner of the firm/firm from an assurance client or deposits made by, or brokerage accounts of a firm or a member of the assurance team with an assurance client creates threats to Independence unless;

(a) It is made within the terms of statutory provisions and guidelines/guidance notes issued by the Council of the Institute from time to time;

(b) When assurance client that is a bank or a similar institution, provided the loan, or guarantee/ deposit or brokerage account is made under normal procedures, terms and requirements. Examples of such loans include home mortgages, bank overdrafts, car loans and credit card balances.

Q. What is the meaning of Direct Financial Interest?

A. Direct Financial Interest means

- Owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or
- Beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control.

Q. What is the meaning of Indirect Financial Interest?

A. Indirect Financial Interest means a financial interest beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has no control.

Q. What are the examples of Close Business Relationships giving rise to conflict of interest?

A. Examples of Close business Relationships giving rise to conflict of interest are

(a) Material financial interest in Joint venture;

(b) Arrangements to combine one or more services or products of the firm with one or more services or products of the assurance client and to market the package with reference to both parties.;

(c) Business relationships involving an interest held by the firm, a network firm or a member of the assurance team or their relative(s) in a closely held entity when the audit client or a director or officer of the audit client, or any

* Contributed by the Ethical Standards Board of the ICAI

(c) ...group thereof, also has an interest in that entity;

(d) The purchase of goods and services from an assurance client by the firm (or from a financial statement audit client by a network firm) or a member of the assurance team, etc.

Q. Whether a person who is an officer or employee of an entity shall be qualified for appointment as auditor of that entity?

A. As per Section 290.148 of Part–A of Code of Ethics 2009, no person who is an officer or employee of an entity shall be qualified for appointment as auditor of that entity.

Q. Whether a Professional Accountant in Service should undertake those tasks for which he does not have sufficient specific training or experience?

A. The fundamental principle of professional competence and due care requires that a professional accountant in service should only undertake significant tasks for which the professional accountant in service has, or can obtain, sufficient specific training or experience. A professional accountant in service should not intentionally mislead an employer as to the level of expertise or experience possessed, nor should a professional accountant in service fail to seek appropriate expert advice and assistance when required.

Q. Whether a firm can obtain an assurance engagement at a significantly lower fee level than that charged by the predecessor firm, or quoted by other firms?

A. When a firm obtains an assurance engagement at a significantly lower fee level than that charged by the predecessor firm, or quoted by other firms, the threat created will not be reduced to an acceptable level unless:

(a) The firm is able to demonstrate that appropriate time and qualified staff are assigned to the task; and

(b) All applicable assurance standards, guidelines and quality control procedures are being complied with.

Q. Can a Chartered Accountant provide `Portfolio Management Services' (PMS) as part of CA practice?

A. No, the Explanation to Clause (xix) of the definition of 'Management Consultancy and other Services' expressly bars the activities of broking, underwriting and Portfolio Management.

Q. Whether a practicing Chartered Accountant can agree to select and recruit personnel, conduct training programmes and workstudies for and on behalf of a client?

A. Yes. The expression "Management Consultancy and other Services" defined by the Council includes both personnel recruitment and selection and conducting training programmes and work-studies. Therefore, a Chartered Accountant in practice shall not commit any professional misconduct by rendering such services for and on behalf of the client.

Q. When does the situation for Potential Conflict arises?

A. When the responsibilities to an employing organisation and the professional obligations to comply with the fundamental principles are in conflict, the situation of potential conflict arises for the Professional Accountant in service.

Q. Can a member in practice render Management Consultancy and other services?

A. Yes, however, the areas covered under the Management Consultancy and other services have been summarised by the Council, appearing in the Code of Ethics, 2009 Edition.

Q. Whether a Chartered Accountant in practice is required to obtain any trade license for practicing?

A. No, a Chartered Accountant in practice is not required to obtain any trade licence for practicing as a professional. The certificate of practice issued by the Institute is the only requirement to practice as a Chartered Accountant.

Q. Whether a member in practice is permitted to undertake the management of NRI funds?

A. No, the member is not permitted to undertake such assignment because the same is not covered under "Management Consultancy and Other Services" permitted to be rendered by the practicing members of the Institute. ■

Accounting Treatment of Interest on Deposits made out of Equity Share Capital and Interest Free Subordinate Debt Funded by Government

The following is the opinion given by the Expert Advisory Committee of the Institute in response to a query sent by a member. This is being published for the information of readers.

A. Facts of the Case

1. A company (hereinafter referred to as the 'company'), which is a joint venture between the Government of India (GOI) and the Government of Tamil Nadu (GOTN) has been incorporated for the implementation of chennai metro rail project (hereinafter referred to as the 'project'). The project will be implemented as a central sector project through the executing agency, viz., the company, which will work as a special purpose vehicle (SPV) for the implementation of project with the GOI and GOTN being the joint promoters with equal equity holding.
2. The estimated cost of the project is ₹ 14,600 crore and the same will be funded in the following manner:

(Rupees in crore)

Details	**Means of finance for the project**		
	Government of India	**Government of Tamil Nadu**	**Total**
Equity share capital	2,190	2,190	4,380
Subordinate debt (Interest free)	730	844	1,574
Senior term debt (Loan from Japan International Cooperation Agency (JICA))	8,646	-	8,646
Total	**11,566**	**3,034**	**14,600**

The funds are provided by the joint venturers for the purpose of construction based on the Government's budgetary provision. The Central Government, State Government and the company had entered into memorandum of understanding (MOU) for the purpose of execution of the project (a copy of which has been supplied by the querist for the perusal of the Committee).

3. The company is in the construction stage (*i.e.*, pre-commencement period). The company has appointed various contractors for the execution of the project. The Government releases amount towards equity and interest free subordinate debt by way of budgetary allocation. As per the MOU, any increase in the cost by way of price rise, rise in foreign exchange (forex) rate will be borne by the Central and State Government equally as equity.
4. The querist has stated that the company borrows money from Japan International Cooperation Agency (JICA). Loan agreement is executed between JICA and the Central Government (on behalf of the company). As per the loan agreement with JICA, the money can be borrowed by any one of the following ways:
   1. Commitment method
   2. Reimbursement method

   The company opted for the reimbursement method wherein the company initially makes payment to the contractor based on the running bills given by them and will then apply to JICA based on the payments made to contractors, the equity capital and subordinate debt being the source to fund the initial payments. JICA releases the money in JPY to the credit of Central Government on its receipt of application from the company. The Central Government releases the funds out of the JICA loan to the company as pass-through as per budgetary allocation. Interest and commitments payable on this loan are recognised in the books based on the funds released by JICA to the Central Government and the same is reconciled every year with AAAD (Aid, Accounts and Audit Division) statement maintained by the Central Government. The interest paid on the borrowing is taken as preoperative expenditure and added to the capital work in progress (CWIP).

5. *Funds deployed by the company over the years:*
The equity and subordinate debts received from the Governments including the pass-through assistance of loan received from JICA, which are pending to be utilised for the project, are temporarily parked in short term deposits with the banks. The fund flow in the business for the last four years is tabulated below:

(Rupees in crore)

Particulars	2014	2013	2012	2011	2010	2009	2008
Equity including share application money –(a)	4141	3659	1919	999	262	50	50
Reserves and Surplus-(b)	244	164	76	5	3	0	0
Subordinate debt -(c)	1131	1082	968	886	841	500	500
Total-(a+b+c)=(d)	**5516**	**4905**	**2963**	**1890**	**1106**	**550**	**550**
Pass through received from GOI for JICA loan-(e)	4325	2582	1860	570	100	0	0
Excess of equity over debt-(d-e)	1191	2323	1103	1320	1006	550	550
Deposits at banks-(f)	1567	1300	1154	355	4	4	1
Interest earned from deposits during the year	124	131	104	5	1	0	0
Excess of equity over debt over deposits-(d-e-f)	**(376)**	**1023**	**(51)**	**965**	**1002**	**546**	**549**

6. *Sources of Income:*
The company earns income from various sources. Treatment of income and expenditure in the books are given below:

S. No	Source of Income	Accounting treatment in the books
1	Interest earned on bank deposits The company places deposits in banks out of the funds received in the form of equity capital, subordinate debt and reimbursements received on account of JICA loan pending utilisation.	The company did not prepare profit and loss account till F.Y. 2010-11. Interest earned on deposits till that year was adjusted against CWIP. From F.Y. 2011-12, the income earned is credited to the profit and loss account as the income earned on these deposits is not directly attributable to the project.
2	Sale of tender document The company charges fee on tender documents relating to project from the pre bid contractors	The income earned on sale of tender documents is directly attributable to the project. The income earned is shown as deduction from CWIP. There has been consistency in accounting treatment of income earned from the beginning.
3	Interest earned on advances provided to contractors The company provides advances to the contractors in the form of mobilisation advance, plant and machinery advance and special advance for the purpose of facilitation of work. The company charges interest on these advances from the contractors.	The income earned on these advances is shown as deduction from CWIP. There has been consistency in treatment of interest earned from the beginning.

7. *Query raised during Comptroller and Auditor General of India (CAG) audit:*
During the audit of F.Y. 2013-14, the CAG has raised a query that interest earned on these deposits is earned from the funds received as equity and also as per Accounting Standard (AS) 10, 'Accounting for Fixed Assets', income earned during the construction period should be deducted from the capital works and also stated that income should have been shown as deduction from expenditure to be capitalised. However, this has not been consistent with the

treatment in the past and the CAG had not raised any query on treatment of interest income.

B. Query

8. In light of the query raised by CAG, the querist has sought the opinion of the Expert Advisory Committee as to whether the accounting treatment followed by the company in respect of the interest income earned on short-term deposits is in compliance with Accounting Standards.

C. Points considered by the Committee

9. The Committee notes that the basic issue raised in the query relates to accounting treatment of interest income earned on short term deposits out of the surplus funds received in the form of equity and debt for the implementation of Chennai metro rail project. The Committee has, therefore, considered only this issue and has not examined any other issue that may arise from the Facts of the Case, such as, treatment of equity and debt contribution by the Government of India and Government of Tamil Nadu, treatment of interest on JICA loan, propriety of not preparing statement of profit and loss till F.Y. 2010-11, disclosure of deposits by the company in its financial statements, treatment of fees on sale of tender document, treatment of interest earned on advances provided to contractors, accounting for prior period item, if any, to be reported in the current reporting period, etc. Further, the Committee notes from the Facts of the Case that with respect to loan from JICA, the company has opted for the reimbursement method wherein the company initially makes payment to the contractor based on the running bills given by them and then apply to the JICA for release of funds. Thus, a question may arise as to whether there would be any surplus funds out of loan from JICA. However, since the Committee is addressing the issue from the perspective of accounting principles and not from the perspective of determination of various amounts, this would not impact the opinion being expressed hereinafter.

10. The Committee notes that the company places deposits in banks out of the funds received in the form of equity capital, interest free subordinate debt and JICA loan pending utilisation. Thus, the source of investment consists of three categories, viz., equity capital, interest free subordinate loan and JICA loan. Therefore, the Committee has examined the treatment of interest income from these three sources separately.

11. With regard to treatment of interest earned on short term deposits made out of equity capital, the Committee notes the following requirements of Accounting Standard (AS) 10, 'Accounting for Fixed Assets', notified under the Companies (Accounting Standards) Rules, 2006 (hereinafter referred to as the 'Rules'):

> "9.1 The cost of an item of fixed asset comprises its purchase price, including... and any directly attributable cost of bringing the asset to its working condition for its intended use ..."
>
> "10.1 In arriving at the gross book value of self-constructed fixed assets, the same principles apply as those described in paragraphs 9.1 to 9.4. Included in the gross book value are costs of construction that relate directly to the specific asset and costs that are attributable to the construction activity in general and can be allocated to the specific asset. Any internal profits are eliminated in arriving at such costs."

From the above, the Committee notes that only those items of costs which are directly attributable to bringing the asset to its working condition can be included in the cost of an asset. The Committee is of the view that the same principle can also be extended in respect of an item of income arising during the acquisition/construction of an asset/project. Thus, only those items of income arising from the activities would go on to reduce the asset/project cost, that are directly attributable to the acquisition/construction of an asset/project for bringing it to its working condition for its intended use. In the extant case, the Committee is of the view that interest earned on short term deposits made out of equity portion is an income arising out of the company's ancillary activities which are not necessary to bring the project/asset to its working condition for its intended use and therefore, these cannot be considered as directly attributable to the rail project. Accordingly, interest income earned on the deposits made out of equity funds cannot be capitalised/included in the cost of the asset/project and therefore, should be recognised in the statement of profit and loss.

12. With regard to recognition of the interest earned on short term deposits made out of borrowed funds, viz., interest free subordinate loan and loan from the JICA, the Committee notes the definition of the term 'borrowing costs' and paragraphs 10 and 11 of Accounting Standard (AS) 16, 'Borrowing Costs', notified under the 'Rules', which state as follows:

"3.1 <u>Borrowing costs</u> are interest and other costs incurred by an enterprise in connection with the borrowing of funds."

"10. To the extent that funds are borrowed specifically for the purpose of obtaining a qualifying asset, the amount of borrowing costs eligible for capitalisation on that asset should be determined as the actual borrowing costs incurred on that borrowing during the period less any income on the temporary investment of those borrowings.

11. The financing arrangements for a qualifying asset may result in an enterprise obtaining borrowed funds and incurring associated borrowing costs before some or all of the funds are used for expenditure on the qualifying asset. In such circumstances, the funds are often temporarily invested pending their expenditure on the qualifying asset. In determining the amount of borrowing costs eligible for capitalisation during a period, any income earned on the temporary investment of those borrowings is deducted from the borrowing costs incurred."

The Committee notes from paragraphs 10 and 11 of AS 16 above that borrowing cost to be capitalised is to be adjusted with the income earned from temporary investment of borrowed funds while the project is in the stage of construction. Thus, the income earned during the construction period can be set-off only against the borrowing costs to be capitalised as per the principles of AS 16. Accordingly, in respect of a loan where no such borrowing costs as per AS 16 would arise, as in the case of interest free subordinate loan in the extant case, the interest income out of investment of such borrowed funds cannot be adjusted against the borrowing costs to be capitalised in the cost of the asset and the same shall have to be recognised in the statement of profit and loss.

13. With regard to income earned from the temporary investment of funds out of JICA loan during the period of construction, the Committee is of view that considering the principle discussed in paragraph 11 above, the said income should be adjusted against the borrowing costs to be capitalised as per the principles of AS 16 in the cost of the asset/project concerned.

D. Opinion

14. On the basis of the above, the Committee is of the opinion that the accounting treatment followed by the company in respect of interest income is not appropriate, as discussed in paragraphs 11, 12 and 13 above. Interest income from investment of surplus equity funds and interest free subordinate debt should be recognised in the statement of profit and loss and interest earned from investment of loan from JICA during construction period should be adjusted against the borrowing cost to be capitalised in the cost of asset/project concerned as per the principles of AS 16.

1	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2	The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on January 16, 2015. The Opinion must, therefore, be read in the light of any amendments and/or other developments subsequent to the issuance of Opinion by the Committee.
3	The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in thirty two volumes. A CD of Compendium of Opinions containing thirty two volumes has also been released by the Committee. These are available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.
4	Recent opinions of the Committee are available on the website of the Institute under the head 'Resources'.
5	Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources'. For further information, write to eac@icai.in.

9th ICAI Awards 2015

For Chartered Accountants in Industry

Invitation for Nomination

Dear Professional Colleagues,

I am elated to inform that the Committee for Members in Industry (CMII) of ICAI is organizing the 9th ICAI Awards 2015 at New Delhi.

To recognize the distinguished efforts and exemplary achievements of the members in Industry, the CMII of ICAI organizes the ICAI Awards. These Awards aim to honor the members who have reached exceptional levels of professional achievements. Many members of the institute holding top management positions viz Chairmen, Directors, CFOs and CEOs have been the recipients of these prestigious awards.

The awardees will be finalized by a jury consisting of eminent business leaders under the Chairmanship of a dynamic personality. The awards will be bestowed to the awardees in a gala award function.

Award Categories: ICAI Awards are presented in various sub-categories under three main categories:

- **CA Business Leader**
- **CA CFO**
- **CA Professional Achiever**

The ICAI Award 2015 is meant for members of ICAI who are in Industry. I request them to nominate themselves or other member in industry, whom they deem fit for grant of these awards in any of the Award Categories.

I also request all the members who are in practice, to bring this into the knowledge of members who are in Industry and known to your good self, to nominate themselves or other eligible members for the award in any of the Award categories.

Wishing you a grand success in all your endeavors.

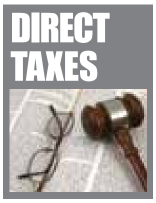
With Kind Regards,

Chairman
Committee for Members in Industry
The Institute of Chartered Accountants of India
Email: cjsnanda1@gmail.com; csnanda@gmail.com
Mob: 9212700353

The Nomination Form and detailed announcement will be updated on www.corporateforum.icai.org shortly

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, FEMA, SEBI during the last month for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/ notification. You are requested to please submit your feedback and suggestions on the column at **eboard@icai.in**



(Matter on Direct Taxes has been contributed by the Direct Taxes Committee of the ICAI)

I. CIRCULARS

1. Exemption from Tax deduction at source from payments made to Corporations whose income is exempt under Section 10(26BBB) of the Income-tax act, 1961 - Circular No. 7/2015, dated 23-04-2015

The CBDT had earlier issued Circular No. 4/2002 dated 16.07.2002 which laid down that there would be no requirement for tax deduction at source in respect of payments made to such entities, whose income is unconditionally exempt under Section 10 of the Income-tax Act, 1961 and who are statutorily not required to file return of income as per the Section 139 of the Act.

Section 10(26BBB) was inserted in the Income-tax Act *vide* Finance Act, 2003 w.e.f. 01.04.2004 which provides that any income of a corporation established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen being the citizen of India does not form part of the total income. The corporations covered under Section 10(26BBB) are also statutorily not required to file return of income as per the Section 139 of the Act.

The corporations covered under Section 10(26BBB) satisfy the two conditions of Circular No. 4/2002 *i.e.* such corporations are also statutorily not required to file return of income as per the Section 139 of the Act and their income is unconditionally exempted under Section 10 of the Income-tax Act, 1961. Accordingly, the Board has examined the matter and extended the benefit of the said circular to such corporations whose income is exempt under Section 10 (26BBB) of the Act also. Hence, there would be no requirement for tax deduction at source from the payments made to such corporations since their income is anyway exempt under the Act.

2. Procedure for response to Arrear demand by taxpayer and verification and correction of Demand by Assessing Officers- Circular No. 8/2015, dated 14-05-2015

The CBDT *vide* instruction No. 4 of 2014 dated 7.4.2014, *inter-alia*, prescribed Standard Operating Procedure for Verification and correction of demand available or uploaded by Assessing officers in CPC Demand portal. Further a facility has been made available to taxpayers on the E-filing website (www.incometaxindiaefiling.gov.in) to provide online responses to such demands. The actions include the action to be performed by the taxpayer as well as the action on the part of the department. It also prescribes the manner in which the different scenarios during verification and confirmation of demand should be handled by the Assessing officer.

The complete text of the above Circulars can be downloaded from the link below: http://www.incometaxindia.gov.in/Pages/communications/circulars.aspx

II. PRESS RELEASES

1. Fixation of Interest Rates for General Provident Fund (GPF) and other similar funds including Special Deposit Scheme, 1975 (SDS, 1975) for Non-Government Provident, Superannuation and Gratuity Funds for Financial Year 2015-16- Press Release, Dated 21-4-2015

It was decided by the Government to link the interest rates of State PFs (General Provident Fund and other similar funds) including Special Deposit Scheme, 1975 (SDS, 1975) for Non-Government Provident, Superannuation and Gratuity Funds for the FY 2015-16 to Public Provident Fund (PPF) rates. In pursuance of that decision, the Government has decided to fix the rate of 8.7% per annum applicable to the following:—

- The General Provident Fund (Central Services).
- The Contributory Provident Fund (India).
- The All India Service Provident Fund.
- The State Railway Provident Fund.

- The General Provident Fund (Defence Services).
- The Indian Ordnance Provident Fund.
- The Indian Ordnance Factories Workmen's Provident Fund.
- The Indian Naval Dockyard Workmen's Provident Fund.
- The Defence Services Officers Provident Fund.
- The Armed Forces Personnel Provident Fund.

The rate of interest is applicable to the above funds w.e.f. 1st April, 2015 and until further orders.

Recently, the Government had kept the interest rates for PPF and other Small Savings Schemes intact. However, interest rates for 5 year Senior citizen Saving Scheme and Sukanya Samriddhi Account Scheme have been increased from 9.2% to 9.3% and 9.1% to 9.2% respectively, keeping in view the commitment of the Government towards the welfare of the girl child and the senior citizens.

2. Fast track of all applications made by Voluntary Organisations/Trusts seeking approval u/s 11(1)(C) of the Income Tax Act, 1961- dated 28.4.2015

The CBDT has decided to fast track all applications made by Voluntary Organisations/ Trusts seeking approval u/s 11(1)(c) of the Income Tax Act, 1961 for rendering help to the victims of earthquake in Nepal. Approval under this section is required by the charitable institutions for application of their income outside India to promote international welfare. It will be the endeavor of the Department to process these applications within two working days of receiving the completed applications. The details of documents required to be submitted alongwith such applications have been uploaded on the website of Income Tax Department- http://www.incometaxindia.gov.in.

3. Constitution of a High Level Committee (HLC) to interact with Trade & Industry on Tax Laws – Press Release dated 1.5.2015

A High Level Committee was constituted vide OM dated 26th November, 2014 of the Department of Revenue, Ministry of Finance with the approval of the Finance Minister to interact with trade and industry on tax laws, headed by former Chief Economic Advisor (CEA), Ministry of Finance, Dr. Ashok Lahiri.

The Committee has invited various entities/ associations/federations/any other stakeholders representing the trade and industry to present their views/suggestions in order to ascertain areas where clarity in tax laws is required.

4. LPG subsidy and other welfare subsidies received by Individuals not to be affected by inclusion of subsidies in the definition of income– press release, dated 05-05-2015

The Central Government has *vide* Notification no. 32/2015 and in exercise of the powers conferred under Section 145(2), notified income computation and disclosure standards (ICDSs) to be followed by all assessees, following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profit and gains of business or profession" or " Income from other sources". This notification shall come into force with effect from 1st April, 2015, and shall accordingly apply to the A.Y. 2016-17 and subsequent assessment years.

The CBDT has, through this Press release, clarified that these ICDSs are not applicable to individuals

i. not having any income chargeable under the head "Profits and gains of business or profession"
ii. and receiving LPG subsidy or any other subsidy which is for the welfare of the individual.

5. Section 90 of the Income-tax Act, 1961 - Double Taxation Agreement - revised agreement between India and Republic of Korea for avoidance of double taxation and prevention of fiscal evasion of taxes on income -Press Release, Dated 6-5-2015

The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, has given its approval for revising the Double Taxation Avoidance Convention (DTAC) which was signed in 1985, between India and the Republic of Korea, for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income.

The revised Double Taxation Avoidance Agreement (DTAA) will provide tax stability to the residents of India and Korea and facilitate mutual economic cooperation as well as stimulate the flow of investment, technology and services between the two countries.

The revised DTAA provides for source based taxation of capital gains, provisions for making adjustments to profits of associated enterprises on the basis of arm's length principle, provides for residence based taxation of shipping income, provisions for service of permanent establishment, rationalises tax rates in the Articles on Dividends, Interest and Royalties and Fees for Technical Services.

The Agreement further incorporates provisions for effective exchange of information and assistance in collection of taxes between tax authorities and also incorporates limitation of benefits provisions, to ensure that the benefits of the Agreement are availed of by genuine residents of both countries.

6. Committee headed by Justice A. P. Shah, Chairman of the Law Commission to look into issues relating to MAT on FIIs pertaining to the period prior to the amendment by Finance Act, 2015-Press Release, Dated 8-5-2015

A Committee headed by Justice A. P. Shah, Chairman of the Law Commission has been constituted to look into tax issues relating to MAT on FIIs (for period prior to amendment by the Finance Act, 2015) and few other tax issues which are essentially legacy issues.

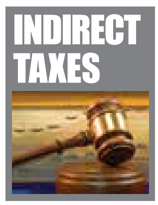
In the said press release, it was reiterated that in matters of taxation, the Government is fully committed to the principles of certainty of taxation, avoidance of retrospectivity and providing an enabling environment to business and investment, both domestic and foreign. The government also ensured that these principles would be adhered to in letter and spirit.

Further, *vide* letter No. 96370/2015 dated 11.5.2015, it has been directed that no coercive action has to be taken for recovery of demand already raised by invoking provisions of MAT in the cases for foreign companies. It has also been directed that issues of fresh notices for reopening of cases as also completion of assessment have to be put on hold unless the case is getting barred by limitation.

7. Tracking of High Value Transactions by Income Tax Department; Additional Tax of Rs. 4733.61 Crore Collected and 30,68,662 New Returns Filed due to Non-Filer Monitoring System (NMS)- Press Release dated 12.5.2015

During the year 2013, 2014 and 2015 (up to 31.3.2015), Income Tax Department has through its Non-filer Monitoring System (NMS) identified 12.9 lakh, 22.09 lakh and 44.09 lakh cases respectively, as non-filers of return, though having potential tax liabilities. As a result of the exercise, 30,68,662 new returns have been filed and additional tax of ₹4,733.61 crore has been collected in the year 2013, 2014 and up to 31.3.2015 in the year 2015. Further follow up action is underway and similar exercise is also planned to be undertaken in the current financial year.

While identifying non-filers of return through NMS, the Income Tax Department analyses and assimilates all in-house information as well as transactional data received from third-party including Annual Information Return (AIR), Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) statements, Central Information Bureau (CIB) data *etc,* to isolate such persons/ entities who have undertaken high value financial transactions but have not filed return.



(Matter on Indirect Taxes has been contributed by the Indirect Taxes Committee of the ICAI)

A. GOODS & SERVICES TAX

1. The Lok Sabha passes the 122nd Constitutional (GST) Amendment Bill, 2014

Way back in the year 2004, Dr. Kelkar Task Force recommended the need of Goods and Services Tax (GST) in India. The Government came out with a First Discussion Paper on GST in November, 2009 and introduced the 115th Constitution Amendment (GST) Bill in the year 2011 which was lapsed in the year 2014.

The 122nd Constitution Amendment (GST) Bill was introduced on 19th November 2014 and has been passed in Lok Sabha on 6th May 2015. In Rajya Sabha, the Bill was referred to a Select Committee after SH. ARUN JAITELY, Finance Minister of India, moved the motion for referring the Bill (The Constitution One Hundred and Twenty-second Amendment Bill, 2014) to the Select Committee. Now, the 21-member panel will give its report by the last day of the first week of the Monsoon session.

B. SERVICE TAX

2. Amendment in Mega Exemption Notification 25/2015

CBEC *vide Notification No. 12/2015-ST, Dated: April 30, 2015* has amended Mega Exemption *Notification No. 25/2012-ST dated 20th June 2012* to exempt the following:

a) Service tax on services of General Insurance business provided under Pradhan Mantri Suraksha Bima Yojana (PMSBY)–Entry 26 item 'p'

b) Service tax on services of Life Insurance business provided under Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY)-Entry 26A item 'e'

c) Service tax on services of Life Insurance business provided under Pradhan Mantri Jan Dhan Yojana (PMJDY)-Entry 26A item 'f'

d) Service tax on services by way of collection of contribution under Atal Pension Yojana (APY)–Entry 26B

[Notification No. 12/2015-ST, Dated: April 30, 2015]

C. CENVAT CREDIT

3. Credit of Cess can be used for payment of Excise Duty

Finance Act, 2015 has abolished Education Cess and Secondary and Higher Education Cess (collectively referred as 'cess'); in case of Excise Duty w.e.f. 1st March, 2015 and in case of Service Tax w.e.f. a date to be notified after the enactment of the Act. This amendment had raised questions regarding fate of cess, majorly, in following cases:

- Closing balance of cess as on 28th February, 2015;
- Cess in respect of inputs and capital goods received in factory in F.Y. 2014-15 but CENVAT Credit is omitted to be availed;
- Cess in respect of input services received in F.Y. 2014-15 but CENVAT Credit is omitted to be availed;
- Deferred cess of Capital Goods received in factory in F.Y. 2014-15;
- Cess in respect of Capital Goods received in factory prior to F.Y. 2014-15;
- Cess in respect of inputs and capital goods received on or after 1st March, 2015; and
- Cess in respect of input services availed on or after 1st March, 2015.

To remove difficulties CBEC *vide Notification No.12/2015-Central Excise (N.T.), dated 30.04.2015* has amended Rule 3(7)(b) of the CENVAT Credit Rules, 2004 so as to allow utilisation of credit of

Education Cess and Secondary & Higher Education Cess for payment of basic excise duty in the following situations:

a) Education Cess and Secondary & Higher Education Cess on inputs or capital goods received in the factory of manufacture of final product on or after the 1st March, 2015;

b) Balance 50% Education Cess and Secondary & Higher Education Cess on capital goods received in the factory of manufacture of final product in the financial year 2014-15; and

c) Education Cess and Secondary & Higher Education Cess on input services received by the manufacturer of final product on or after the 1st March, 2015.

Therefore, though Central Government has allowed utilising CENVAT Credit of cess in three cases mentioned in para *supra*; fate of cess in respect of other points is still full of doubts.

[Notification No.12/2015-Central Excise (N.T.), dated 30.04.2015]

4. Clarification regarding CENVAT Credit in transit sale through dealer

Notification No. 08/2015-CE(NT) dated 1st March, 2015 has amended Rule 11(2) of the Central Excise Rules, 2002 to provide that if the goods are directly sent to any person on the direction of the registered dealer, the invoice shall also contain the details of the registered dealer as the buyer and the person as the consignee, and that person shall take CENVAT credit on the basis of the registered dealer's invoice. Similar provisions are also inserted for sale by importer.

This amendment raises question on fate of Circular No 96/7/95-CX dt. 13-2-1995, 137/48/95-CX dt. 18-7-1995 and 218/52/96-CX dt. 4-6-1996, in so far as these circulars pertain to availment of credit on strength of original manufacturer's invoice where a dealer including an indenting dealer has procured order and has arranged direct transport of the goods from the premises of the manufacturer to the premises of the consignee.

To remove doubts CBEC *vide Circular No. 1003/10/2015-CX, Dated: May 05, 2015* has clarified that the 3rd and 4th *proviso* of Rule 11(2) of Central Excise Rules, 2002, dealing with removal of goods on invoice, are to allow an additional facility for direct transport of goods from the manufacturer or the importer to the consignee where the consignee may avail CENVAT Credit on the basis of the Cenvatable invoice issued by the manufacturer or the registered importer. The need for the goods to be brought to the premises of the registered importer or the registered dealer for subsequent transport of the goods to the consignee is done away with this facility. Thus, in order to save cost, time and improve the ease of doing business this additional facility is provided where in case of transit sale, it is not compulsory for registered/unregistered dealer to issue Cenvatable invoice and Consignee may take CENVAT Credit on the basis of manufacturers/registered importers invoice.

[Circular No. 1003/10/2015-CX, Dated: May 05, 2015]

D. EXCISE DUTY

5. Goods cleared from DTA to SEZ treated as Exports

Notification No. 06/2015-C.E. (N.T.) dated March 1, 2015 inserted a Clause (1A) in Explanation 1 to Rule 5 of the Cenvat Credit Rules, 2004 to provide that "export goods" means any goods which are to be taken out of India to a place outside India".

Accordingly, with the insertion of the words "taking goods out of India to a place outside India", fate of refunds/rebate in case of Deemed exports raised concerns among the Trade.

To remove the doubt, CBEC *vide Circular No. 1001/8/2015-CX, Dated: April 28, 2015* has clarified that Benefit of rebate of duty under Rule 18 of Central Excise Rules, 2002 and Refund of accumulated CENVAT credit under Rule 5 of CENVAT Credit Rules, 2004 will continue to be available on goods cleared from Domestic Tariff Area (DTA) to Special Economic Zone (SEZ).

As per the provisions of SEZ Act, supply of goods from DTA to the SEZ is treated as export; as a SEZ is treated as a territory outside the customs territory of India. The DTA supplier supplying goods to the SEZ shall clear the goods either under bond or as duty paid goods under claim of rebate on the cover of ARE-1. Thus, any licit clearances of goods to an SEZ from the DTA will continue to be treated as export only.

Therefore, though Central Government has clarified in respect of benefit to clearance made from DTA to SEZ; fate of benefit in clearance from DTA to EOU is still in doubt.

[Circular No. 1001/8/2015-CX, Dated: April 28, 2015]

E. Karnataka Professional Tax

Person mandatory required to register electronically under Karnataka Professional Tax

Every employer or self-employed person are required to apply electronically for registering himself under the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 within 30 days from the commencement of his profession. For more information, log on to http://ctax.kar.nic.in or http://pt.kar.nic.in

[Public Notice No. PT/CR-18/2014-15 Dated: 15th April, 2015]

F. VALUE ADDED TAX (VAT)

Punjab VAT

Tax incentive scheme for expansion projects by an eligible unit in eligible area

A new rule Punjab Value Added Tax (Incentives for expansion projects) Rules, 2015 has been prescribed vide ***Notification No. G.S.R. 19/P.A.8/2005/Ss.8-E and 70/2015 Dated 6th April, 2015 which*** provide incentive for expansion of project in varius zone area in Punjab. The incentive range from 12.5% VAT + 25% CST to 45% VAT + 40% CST depending upon the amount of Investment and Zone area of investment. The detailed guideline and condition have been prescribed in the rule.

[Notification No. G.S.R. 19/P.A.8/2005/Ss.8-E and 70/2015 dated 6th April, 2015]

Gujarat VAT

Carrying of electronically generated Form 402, 403, 405 with every movement of taxable goods is made mandatory

Electronically generated Form 402 (Movement of goods within/going outside the state), Form 403 (Goods entering into the state from other states) or Form 405 (Issue of Transit pass) should be accompanied with every movement of taxable goods from, to and through the state from 28th April, 2015. The Forms can be downloaded from www.commercialtax.gujarat.gov.in

[Order No. GVL/VAT/Sec.68 and 69/(5) Dated the 18th April, 2015]

Jammu and Kashmir VAT

Electronically filing of return made mandatory

It is mandatory for the dealer whose gross annual turnover is ₹50 lakh and above to file VAT return from first quarter ending June '14 and onwards.

[Notification No. 02 dated 21st April, 2015]

West Bengal VAT

Amendment in West Bengal VAT Rules, 2005

Following amendments have been made in various rule(s) under West Bengal VAT Rules, 2005 through ***Notification No 523- F. T.-Dated 2nd April, 2015***

- The taxable quantum to pay tax has been increased form ₹5 lakh to ₹10 lakh.
- The new proviso has been inserted in Rule 5A which provides that there is no need to submit hard copies of the documents, if registration application has been submitted online under digital signature along with scanned documents and declarations as required.
- A composite scheme has been brought by inserting a new rule 16C for the dealers who are engaged in business of hotel, inn, motel, resort, or alike. The dealer has to pay tax on the value of Gross Turnover as mentioned in the notification ranges from 5% to 30%.
- The limit of turnover of sales has been increased from ₹5 crore to ₹10 crore in a year in Rule 44 *i.e.* for submission of P&L A/c and B/S with Audit Report of CA to appropriate assessing authority. The provision has been extended to stock transfer also.

[Notification No 523- F. T.-Dated 2nd April, 2015]

Karnataka VAT

Entry tax exempt for new Micro/Small/Medium Enterprise/Large/Mega/Super Mega/Ultra Mega/ industrial unit/EOU

Entry tax has been exempted on the entry of plant & machinery and capital goods and goods to be used as raw material inputs in new Micro/Small/ Medium Enterprise/Large/Mega/Super Mega/ Ultra Mega/industrial unit/EOU subject to certain conditions as specified in notification.

[Notification No. FD 01 & II& III &IV CET 2015, dated: 22nd April, 2015]

Maharashtra VAT

In case registration is applied online; applicants are not required to attend before the registration authority.

The applicants are required to upload the scanned documents after submitting the application and then send a demand draft of required fees and necessary documents within 7 days after filing of application. Now, there is no need to attend before the registration authority.

[Circular No. 5 of 2015 dated 6th May, 2015]

(Matter on FEMA has been contributed by CA Manoj Shah, Mumbai and CA Hinesh Doshi, Mumbai)

A. Foreign Direct Investment–Reporting under FDI scheme e-Biz platform

A. P. (DIR Series) Circular No. 95 dated April 17, 2015

Attention is invited to A.P. (DIR Series) Circular No.77 dated February 12, 2015, advising the enabling of reporting of Advanced Remittance Form and FCGPR Form under the FDI scheme on the e-Biz platform of the Government of India.

With reference to para 5 of the said circular, it is advised that financial aspects of the Virtual Private Network (VPN) accounts obtained from National Informatics Centre (NIC) for accessing e-Biz portal have now been finalized in consultation with the Government of India, Department of Industrial Policy and Promotion (DIPP) and NIC. The details are as under:

1. VPN will be in the name of individual users and coterminous with the lifetime of class 2 digital signature (which is for maximum of two years) issued by Institute for Development and Research in Banking Technology (IDRBT), Hyderabad.
2. AD Category-I banks will be required to credit (through NEFT/RTGS) the payment in advance for the VPN accounts (@ ₹9,654/- per account for a block of two years) directly to National Informatics Centre Services Inc's (NICSI) bank account as under:
   a. Name of Bank: ICICI Bank
   b. Branch: ICICI Bank CMS
   c. Account No: NICSIPPCDL141571
   d. IFSC Code: ICIC0000104

3. After making the payment, the AD bank may fill up the details in the 'Payment Reference Form' and forward the same to the email. A copy of the form is annexed to this circular.
4. AD banks may kindly note to maintain appropriate records pertaining to the number of connections, amounts remitted to NICSI, *etc.* Reconciliation issues, if any, may be resolved by writing to NICSI at the above mentioned email address.

B. Policy on foreign investment in Pension Sector

DIPP press Note No. 4 (2015 series) dated April 24, 2015

In pursuance to enactment of Insurance Regulatory and Development Authority Act, 2013, government has decided to permit Foreign Direct Investment in Pension sector and accordingly a new paragraph 6.2.17.9 is added to the 'Consolidated FDI Policy Circular of 2014' as under:

S No.	Sector/ Activity	% of FDI Cap/ Equity	Entry route
6.2.17.9	Pension Sector	49% {FDI+FPI(FII, QFI)+NRI+FVCI +DR}	Automatic up to 26% Government route beyond 26% and up to 49%
6.2.17.9.1	Other Conditions		
	(a) FDI in pension funds is allowed as per the Pension Fund Regulatory and Development Authority (PFRDA) 2013. (b) Foreign investment in pension funds will be subject to the conditions that entities bringing in foreign equity investment as per Section 24 of the PFRDA Act shall obtain necessary registration from the PFRDA and comply with other requirements of PFRDA Act, 2013 and rules and regulations framed under it for so participating in Pension Fund management activities in India.		

S No.	Sector/ Activity	% of FDI Cap/ Equity	Entry route
	(c) Whenever such foreign equity investment involves control or ownership by the foreign investor or, transfer of control or ownership of an existing pension fund from resident Indian citizens and/or Indian companies owned or controlled by the resident Indian citizens to such foreign investing entities as a consequence of the investment, including through transfer of shares and or fresh issue of shares to non-residents entities through acquisition, amalgamation, mergers etc. it would require FIPB approval in consultation with the Department of Financial Services, PFRDA and other entities concerned and the onus of compliance to these conditions will be on investee India pension fund company. The meaning of ownership and control would be as per the Foreign Direct Investment Policy.		

C. Merchanting Trade to Nepal and Bhutan

A. P. (DIR Series) Circular No. 97 dated April 30, 2015

In terms of the revised merchanting trade guidelines stipulated therein, for a trade to be classified as merchanting trade, goods acquired should not enter the Domestic Tariff Area and the state of the goods should not undergo any transformation.

As Nepal and Bhutan are landlocked countries, there is a facility of transit trade whereby goods are imported from third countries by Nepal and Bhutan through India under the cover of Customs Transit Declarations in terms of the Government of India Treaty of Transit with these two countries. In consultation with Government of India, it is clarified herein that goods consigned to the importers of Nepal and Bhutan from third countries under merchanting trade from India would qualify as traffic-in-transit, if the goods are otherwise compliant with the provisions of the India-Nepal Treaty of Transit and Indo-Bhutan Treaty of Transit respectively.

D. Foreign Direct Investment (FDI) Policy Circular 2015

Department of Industrial Policy and Promotion issued Consolidated Foreign Direct Investment Policy Circular for 2015 dated May 12, 2015.

Below are the major changes in the FDI Policy of 2015 *vis-à-vis* FDI Policy of 2014:

1. **Change in Definition of Holding Company and Indian Company**
   The only change made in the definitions of Holding Company and Indian Company is instead of "Companies Act 1956" they have mentioned words "Companies Act, as applicable"
2. **Pricing of guidelines for issue and transfer of shares including Compulsorily Convertible Debentures (CCDs) and Compulsorily Convertible Preference Shares (CCPs):**
   The method of determining fair value for issue and transfer of shares including CCDs and CCPs with or without optimality clause in case of unlisted companies has been changed from Discounted Cash Flow Method to price worked as per any internationally accepted pricing methodology on arm's length basis. [**A.P. (DIR Series) Circular No. 4 dated July 15, 2014**].
3. **Conditions of Optionality clause modified**
   The following conditions of Optionality clause have been modified:
   - In earlier FDI Policy minimum lock-in period was of one year or as prescribed under FDI Regulations, whichever is higher (*e.g.* defence and construction development sector where the lock-in period of three years has been prescribed). The lock-in period was to be be effective from the date of allotment of such capital instruments or as prescribed under the FDI Policy.
     This has been modified and as per new FDI Policy the minimum lock in period shall be one year for all the sectors and it shall be effective from the date of allotment of such capital instruments.
4. **Issue of Foreign Currency Convertible Bonds (FCCBs) and Depository Receipts (DRs) [A. P. (DIR Series) Circular No. 61 dated January 22, 2015]:**
   The guidelines pertaining to issue of FCCBs and DRs have been modified. The new

guidelines as per FDI Policy 2015 are as follows:

- FCCBs and DRs may be issued in terms of Scheme of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and DR Scheme 2014.
- In terms of Notification No. FEMA.20/2000-RB dated May 3, 2000 as amended from time to time, a person will be eligible to issue or transfer eligible securities to a foreign depository, for the purpose of converting the securities so purchased into depository receipts in terms of Depository Receipts Scheme, 2014 and guidelines issued by the Government of India thereunder from time to time.
- A person can issue DRs only if it is eligible to issue eligible instruments under Schedules 1, 2, 2A, 3, 5 and 8 of Notification FEMA 20.
- The aggregate of eligible securities which may be issued or transferred to foreign depositories, along with eligible securities already held by persons resident outside India, shall not exceed the limit on foreign holding of such eligible securities under the relevant regulations framed under FEMA, 1999.
- The price should not be less than price applicable to a corresponding mode of issue or transfer of such securities to domestic investors under relevant regulations framed under FEMA, 1999.
- The issue of DRs as per DR scheme 2014 shall be reported to Reserve Bank by the domestic custodian as per the reporting guidelines of the DR scheme 2014.

5. **Transfer of shares:**

As per the FDI Policy of 2015, government approval is not required for transfer of shares in the investee company from one non-resident to another non-resident in sectors which are under automatic route. However, approval of government will be required while transfer from one non-resident to another non-resident in sectors which are under approval route.

Further with regards to submission of FC-TRS, in cases of NR investor (including an NRI) acquiring shares on stock exchange under FDI scheme, the investee would require to file FC-TRS with AD bank [**A.P. (DIR Series) Circular No. 127 dated May 02, 2015**].

In case of transfer of shares by way of sale or gift from Resident to person resident outside India or non-resident by unlisted company, the price shall not be less than fair value of shares as determined by SEBI registered merchant banker or a Chartered Accountant as per any internationally accepted pricing methodology on arm's length basis (In erstwhile policy the same was required to be done by DCF method) [**A.P. (DIR Series) Circular No. 4 dated July 15, 2014**].

6. **Modes of Payment:**

Equity shares can be issued against any other funds payable by the investee company, remittance of which does not require prior permission of the Government of India or Reserve Bank of India under FEMA 1999 [A.P. (DIR Series) Circular No. 31 dated September 17, 2014].

7. No FIPB approval would be required in case of mergers and acquisitions taking place in sectors under automatic route.
8. **Levels of approval for cases under Government route:**
   The Minister of Finance who is in-charge of FIPB would consider the recommendations of FIPB on proposals with total foreign equity inflow of and below ₹2,000 crore. This limit earlier was for total foreign equity inflow up to ₹1200 crore.
   In case of proposals total foreign equity inflow of more than ₹2,000 crore, the same were considered by Cabinet Committee on Economic Affairs(CCEA). This limit was earlier for total foreign equity inflow of more than ₹1,200 crore.
9. **Sectoral changes:**
   - **Railway Infrastructure [A. P.(DIR Series) Circular No. 47 dated December 8, 2014]:**
     In erstwhile FDI Policy, FDI in Railway transport (other than mass rapid transport systems) was prohibited. In current FDI Policy of 2015 100% FDI under automatic route is permitted for Construction, operation and maintenance of the following:
     (i) Suburban corridor projects through PPP, (ii) High speed train projects, (iii) Dedicated freight lines, (iv) Rolling stock including train sets, and locomotives/ coaches manufacturing and maintenance facilities, (v) Railway Electrification, (vi) Signaling systems, (vii) Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivities to main railway line and (x) Mass Rapid Transport Systems.
   - **Defence Sector [A. P. (Dir Series) Circular No. 46 dated December 8, 2014]:**
     Entry Route has been increased up to 49% under government route and above 49% to Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and 'state of art' technology in the country.
     FDI limit of 49% is composite and includes all kinds of foreign investments. Further Portfolio investments by FPI/FII/NRI/QFI and investments by FVCI together will not exceed 24% of the total equity of the investee/joint venture company and portfolio investments will be under automatic route.
     The applicant company seeking permission of government for FDI up to 49% should be an Indian company owned and controlled by resident India citizens, which in erstwhile FDI Policy of 2014 was either Indian company or partnership firm also.
   - Construction Development: Townships, Housing, Built up Infrastructure [A. P. (Dir Series) Circular No. 60 dated January 22, 2015]:
     FDI is permitted for Construction-development projects (which would include development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships)

Following changes in the conditions have been made:

i. Condition for development of minimum land area of 10 hectares had been done away with and accordingly no minimum land area is required to be developed.
ii. For construction development projects condition for developing minimum built up area of 50,000 sq. meters has been changed to a minimum floor area of 20,000 sq. meters.
iii. Investee company will be required to bring now minimum of USD 5 million within six months.
iv. The requirement to develop at least 50% of the project within 5 years has also been done away with.
v. The investor will be permitted to exit on completion of project or after development of trunk infrastructure *i.e.* roads, water supply, street lighting, drainage and sewerage.
vi. In case Hotels & Tourist Resorts, Hospitals, Special Economic Zones (SEZs), Educational Institutions, Old

Age Homes and investment by NRIs the conditions of minimum area development, inflow of funds and exit options would not be applicable. If investee/joint venture companies which commit at least 30 percent of the total project cost for low cost affordable housing then the conditions of minimum area development and inflow of funds would not apply.

- **Insurance [A. P. (DIR Series) Circular No. 94 dated April 08, 2015]:**
  The equity cap has been increased from 26% to 49%. Accordingly investments up to 26% will be under automatic route and beyond 26% and up to 49% under government route. Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) have been added as parties eligible to receive foreign investments.

- **Pharmaceuticals [A. P. (DIR Series) Circular No. 70 dated February 02, 2015]:**
  FDI up to 100%, under the automatic route is permitted for manufacturing of medical devices. The conditions of non-compete clause and other conditions as per FDI Policy will, therefore, not be applicable to greenfield as well as brownfield projects of this industry.

ICAI News

Invitation for empanelment as Resource Persons for the programmes to be organised by the Career Counselling Committee in the Year 2015-16

The Career Counselling Committee (CCC) of the Institute of Chartered Accountants of India a newly constituted non standing Committee proposes to organise a Career Counselling Programmes during the year 2015-16. The Committee emphasise on holding the career counseling programmes in various parts of India in the year 2015-16 to advise to students at Secondary school Higher/Senior Secondary school, Graduation/Post Graduation level & others for connecting them with the Chartered Accountant course.

Experts/Resource Persons who have experience in the relevant area and/or who have delivered lectures at various forums of Chartered Accountants are eligible for the enlistment in the Panel of Experts. Experts who are interested to be associated with The Institute of Chartered Accountants of India as Career Counsellors are requested fill the form available at https://docs.google.com/a/icai.org/forms/d/1P4sLD2EFaL3coX2zqdZa50Zqod_ARzxAPykeDyj3pAI/viewform. Thereafter, Experts are also requested to send/e-mail their resume at: Secretary, Career Counselling Committee (CCC), The Institute of Chartered Accountants of India (ICAI), ICAI Bhawan, A-29, First Floor, Administrative Block, Sector-62, Noida (U.P.), P.C.-201309, E-Mail: sambit.mishra@icai.in, Tel No. 0120-3876871. It would be appreciated if the resume including all details regarding qualification, Membership no. of ICAI (if any), Experience, areas of specialisation, contact address, *etc.* is sent at the earliest, preferably within 31.05.2015.

CCC, ICAI reserves the right to invite similar proposal from any other Member/Members of ICAI though they may not have offered their expression of interest in this regard. No communications will be entertained from the applicant Member/Members in this regard. Only selected applicant Member/Members will be individually communicated. CCC, ICAI reserves the right to reject the Expression of Interest received from the applicant Member/Members of ICAI without assigning any reason therefore.

Chairman
Career Counselling Committee (CCC), ICAI
Email: ccc.chairman@icai.in

10. Reporting of Inflow and Issue of shares:
An Indian Company issuing partly paid shares shall furnish a report not later than 30 days from the date of receipt of each call payment.

Further, an Indian company issuing partly paid equity shares shall file a report in form FC-GPR to the extent they become paid up.

11. Reporting of FCCB/DR issue:
The domestic custodian shall report the issue/transfer of sponsored/unsponsored depository receipts as per DR Scheme 2014 in 'Form DRR' 30 days of close of the issue/program. The onus of reporting is now on domestic custodian which earlier was done by Indian issuing company (Indian company was required to be filed Form DR which is now replaced with Form DRR and the same is to be submitted by domestic custodian).

12. Documents required to be submitted for transfer by way of gift by a person resident in India to person resident outside India
An additional declaration from the donee accepting partly paid shares or warrants that donee is aware of the liability as regards calls in arrears and consequences thereof is added to the requisite documents that are required to be submitted.

For detailed amendments in the FDI Policy Circular of 2015, please refer the said circular available on DIPP website at– http://dipp.nic.in/English/Policies/FDI_Circular_2015.pdf

Note:

a. Despite reserve Bank recognising partly paid equity shares and warrants as eligible instruments for FDI *vide* A. P. (Dir Series) Circular No. 3 dated July 14, 2014 notification No. FEMA 308/2014 dated June 30, 2014 issued by Reserve Bank, the same are still considered under review by government for inclusion in FDI policy and can be issued only after approval through government.

b. DIPP *vide* its Press Note No. 4 dated April 24, 2015 had decided to permit Foreign Direct Investment in Pension sector and accordingly a new paragraph 6.2.17.9 is added to the 'Consolidated FDI Policy Circular of 2014'. However, the said newly added paragraph is not given in the 'Consolidated FDI Policy Circular of 2015' issued by DIPP.

……………………………………………………………..

(Matter on Corporate Laws has been contributed by CA. Rahul Joglekar)

SEBI (www.sebi.gov.in)

1. SEBI Notification No. SEBI-NRO/OIAE/GN/2015-16/003 dated 5th May 2015 – SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2015

SEBI has issued the above notification amending the Issue of Capital and Disclosure Requirements Regulations. The amendment deals with Conversion of debt into equity under strategic debt restructuring scheme. It is clarified that certain provisions of those regulations shall not apply in case where the preferential issue of equity shares is made to the consortium of banks and financial institutions pursuant to conversion of their debt, as part of the strategic debt restructuring scheme in accordance with the guidelines specified by the Reserve Bank of India, subject to certain conditions. For a complete text of this order, please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1430885855266.pdf

2. SEBI Master Circular No. CIR/MRD/DP/6/2015 dated 7th May 2015-Master Circular for Depositories

SEBI has been issuing various circulars/directions from time to time. In order to enable the users to have an access to all the applicable circulars/directions at one place, Master Circular for Depositories has been prepared. This Master Circular shall supersede previous Master Circular CIR/MRD/DP/11/2014 dated April 07, 2014. For a complete text of this circular, please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1430992306107.pdf

3. SEBI Circular No. CIR/ISD/01/2015 dated 11th May 2015-Disclosures under SEBI (Prohibition of Insider Trading) Regulations, 2015

SEBI has issued the aforesaid circular to prescribe/enhance various disclosures required to be made by companies under the SEBI (Prohibition of Insider Trading) Regulations, 2015. These disclosures mainly deal with Code of Fair Disclosure and Code of Conduct as mandated under Regulation 8 and 9 respectively of the aforesaid regulations. For a complete text of this circular, please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1431337589072.pdf. ■

Legal Decisions[1]

DIRECT TAXES

Income Tax Act

LD/63/84

Jeyar Consultant and Investment P. Ltd.
vs.
The Commissioner of Income Tax – I, Madras
1st April, 2015

Section 80HHC of the Income-tax Act, 1961– Method of computation of deduction

No deduction u/s 80HHC available where there are losses in the export business but the profits in respect of business carried out within India are more than the export losses. In the first instance, it has to be satisfied that there are profits from the export business. Sub Section (3) of 80HHC comes into picture only for the purpose of computation of deduction; dividend income, interest income, profit or sale of shares and fees received from arranging finance, to be excluded from 'total turnover', as the same are 'income simplicitor', not trading receipts.

The assessee is a company engaged in the business of export of Marine products and also financial consultancy and trading in equity shares. Apart from export turnover, assessee's total business consisted of business within the country as well. The AO did not allow the deduction on the ground that there was no relationship between the Assessee Company and the Processors. The CIT(A) dismissed assessee's appeal whereas the ITAT ruled in favour of the assessee and came to a conclusion that the appellant was entitled to full relief u/s 80HHC.

While giving effect to ITAT's order, the AO found that the appellant had not earned any profits from the export of Marine products and in fact, from the said export business, it had suffered a loss. According to the Assessing Officer, as per Section 80AB, the deduction under Section 80HHC could not exceed the amount of income included in the total income. Thus as the income from export of Marine product business was in the negative i.e. there was a loss, the deduction under Section 80HHC would be nil, even when the assessee is entitled to deduction under the said provision.

[1] Contributed by CA. Sahil Garud and ICAI's Editorial Board Secretariat.
Readers are invited to send their comments on the selection of cases and their utility at eboard@icai.in. For full judgment, write to eboard@icai.in

In the second round of litigation, assessee challenged the order passed by the AO before the CIT(A) contending that the formula which was applied by the AO was different from the formula prescribed under Section 80HHC of the Act and it was also in direct violation of CBDT Circular dated 05.07.1990. The CIT(A), however, dismissed the appeal of the assessee principally on the ground that u/s 246, an order of the AO giving effect to the order of the ITAT is not an appealable order. ITAT upheld the orders of lower authorities. High Court ruled in favour of Revenue and held that assessee was not entitled to any benefit u/s 80HHC in the absence of any profits from export business. Aggrieved, the assessee preferred a Special Leave Petition before the Hon'ble Supreme Court of India.

The Hon'ble Supreme Court referred to ratio in the case of *IPCA Laboratory Ltd. vs. Deputy Commissioner of Income Tax, Mumbai* [(2004) 12 SCC 742] and *A. M. Moosa vs. Commissioner of Income Tax, Trivandrum*[(2007) 9 SCR 831]. In IPCA Laboratory (*supra*) it was held that "profit" in Section 80-HHC(3) will mean profits after taking into account losses, if any. The term "profit" in both Sections 80-HHC(1) and 80-HHC(3) means a positive profit worked out after taking into consideration the losses. It follows that if no deduction is available, because there is a loss, then the export house cannot pass on or give credit of such non-existing deduction to a supporting manufacturer. In the case of *A. M. Moosa vs. Commissioner of Income Tax (supra)*, it was held that Section 80AB starts with a *non-obstante* clause and thus would have an overriding effect over Section 80HHC. Section 80-AB makes it clear that the computation of income has to be in accordance with the provisions of the Act. Thus, if the income has to be computed in accordance with the provisions of the Act, then not only profits but also losses have to be taken into consideration. It was further held that under Section 80-HHC (3) (c)(i) the profit is to be adjusted profit of business. The adjusted profit of the business means a profit as reduced by the profit derived from business of exports out of India of trading goods. Thus in calculating the profits under sub-Section (3)(c)(i) one necessarily has to reduce profits under sub-Section (3)(c)(ii). As seen above, the term "profit" means positive profit. Thus if there is loss then those losses in export of trading goods have to be adjusted. They cannot be ignored. A plain reading of Section 80-HHC makes it clear that in arriving at profits earned from export of both self-manufactured goods and trading goods, the profits and losses in both the trades have to be taken into consideration. If after such adjustments there is a positive profit, the assessee would be entitled to deduction under Section 80-HHC(1). If there is a loss he will not be entitled to any deduction. The SC had held that the term "profit" in Section 80-HHC, both in sub-Section (1) and in sub-Section (3), meant a positive profit worked out after taking into consideration the losses, if any. Thus the word "profit" had the same meaning in Sections 80-HHC(1) and (3).

After analysing the ratios in the case of *IPCA Laboratory Ltd. vs. Deputy Commissioner of Income Tax*, and *A. M. Moosa vs. Commissioner of Income Tax*, in the instant case, the Supreme Court came to the conclusion that where there are losses in the export of one type of goods (for example self-manufactured goods) and profits from the export of other type of goods (for example trading goods) then both are to be clubbed together to arrive at net-profits or losses for the purpose of applying the provisions of Section 80HHC of the Act. If the net result was loss from the export business, then the deduction under the aforesaid Act is not permissible.

SC rejected assessee's contention that even if there are losses in the export business, but profits of indigenous business outweigh those losses and the net result is that there is profit of the business, then the deduction under Section 80HHC should be given. SC held that deduction to be provided u/s 80HHC(1) is "in respect of profits retained for export business". Therefore, existence of profits from export business is the pre-requisite. Sub-Section (3) of Sec. 80HHC comes into picture only for the purpose of computation of deduction. SC remarked that *"while computing the 'total turnover', one may apply the formula stated in clause (b) of sub-section (3) of Section 80HHC. However, that would not mean that even if there are losses in the export business but the profits in respect of business carried out within India are more than the export losses, benefit under Section 80HHC would still be available."*

With respect to income earned by the assessee from dividend, interest and brokerage, and profit on sale of shares, the ITAT had observed that these four items are income simplicitor and cannot be covered by the expression "total turnover". ITAT had further noted that the intention of Parliament, was to extend the benefit of Section 80HHC to the extent of the profits generated by exports. As long as the assessee has cleared profits in a particular year of account, export profits are to be computed by applying to total profits the ratio which export turnover bears to total turnover. The Hon'ble Supreme Court affirmed such a view of the ITAT.

Thus, ruling in favour of the Revenue, SC held where there are losses in the export business, but profits of indigenous business outweigh those losses and the net result is a profit, then the deduction under Section 80HHC should not be given.

LD/63/85

M/s Chennai Properties & Investments Ltd.

vs.

The Commissioner of Income Tax – Central III, Tamil Nadu

9th April, 2015

Rental income from letting of property assessable as 'business income', not 'income from house property' based on facts.

Rental income from letting of property held to be assessable as 'business income', not 'income from house property'; Based on fact that assessee had no other income except income from letting out properties; it was observed that letting of properties was the business of the assessee. The Object clause of the company included holding of properties and earning income from letting of those properties.

The assessee is a company incorporated under the Indian Companies Act. Its main objective as per the Memorandum of Association was to acquire properties in the city of Chennai and to let out those properties. Rental income derived by the assessee was shown as business income by the assessee. The A.O. however taxed the same under income from house property. The CIT(A) as well as the ITAT ruled in favour of the assessee accepting its contention that it was a business income. Aggrieved, the Revenue preferred an appeal before the High Court.

The Hon'ble High Court ruled in favour of the Revenue and held that impugned income was an income to be taxed under 'Income from House Property' and not as business income. In holding such, the High Court placed its reliance upon judgment in the case of *East India Housing and Land Development Trust Ltd. vs. Commissioner of Income Tax [(1961) 42 ITR 49], and Constitution Bench judgment of this Court in 'Sultan Brothers (P) Ltd. v. Commissioner of Income Tax' [1964 (5) SCR 807]*. Aggrieved, the assessee preferred an appeal before the Supreme Court.

SC observed that the main object of the assessee company was to acquire and hold the properties known as "Chennai House" and "Firhavin Estate" both in Chennai and to let out those properties as well as make advances upon the security of lands and buildings or other properties or any interest therein. The return of Income for the relevant assessment year reflects entire income from rent only and there was no other source of income.

SC placed its reliance on ruling in *Karanpura Development Co. Ltd. vs. Commissioner of Income Tax, West Bengal [44 ITR 362 (SC)]*. In that case, leasing out of the coal fields to the collieries and other companies was the object and the business of the assessee. The income which was received from letting out of those mining leases was shown as business income, whereas the Revenue took the view that it was as Income from House Property. The SC in that case analysed the scheme of the Act and the six heads under which income can be categorised/classified. SC noted that that the deciding factor is not the ownership of land or leases but the nature of the activity of the assessee and the nature of the operations in relation to them. It was also highlighted and stressed that the objects of the company must also be kept in view to interpret the activities.

SC observed that the facts of the instant case were identical to the case of Karanpura Development Co. Ltd. (*supra*).

SC held as follows:

Since letting of the properties was in fact is the business of the assessee, the assessee rightly disclosed the income under the head Income from Business and that the same could not be treated as an 'Income from the House property'.

LD/63/86

The Commissioner of Income Tax vs. M/s. Sri Marikamba Transport Company Tax

13th April, 2015

Filing form 15I/J 'directory' not 'mandatory'; Deletes Sec 40(a)(ia) disallowance, no breach of Sec 194C(3).

Filing of Form No.15I/J is only directory and not mandatory. Disallowance made u/s 40(a)(ia) pertaining to freight charges paid to sub-contractors deleted; Only if there is any breach of requirements of Section 194C(3), the question of applicability of Section 40(a)(ia) arises.

The assessee had filed the return of income for the AY 2009-10 declaring the total income of ₹19,07,890/-. During the regular assessment proceedings, the AO disallowed payments made to sub-contractors towards freight charges amounting to ₹17.63 crore u/s 40(a)(ia). The CIT(A) as well as ITAT ruled in favour of assessee. Aggrieved, Revenue preferred an appeal before Karnataka HC.

HC observed the question requiring consideration was "Whether non-filing of Form No.15-I/J within the prescribed time is only a technical default or the Provisions of Section 40(a)(ia) of the Act are attracted?"

HC analysed Section 194C(3) and Section 40(a)(ia). HC observed that the combined reading of these two provisions made it clear that if there is any breach of requirements of Section 194C(3), the question of applicability of Section 40(a)(ia) arises. The exclusion provided in Sub-Section(3) of Section 194C from the liability to deduct tax at source under sub-Section(2) would be complete when the requirements contained therein are satisfied. Once the declaration forms are filed by a subcontractor, the liability of the assessee to deduct tax on the payments made to the sub-contractor would not arise.

HC observed that since the sub-contractors had filed Form No.15I before the assessee, the assessee was not required to deduct tax u/s 194C or to file Form No.15J. HC affirmed the view of ITAT that non-filing of Form 15J by assessee was only a technical defect.

HC relied on Gujarat High Court's judgment in the case of *Valibhai Khandbai Mankad [(2013) 216 Taxmann 18 (Guj)]* wherein it was held that once the conditions of Section 194C(3) were satisfied, the liability of the payee to deduct tax at source would cease and accordingly, application of Section 40(a)(ia) would also not arise.

HC upheld ITAT order that filing of Form No.15I/J was only directory and not mandatory and thus ruled in favour of the assessee.

LD/63/87

Shivnandan Buildcon Pvt. Ltd.

vs.

The Commissioner of Income Tax & Anr

30th April, 2015

Notional interest cannot be charged on domestic advances in the absence of any specific provision.

Addition made on account of notional interest on advances made during normal course of business was deleted in the absence of any specific provision to tax it; Books of accounts were not rejected and there was no finding that assessee received any interest on advance.

The assessee had filed its return of income for relevant year declaring a loss. During the regular assessment proceedings, the AO made an addition on account of notional interest earned on advances given to one party on the ground that assessee had furnished no explanation as to why such loan was advanced without charging interest thereon. The assessee argued that such an addition had no factual basis and so preferred an application seeking revision u/s 264 before CIT(A).

Assessee submitted that the impugned assessment was based on assessment of preceding year, and since the assessment of preceeding year was set aside, this instant assessment should also be set aside u/s 264. However, CIT(A) rejected assessee's contention on the ground that earlier orders were set aside by predecessor CIT after considering many issues apart from the instant issue and also the predecessor CIT had noted the correctness of comments of AO. Aggrieved assessee preferred a writ before Delhi HC.

HC noted that the reason behind the impugned addition was that assessee had failed to furnish any explanation as to why the loan was advanced. Only logic that the Revenue applied was that assessee being in a business, it was not prudent to advance a sum of ₹1.6 crore without charging anything in return. HC noted assessee's contention that advances were made in the course of business and that it was not at all necessary that the advance should always be given for an interest since there are various other considerations which come into calculations when a businessman advances money to another.

Events

Forthcoming Events[1]

1.		5th June	Bhubaneswar	6
Topics	One Day Seminar on Reporting under Companies Act, 2013.			
Fees	₹500/-			
Contact Person	Chairman, Bhubaneswar Branch of the EIRC of ICAI- Phone:0674-2392391, bhubaneswar@icai.org			
2.		6th June	Siliguri	6
Topics	One Day Seminar on Reporting under Companies Act, 2013.			
Fees	₹300/-			
Contact Person	Chairman, Bhubaneswar Branch of the EIRC of ICAI- Phone-0353-2560445, siliguri@icai.org			
3.		6th June	Vapi	6
Topics	One Day Seminar on Reporting under Companies Act, 2013			
Fees	Under Finalisation			
Contact Person	Chairman Vapi Branch of the WIRC of ICAI Phone:0260-2468232, vapi@icai.org			

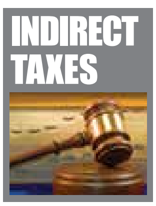
[1] For more details about the forthcoming events, please refer the detailed announcements hosted on the ICAI website www.icai.org

HC took note of assessee's submission that there was no finding in the assessment order or the CIT's order that the assessee had received some amount by way of interest and that such amount was not shown in the accounts. Further, the revenue authorities had not rejected the books of accounts assessee and it was, therefore, submitted that unless and until there was a concrete finding that something was received by the assessee from the party, nothing can be added by way of notional income.

HC noted that Revenue pointed out none other than Section 144 of the Act as an income tax provision which empowered Revenue to add notional interest income. HC observed that Section 144 did not apply to the instant proceedings since the instant proceedings originated from an assessment u/s 143(3) of the Act.

HELD:

In absence of any specific provision to tax the notional income on advances, the impugned interest income could not be brought to tax.



Service Tax

LD/63/88

Delhi Transport Corporation
vs.
Commissioner of Service Tax
17th April, 2015

Service of providing space to display advertisements on bus-queue shelters and time-keeping booths is chargeable to service tax u/s 65(105)(zzzn) of Finance Act; Although service tax burden can be transferred to other party through a contractual arrangement, assessee cannot ask the Revenue to recover the tax dues from a third party or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors; Penalty u/s 78 of Finance Act deleted since there was no "intent to evade payment of service tax" and the financial position being poor on account of providing highly subsidized transport facilities & dependence on Govt grants.

Delhi Transport Corporation, a Central public sector undertaking had entered into contracts with 7 agencies (contractors/advertisers) for providing space to display advertisements, *inter alia*, on bus-queue shelters and time-keeping booths. As per the terms of contract, it was the contractor's/advertiser's/service recipient's responsibility to pay the taxes/levy payable or imposed directly to the concerned authority and such amount was in addition to license fee quoted in the contract.

A service tax liability of ₹7.19 crore was raised against the assessee on account of income from service of "sale of space or time for advertisement". Penalties were imposed for non-registration, failure to file service tax returns, intentional failure to pay the service tax to evade the liability. Assessee submitted that it is an autonomous body of Govt. of NCT of Delhi and had no intention to violate provisions of taxing statutes, and that the non-registration was not deliberate or intentional. Assessee submitted that as per the contracts entered into with the 7 agencies (contractors), the agencies were the ones liable to bear the service tax. Assessee placed reliance on the Supreme Court judgment in the case of *Rashtriya Ispat Nigam Limited vs. Dewan Chand Ram Saran* [(2012) 5 SCC 306]. Further it was pointed out that the licence fee, maintenance charges, *etc.* received by the assessee from such agencies (contractors) was being shared with Municipal Corporation of Delhi (MCD) equally and therefore tax liability was also required levied to the extent of 50%. Assessee informed the Revenue that it intended to institute contempt/execution proceedings against the contractors for failure to deposit the service tax in spite of contractual obligation and the directions of the High Court. It added that the amount of service tax to the extent realised from the contractors had been deposited with the service tax department already.

The Commissioner (Adjudication) Service tax confirmed the demand of ₹7.19 crore u/s 73, Section 68 and 95 of Finance Act, alongwith interest u/s 75 and penalties u/s 77 & u/s 78.

The order of Commissioner was challenged before the CESTAT, however the CESTAT ruled in favour of Revenue. CESTAT rejected assessee's claim that Revenue ought not to insist the assessee for payment of tax liability since the same was the burden of the contractors. CESTAT held that such considerations would not transfer the substantive and legislatively mandated liability to service tax from the appellant (the service provider) to the advertisers (the service recipients). CESTAT further held that assessee should have taken care to ascertain whether it was liable to tax. Assessee neither alleged, asserted nor established that there was any ambiguity in the provisions of the Act which might justify a belief that the assessee was not liable to tax. CESTAT remarked that *"It is axiomatic that no person can harbour a "bona fide belief" that a legislated liability could be excluded or transferred by a contract. The appellant was clearly and exclusively liable to service tax on rendition of the taxable service of "sale of space or time for advertisement"."*

The High Court observed that there was no dispute that services provided were taxable within the meaning of Section 65 (105) (zzzn) and that the assessee was liable to pay service tax thereupon. However, the High Court stated that it disagreed with CESTAT's view that service tax liability could not have been transferred by way of contract. The reliance of assessee on the ruling in Rashtriya Ispat Nigam Limited (*supra*) on this aspect was correct and the CESTAT had not properly appreciated he same. In the case of *Rashtriya Ispat Nigam Limited*, the Hon'ble Supreme Court had observed that as far as the submission of shifting of tax liability was concerned, as observed in para 9 of *Laghu Udyog Bharati vs. Union of India* [(1999) 6 SCC 418] service tax is an indirect tax, and so it was possible that it may be passed on. Therefore, an assessee can certainly enter into a contract to shift its liability of service tax.

The High Court observed that the service tax burden can be transferred by contractual arrangement to the other party. However on account of such contractual arrangement, the Revenue cannot be asked to recover the tax dues from a third party or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors. The HC held that the directions under Arbitration and Conciliation Act would only govern the rights and obligations arising out of the contracts entered upon by assessee with the contractors. It may be that in terms of the said orders, DTC would be in a position to recover the amount of service tax paid by it to the Revenue respecting the services in question. The fastening of liability on such account by such order on the contractors is, thus, a matter restricted to claims of the appellant against such parties. It would have no bearing insofar as the claim of the Revenue against the appellant for recovery of the tax dues is concerned.

On the aspect of the assesseee's submission about its 'bonafide belief', the HC remarked that *"The appellant is a public sector undertaking and should have been more vigilant in compliance with its statutory obligations. It cannot take cover under the plea that contractors engaged by it having agreed to bear the burden of taxation, there was no need for any further action on its part."* The assessee was statutorily bound to not only get registered, but also submit requisite returns as per the prescriptions of law and rules framed thereunder.

Thus, the HC held that the imposition of service tax liability with interest and penalty could not be faulted. The HC accepted assessee's contention and deleted penalty levied u/s 78. It observed that in order to invoke Section 78, Revenue must make out a case of "intent to evade payment of service tax", which may manifest by reason of fraud, collusion, willful misstatement or suppression of facts. From the facts, HC observed that there was no effort to "evade" the payment of service tax by the assessee.

……………………………………………………………………..

Legal Update

Excise Law

LD/63/89

Commissioner of Central Excise, Goa.

vs.

Cosme Farma laboratories Ltd.

7th April, 2015

Job workers of Medicaments held to be manufacturers.

Job-work agreement was on principal to principal basis and job-workers were not manufacturing drugs as agents/on behalf of assessee but were manufacturing them independently. Job workers held as 'manufacturers' under Central Excise Act. Consequently, holds that assessable value of goods would be sum total of material cost, labour charges and profit of job-workers. Term 'manufacturer' or 'loan licensee' used under Drugs and Cosmetics Act has nothing to do with manufacturing activity/term 'manufacture' under Central Excise Act.

The assessee is a manufacturer of medicaments having license under the Drugs and Cosmetics Act, 1940. The assessee also gets certain medicaments manufactured through other job workers so is a loan licensee-who is also permitted to get drugs manufactured at different places under the provisions of the Drugs and Cosmetics Act, 1940 and Rules made thereunder. Under the agreement with the job workers, raw material and packing material was supplied by assessee and as per its instructions, medicaments were manufactured by job workers, under supervision of the assessee. Show cause notices were issued as to why the assessee, the loan licensee should not be treated as a manufacturer as per the provisions of the Central Excise and Salt Act, 1944 in respect of the medicaments manufactured by the job workers. The assessee was also called upon to make payment of certain duty and the job workers were also called upon to show cause as to why they should not be directed to pay penalty. The Commissioner held that the assessee was a manufacturer of the medicaments manufactured at the premises of its job workers.

There was a difference of opinion in members of the CESTAT and matter was taken up by Third Member, who agreed with views of Member (Technical) allowing assessee's appeals. Against this, Revenue approached the SC.

The questions raised before the Supreme Court were that whether assessee, who was getting medicaments manufactured through job-workers, could be considered as independent manufacturer and what would be the assessable value of job-worked goods under the Central Excise Act.

SC held that manufacturing activity was done only by the job workers in their premises and with the help of their labour force and machinery. Simply because the job workers had to adhere to the quality control or the specification with regard to the quality prescribed by the respondent, it would not mean that the assessee was the manufacturer.

SC observed that the term 'manufacturer' or 'loan licensee' used under the provisions of Drugs and Cosmetics Act had nothing to do with the manufacturing activity or term 'manufacture' under Central Excise Act. Both the Acts were enacted for different purposes. The provisions of the Drugs and Cosmetics Act, 1940 pertain to manufacture of drugs and quality of the drugs etc, where the manufacturer of the drugs has to see that the quality of the drugs manufactured by him is as per prescribed standards. SC observed that there is a provision in the Act with regard to getting the drugs manufactured by someone else. A manufacturer, who is having a license to manufacture, can get the drugs/medicaments manufactured by another person under his supervision and he would be liable if the drugs manufactured by someone else are not as per the prescribed quality. Though the drugs/medicaments might not have been manufactured by the one who is a licensee and the actual manufacturer is guilty of manufacturing substandard drugs, the licensee becomes responsible and liable under the provisions in the said Act.

SC observed that on the other hand, Central Excise Act provisions are for the purpose of imposing duty on the goods manufactured. The manufacturer becomes liable to pay certain duty as per provisions of the Act. The term 'loan licensee' referred by Revenue was not relevant since the quality or standard of drugs/medicaments manufactured by loan licensee or anybody was not of concern in instant case.

From the agreement between the assessee and job-worker, SC further observed that the job-workers were not assigned the work as agents of assessee and that the relationship between the parties was that of principal and principal, not principal and agent. Thus, it was clear that job-workers were not manufacturing the drugs as agents or on behalf of assessee, but were carrying out the manufacturing activity independently. Therefore, they were manufacturers of drugs as per the provisions of Central Excise Act, held SC.

SC held that the assessable value of goods would be the sum total of cost of raw material, labour charges and profit of the job-workers, as per Circular No. 619/10/2002-CX dated February 19, 2002 and the law laid down in *Pawan Biscuits Co. Pvt. Ltd. vs. Collector of Central Excise, Patna [2000 (6) SCC 489]*. The price at which assessee (brand owner) sold its goods would not be the assessable value because duty is payable at the stage of manufacture and not, when goods are sold.

LD/63/90

Commissioner, Customs and Central Excise, Aurangabad

vs.

Roofit Industries Ltd.

23rd April, 2015

Expenditure incurred upto stage of transfer of ownership would form part of assessable value.

Freight, insurance and unloading charges to be included to arrive at assessable value in terms of Sec 4 of Central Excise Act, where goods are delivered at buyers' premises as per work orders; Expenditure incurred upto stage of transfer of ownership would form part of assessable value. The point of time when sale is effected must be seen, i.e. whether at factory gate or at later point of time. Provisions of the Sale of Goods Act also considered.

Assessee, Roofit Industries Ltd, entered into four agreements for designing, manufacturing, providing at site, laying, jointing and testing of PSC pipes of specified sizes. Revenue argued that assessee was indulging in evasion of central excise duty by not computing the assessable value of finished goods properly to the extent that it was not deducting the amount of freight, insurance and unloading charges from the price of excisable goods, though the place of removal of finished goods was different from the factory gate. The Adjudicating authority held that place of removal finished goods was the buyer's premises and not at the factory gate and therefore confirmed the demand.

CESTAT ruled in favour of the assessee on the ground that the issue was settled in the judgment of *Escorts JCB Ltd. vs. CCE, Delhi-II* [(2003) 1 SCC 281]. Aggrieved, the Revenue filed the present appeals.

SC analysed Section 4 of the Central Excise Act, 1944 (Act), and observed that 'place of removal' is a determinative factor for the purpose of valuation. If the goods are cleared at the factory gate, then the excise duty has to be charged on the valuation of the goods to be arrived at the factory gate as that would be the place of removal of goods, implying that the expenses incurred after removal of goods from factory gate namely freight, insurance and unloading charges *etc.* are not to be included in the valuation of the goods for the purposes of excise duty. SC noted that this aspect was considered in ruling of Escorts JCB Ltd., wherein it was held that, insurance charges, or for that matter, transport charges would not be included even if the assessee had arranged for the transit insurance. The Court found that the terms and conditions of sale clearly stipulated that it was ex-works at the factory gate of the assessee. The payment was to be made before discharge of the goods from the factory premises.

In the instant case, SC observed that from the terms and conditions of the work order that goods were to be delivered at the place of the buyer and it is only at that place where the acceptance of supplies was to be effected. Price of the goods was inclusive of cost of material, central excise duty, loading, transportation, transit risk and unloading charges *etc*. Even transit damage/breakage on the assessee account which would clearly imply that till the goods reach the destination, ownership in the goods remain with the supplier namely the assessee. As per the 'terms of payment' clause contained in the procurement order, 100% payment for the supplies was to be made by the purchaser after the receipt and verification of material. Thus, the sale of goods did not take place at the factory gate of the assessee but at the place of the buyer on the delivery of the goods in question.

Therefore, SC held clear intent of the aforesaid purchase order was to transfer the property in goods to the buyer at the premises of the buyer when the goods are delivered and by virtue of Section 19 of Sale of Goods Act, the property in goods was transferred at that time only.

SC thus set-aside the order of CESTAT and restored the order of the Adjudicating Authority.

LD/63/91
K.R.C.D. (I) PVT. LTD
vs.
Commissioner of Central Excise, Mumbai
23rd April, 2015

Royalty paid by distributor towards music-copyright, not part of assessable value since Job-worker not 'using' the copyright

Assessee was a job-worker duplicating music CDs and supplying to distributor. Royalty paid by distributor towards music-copyright, not part of assessable value (AV) of duplicate CDs produced by assessee. Since, entire sales were made to distributor i.e. copyright holder, copyright not "used" while 'selling' duplicate CDs to distributor.

The assessee is a manufacturer of duplicate CDs from a master tape/CD issued to it by a distributor who had copyright in the contents of the CD. The artist/lyricist who is the owner of copyright, parts with the copyright for a certain consideration to a producer of music, which music/picture is then captured on the CD. The producer in turn parts with such copyright in favour of a distributor who, ultimately, gets the said CDs duplicated from the assessee on job work basis, and who then sells the CDs in the market to the ultimate customer. Assessee is only given the master CD from which it duplicates such master tape/CD on blank CDs that are owned by it and then sold to the distributor copyright holder, having paid a lump sum royalty to the producer of the music which is on the CD. The entire stock of duplicate CDs can only be sold to the distributor/copyright holder and to nobody else.

Based on a price declaration alongwith cost breakup filed by the assessee, the assessee was made to pay differential excise duty at the rate of ₹1/- per CD for CDs cleared during 1995 to 2000. Subsequently, the Asst. Commissioner issued a show-cause notice to pay differential duty of 5.91 Cr for CDs cleared during Nov. 2000 to Oct. 2001. Such duty consisted of royalty payable to distributor/copyright holder calculated at ₹54.81/- per CD. The Commissioner held that royalty charges incurred by the distributor/copyright holder are liable to be included in the assessable value of the CDs. CESTAT confirmed the order of the Commissioner.

Aggrieved, the assessee preferred the present appeal. The assessee argued that It is the distributor and others who are the copyright holders who then sell these duplicate CDs in the market loading on to them the royalty cost paid by the distributor and others in lump sum to the music producer. Since no part of the royalty had in fact passed, no amount of royalty could be included in the assessable value.

Revenue argued that master tape could not be given to the appellant for duplication unless royalty had been paid, which royalty would form part of the cost of the goods to be produced by the assessee and then sold to the distributor/copyright holder. Thus, the royalty that is payable would also have to be loaded on to the duplicate CDs produced by the assessee and apportioned in a manner stated in the circular dated 19.2.2002.

SC noted that Section 4(1)(a) was not applicable in the present case since price is not the sole consideration for the sale as a master tape had to be handed over by the distributor/copyright holder to the appellant. Section 4(1)(b) and Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 were applicable. SC observed that a reading of Rule 6 shows that the value of the goods referred to in the Rule shall be deemed to be the aggregate of the transaction value and the amount of money value of any additional consideration that may flow directly or indirectly from the buyer to the assessee. SC stated that it was important to note that where the master tape is supplied by the distributor who is the copyright holder to the assessee, whether free of charge or at a reduced cost, such master tape must be used in connection with the production and sale of goods by the assessee. What was clear from the present transaction was that the master tape contained within it music/picture in digital form. There was no doubt whatsoever that the music/picture supplied on the master tape ought to be valued and had been valued as additional consideration that flowed from the buyer to the assessee, and its value had been accepted at ₹ 1/- per CD.

The entirety of the duplicate CDs was sold only to the distributor who was the copyright holder. Therefore the copyright value in the duplicate CD was not used in connection with the sale of such goods inasmuch as no part of the copyright which may have been passed on by the distributor to the assessee was used by the assessee in selling the duplicate CDs to the distributor who himself was the copyright-owner. Therefore on the assumption that the music/picture embedded in the master tape was inextricably bound with the copyright thereof, the copyright was not "used" by the assessee while selling the duplicate CDs to the distributor. After the job work was done by the appellant, the distributor having paid a lump sum royalty to the producer of the music, then sold the duplicate CDs in the market with the cost of the royalty loaded thereon.

SC held that since no part of the royalty could be loaded on to the duplicate CDs produced by the appellant, the circular dated 19.2.2002 which dealt with apportionment of royalty had no application to the facts of the present case.

Customs Law

LD/63/92

Commissioner of Customs, Ahmedabad.
vs.
Essar Steel Ltd.
13th April, 2015

Fees for technical services towards setting up & commissioning of manufacturing unit in India are not to be included in import value.

Fees for technical services towards setting up & commissioning of manufacturing unit in India are not to be included in import value of steel plant. Only those costs & services actually paid or payable pre-import are to be added for determining value of imported goods. Since rendering of such services was not a pre-condition for sale, Rule 9(1)(e) of Customs Valuation (Determination of Price of Imported Goods) Rules of 1988 was not applicable.

The assessee entered into an agreement with Met Chem Canada Inc. for supply of technical services required for setting up and commissioning a plant for the manufacture of Hot Rolled Steel Coils in India. The technical consultant was to be paid a fee of DM 78 million. As per the supplementary agreement, the lumpsum fee payable was increased to DM 94 million and the plant capacity was also doubled.

The services agreement is separate from the main agreement for setting up the said plant in India. The main agreement was contained in a purchase order as per which the CIF value was USD 163 million. This purchase order was amended by which CIF price of said steel plant was revised to USD 169.70 million. Revenue sought to add the sum of DM 78 million, being technical knowhow charges, to USD 169.70 million. In reply, assessee submitted that none of the provisions of Rule 9 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 would apply as no payment for technical services was made as a condition of sale of imported goods. In any event, the agreement for technical services was to be performed in India post-importation and therefore, would have to be excluded from value to be taken into account at the time of import.

The Adjudicating Authority added the sum observing that the two payments were not independent to each other and the buyer had no option but to buy machinery once they have made commitment for technical services. CEGAT ruled in favour of the assessee observing that the plant could have been set up and could run without supply of technical knowledge and that that the fact that technical supply agreement was signed prior to the agreement for supply of machinery was not relevant. Apex court's judgement in *Collector of Customs (Preventive) vs. Essar Gujarat Ltd. [(1997) 9 SCC 738*] was distinguished on facts. Aggrieved, the Revenue appealed before SC.

Perusing Section 14 of the Customs Act, SC observed that customs duty is chargeable on goods by reference to their value at a price at which such goods or like goods are ordinarily sold or offered for sale at the time and place of importation in the course of international trade. This would mean that any amount that is referable to the imported goods post-importation has necessarily to be excluded. It is with this basic principle in mind that the rules made under sub-clause 1(A) have been framed and have to be interpreted.

Under Customs Valuation (Determination of Price of Imported Goods) Rules of 1988, Rule 2(f) defines "transaction value" as the value determined in accordance with Rule 4. Rule 4(1) in turn states that the transaction value of imported goods shall be the price actually paid or payable for goods when sold for export to India, adjusted in accordance with provisions of Rule 9 of these rules. SC observed that a reading of Rule 4 and Rule 9 made it clear that that only those costs and services that are actually paid or payable for imported goods pre- import are to be added for the purpose of determining the value of the imported goods.

From the technical services agreement, SC noted that the assessee had associated Met Chem Canada Inc. as a technical consultant only. Technical services to be provided by Met Chem Canada Inc. were basically to coordinate and advise the assessee so that it could successfully set up, commission and operate the plant in India. The coordination and advice was to take place post-importation in order that the plant be set up and commissioned in India. Thus the services were only post-importation. Ownership of patents, know-how, copyright and other intellectual property rights remained vested in the technical consultant and none of them were transferred to assessee. Assessee became owner of that portion of documents, drawings, plans and specifications originally created by the technical consultant, pursuant to the agreement. Further, the liquidated damages were only payable for delay in commissioning the plant and for failure to achieve stipulated performance, both of which were post importation activities.

SC observed that a conjoint reading of the technical services agreement and the purchase order did not lead to a conclusion that the technical services agreement was in any way a pre-condition for the sale of the plant itself. On the contrary, the technical services agreement read as a whole was regarding only to successfully set up, commission and operate the plant after it has been imported into India.

SC therefore held that clause 9(1)(e) was not attracted and consequently the consideration for the technical services to be provided by Met Chem Canada Inc. was not to be added to the value of the equipment imported to set up the plant in India.

SC relied on judgments in the case of *Tata Iron & Steel Co. Ltd. vs. Commissioner of Central Excise & Customs, Bhubaneswar, Orissa [(2000) 3 SCC 472], Commissioner of Customs (Port), Kolkata vs. J.K. Corporation Limited [(2007) 9 SCC 401], Commissioner of Customs vs. Ferodo India (P) Ltd. [(2008) 4 SCC 563], and Commissioner of Customs (Port), Chennai vs. Toyota Kirloskar Motor (P) Ltd. [(2007) 5 SCC 371]* to state that facts of the instant case did not attract Rule 9(1)(e).

LD/63/93
Wipro ltd.
vs.
Assistant Collector of Customs & Ors.
16th April, 2015

Provision fixing notional loading/unloading/ handling charges at 1% even when actual cost is ascertainable struck down.

Proviso (ii) to Rule 9(2) of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, which provides for addition at 1% of FoB value of goods plus transport and insurance charges as handling/loading/unloading charges even when actual cost ascertainable, is 'ultra vires' Sec 14(1) and Sec 14(1)(A) of Customs Act; Only when actual cost cannot be arrived, notional cost should be made applicable; When the actual charges paid are available and ascertainable, introducing a fiction for arriving at the purported cost of loading, unloading and handling charges is clearly arbitrary with no nexus with the objectives sought to be achieved.

Assessee is engaged in the manufacture and marketing of Mini and Micro Computer Systems and peripheral devices like printer, drivers *etc.* It, inter alia, imported various components including software from time to time. Assessee presented a Bill of Entry No. 15020 dated April 15, 1993. The chargeable weight of the consignment was 315 kgs. and the actual loading, unloading and handling charges amounted to ₹65 paisa as per the tariff of the International Airport Authority of India, Madras. The Custom Authorities (Revenue) on the basis of Notification No.39/90 dated 05/07/1990 added a sum of ₹15,214.69/- to the value of the goods as handling charges as the impugned provision entitles the authorities to add 1% of the F.O.B. value of goods on account of loading, unloading and handling charges.

HC dismissed the writ petitions and writ appeals in which the constitutional validity of *proviso* (II-i) of Rule 9(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 was challenged. Assessee had argued that the *proviso* (II-i) was not only *ultravires* Section 14(1) and Section 14(1-A) of the Customs Act, 1962 but was also violative of Article 14 and Article 19(1)(g) of the Constitution of India. The *proviso* (II-i) of Rule 9(2) (hereinafter referred to as "Proviso") was inserted by Notification No. 39/90 dated July 05, 1990 issued by the Ministry of Finance.

The assessee submitted that notional fixation of the handling charges with the addition of one per cent of FOB value of the value of goods, irrespective of the nature of goods, size of the cargo, was in total disregard to the total handling charges, even when such actual handling charges could be ascertained. The assessee argued that such an addition was totally irrational and arbitrary, thus violative of Article 14 of the Constitution and was also *ultravires* Section 14(1) and Section 14(1)(A) of the Customs Act.

Assessee submitted that, that prior to the impugned notification dated 05.07.1990, the Rule in this regard was to the effect that the handling charges were reckoned on the actuals and only where the actual cost could not be ascertained, one per cent of the F.O.B. of the goods was to be added as charges on this account. However, with the impugned amendment in the Rules, the actual cost incurred and or ascertainable is totally ignored in the matter of "handling charges" and is to be arrived at fictionally by adding one per cent of the F.O.B. value of the imported goods and its transportation and insurance charges. It was pointed out that the assessee is engaged in the manufacture and marketing of computer systems and peripherals, and in the course of its business, imports various components worth crores of rupees, which are of high value but of low weight and dimensions. Further, the actual cost incurred towards the handling charges in accordance with the prescribed charges by the international Airport Authority of India was not even a fraction of the "notional handling charges" arrived at by applying the formula contained in the amended Rule. Assessee argued that only in those cases where actual cost could not be arrived at, the impugned fictional formula should be made applicable.

Assessee also argued that there was no rationale in adding one per cent of the F.O.B. value in such cases and this smacked of arbitrariness making it violative of Article 14 of the Constitution as well.

SC analysed the scheme of the Customs Act. SC observed that the valuation rules were made in exercise of powers conferred under Section 156 of the Customs Act, 1962, read with Section 22 of the General Clauses Act, 1897. SC observed that the purpose of the Rules was to arrive at the valuation of the imported goods to enable the customs authorities to levy duty thereupon, on the basis of the value so arrived at. Rule 2 was the "definition" clause, and Rule 2(f) therefore defined "transaction value" to mean the value determined in accordance with Rule 4 of these Rules, which was to be read along with Rule 3. A conjoint reading of the Rule 3 and Rule 4 provisions made it clear that the value of the imported goods was to be the transaction value, and in those cases where transaction value cannot be determined, such a value was to be determined by resorting to Rules 5 to 8 thereof in a sequential order. Therefore the first attempt must be to ascertain the transaction value. As per the formula contained in sub-rule (1) of Rule 4, the authorities were to find out the price actually paid or payable for the goods when sold for exports to India, to arrive at the value of the goods. Further, SC pointed out that once the value was arrived at, it was to be adjusted in accordance with the provisions of Rule 9 of the Rules. The final outcome, after such an adjustment made, is to be treated as transaction value to attract the import duty thereupon.

SC observed that the value of imported goods was to be the transactional value which means the price "actually paid" or "payable" for the goods imported. The value as specified in sub-rule (1) is to be generally accepted with the exception of certain contingencies stipulated in proviso to sub-rule (2) of Rule 4. Only when such a value cannot be determined, one has to resort to Rules 5 to 8, in a sequential manner which would mean that the authorities would first refer to Rule 5 and in case it is inapplicable, then Rule 6 and so on. As per Rule 5, in those cases where the transaction value was indeterminable, transaction value of "identical goods" was to be taken into consideration.

SC analysed clause (b) of sub-rule (2) of Rule 9 which deals with loading, unloading and handling charges associated with the delivery of imported goods at the place of importation, which are to be included to arrive at the value of such imported goods. SC observed that the provision of sub-rule (2) of Rule 9, as originally stood, made it clear that wherever loading, unloading and handling charges are ascertainable *i.e.* actually paid or payable, it is those charges that would be added. Proviso to the said Rule contained the provision that only in the event the same are not ascertainable, it shall be 25% of the free on board value of such goods. In fact, sub-rule (3) of Rule 9 leaves no manner of doubt when it mentions that additions are to be made on the basis of objective and quantifiable data.

SC observed that impugned amendment dated 05.07.1990 has changed the entire basis of inclusion of loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation. SC observed that the proviso which stipulates 1% of the FOB value of the goods irrespective of the fact whether actual cost is ascertainable or not introduces fiction as far as addition of cost of loading, unloading and handling charges is concerned even in those cases where actual cost paid on such an account is available and ascertainable. Obviously, it is contrary to the provisions of Section 14. Thus, SC stated that when the actual charges paid are available and ascertainable, introducing a fiction for arriving at the purported cost of loading, unloading and handling charges is clearly arbitrary with no nexus with the objectives sought to be achieved.

SC remarked that though the rule making authority has the power to make Rules but such power had to be exercised by making the rules which were consistent with the scheme of the Act and not repugnant to the main provisions of the statute itself. The impugned provision would be valid and 1% F.O.B. value in determining handling charges *etc.* could be justified only in those cases where actual cost was not ascertainable.

SC observed that in the instant case the only justification for stipulating 1% of the F.O.B. value as the cost of loading, unloading and handling charges was that it would help customs authorities to apply the aforesaid rate uniformly. SC held that this can be a justification only if the loading, unloading and handling charges are not ascertainable. Where such charges are known and determinable, there is no reason to have such a yardstick.

SC thus held that HC missed the point that Garden Silk Mills Ltd. case was decided by this Court in the scenario where actual cost was not ascertainable. That is why first amendment to the proviso to sub-rule (2) of Rule 9 which was incorporated in 1988 *vide* notification dated December 19,1989, was justified, however, amendment introduced vide provision in 1990 has changed the entire basis of inclusion of loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation. SC was not impressed with the reason given by the authorities to have such a provision and opined that the authorities have not been able to satisfy as to how such a provision helps in achieving the object of Section 14 of the Act.

HELD:

Impugned Proviso (ii) to sub-rule (2) of Rule 9 regarding addition of 1% for loading, unloading, and handling charges, introduced *vide* Notification dated 05/07/1990 was unsustainable and bad in law as it exists in the present form. The proviso has to be read down to mean that the clause would apply only when actual charges referred to in Clause (b) were not ascertainable.

LD/63/94

IVRCL Infrastructure & Projects Ltd.

vs.

Commissioner of Customs, Chennai.

15th April, 2015

Exemption benefit unavailable since entire plant was not imported but only some of the essential components unassembled were imported.

Exemption of imported components of 'hot mix plant' for construction of road for NHAI, under exemption Notification dated 01.03.2001 was denied since complete plant in unassembled form not imported. Un-retracted statements made voluntarily by representatives of assessee and NHAI indicated that what was imported was "the basic character" of hot mix plant and not complete plant. Statements made to an Officer of Customs is admissible as evidence u/s 108 of Act and Court has to merely scrutinize whether same was been made voluntarily or not. Assessee's reliance on Rule 2(a) of General Interpretative Notes had no application to *exemption notification issued u/s 25 of Customs Act, since, test is not whether unassembled plant which is incomplete has essential character of complete plant, but, whether plant in its entirety is imported, albeit in unassembled form.*

The assessee entered into a joint venture (JV) agreement with M/s Shapoorji Pallonji & Company Ltd. for the purpose of construction of roads in State of Andhra Pradesh. The Joint Venture was awarded a contract by the National Highways Authority of India for construction of roads as a part of the Golden Quadrilateral, Phase-2 Project in Andhra Pradesh. Goods required for construction of roads were exempted from customs duty *vide* Notification dated March 1, 2001, provided that goods were 'Hot mix plant' of specified description and subject to other conditions.

A purchase order was placed by the appellant on M/s Lintec GmbH & Co.KG, Germany, for supply of a hot mix plant. Lintec and the assessee decided to split the purchase order between Lintec, Germany and M/s Marshalls, Chennai. Lintec was to supply the "critical items" required for the setting up of the said plant, whereas Marshalls was to supply various containers, frames, ducting, tanks and a thraw belt conveyer apart from agreeing to set up the plant after it is imported.

Assessee made import of the material from Lintec and claimed exemption from Custom Duty claiming that the impugned items fell within scope of notification dated 01.03.2001. Revenue Authorities denied assessee's claim.

Commissioner held that the exemption notification was not applicable to the assessee for two reasons: (a) imports have to be made by a Joint Venture Company and not by one of the partners of the said company and (ii) Exemption applied to a complete plant that is imported and not to parts/ components of such a plant.

CESTAT recorded that there was no JV Company formed and JV between assessee and M/s Shapoorji Pallonji & Co. Ltd. was in nature of a partnership, in which case any of the partners could import goods covered by the exemption notification. However, it agreed with the Commissioner that what had in fact been imported was not a complete plant and, therefore, it would follow that the exemption notification would not be available to the assessee.

From various admissions made by assessee as well as by persons who deposed on its behalf, it was revealed that all essential portions of plant had not been imported and therefore the assessee's argument that the imported items should be considered as 'hot mix plant unassembled' was rejected. However the assessee relied upon Rule 2(a) of General rules for Interpretation of Schedule to Customs Tariff Act and argued that so long as essentially the plant in question had been imported, merely because all items that go into making of such plant were not imported would not matter. It was contended that such imports can be made in unassembled form as well. Assessee further argued that, plant as a whole has been imported and only structural work has to be done by Marshalls in India and, therefore, benefit of exemption notification would be available.

SC held that Rule 2(a) of Interpretative Notes has no application to the exemption notification issued u/s 25 of Customs Act. Therefore, the fact that an unassembled plant which is incomplete but which has the essential character of a complete plant is not the test to be applied in the present case. Placing reliance upon judgments in the case of *Commissioner of Customs (Imports), Mumbai vs. Tullow India Operations Ltd., [(2005) 13 SCC 789]* and *G. P. Ceramics Private Limited vs. Commissioner, Trade Tax, Uttar Pradesh [(2009) 2 SCC 90]*, SC stated that the test to be applied was whether plant in its entirety is being imported albeit in an unassembled form.

SC thus held that, the concurrent findings of Commissioner and the CESTAT required no interference by this Court inasmuch as both authorities have held that a complete plant in an unassembled form was not imported. SC observed that representatives of the assessee, Marshalls (India) as well as NHAI had accepted the fact that a complete plant was not imported and only components of such plant have been imported which did not have essential characteristics of hot mix plant.

Placing reliance upon judgment in the case of *Gulam Hussain Shaikh Chougule vs. S. Reynolds, Supdt. Of Customs, Marmgoa [(2002) 1 SCC 155]*, SC noted that it is a settled law that statements made to an Officer of Customs are admissible in evidence under Section 108 of the Customs Act, 1962. The Court has merely to scrutinise whether same were made voluntarily or otherwise. In the instant case, it was clear that unretracted statements made by none other than the Vice President of the appellant company, representatives of Marshalls, and a representative of National Highways Authority of India, having never been retracted later, were made voluntarily. Revenue's reliance on these statements was therefore not unwarranted in law.

The assessee also relied upon letters written by its representative and representative of NHAI to the Commissioner of Customs. From the perusal of these letters, SC observed that what was imported was "the basic character" of the hot mix plant and not a complete plant and that it is clear that what is manufactured indigenously would alone ultimately complete the plant. Thus, SC held that, both oral evidence and documentary evidence ultimately leaded to the conclusion that, what was imported was not a hot mix plant that was complete in itself. SC thus dismissed assessee's appeal.

Sales Tax

LD/63/95
Voltas Ltd.
Vs.
State of Gujarat
8th April, 2015

"Fabrication" is not synonymous to "installation". Water chilling plant fabricated as per customers works orders taxable at composition rate of 5%.

'Fabrication' is not synonymous to 'installation'. Water chilling plant fabricated as per customers works orders taxable at composition rate of 5%, as applicable to "fabrication and installation of plant and machinery" under Entry 5 of Gujarat VAT Notification dated October 18, 1993; 15% composition rate as applicable to "installation of air-conditioners and A.C. coolers" under Entry 2 of Notification was not applicable.

The Assessee, Voltas Ltd., is engaged in the business of execution of jobs design, supply and installation of air-conditioning plants construed to be indivisible works contracts. One Anupam Colours and Chemicals Industries placed an order for water chilling plant with the assessee, for its Vapi factory. The specifications pertaining to the water chilling plant were to be in conformity with the assessee's offer and the work order insisted on the requirement of chilled water to be used directly for its process of manufacturing pigments with the assertion that sufficient precautions be taken to ensure that chilled water at 5 to 6 degree centigrade is available for such process. It was also emphasised that assessee would provide the customer with the lay-out details, foundation drawing and other necessary information required for the erection of the plant.

Vide notification dated 18.10.1993, the composition rate prescribed for 'installation of air-conditioners and A.C. Coolers' was 15%, for 'Fabrication and installation of plant and machinery' was 5%, and for general 'Works contracts' was 12%. Assessee, under the impression that the works contract ordered by customer would attract 5% rate and not 15% or 12%, filed an application before the Deputy Commissioner of Sales Tax Gujarat under Section 62 of the Act and insisted that the works contract involved came within the purview of 5% rate only. Revenue rejected assessee's plea and held that the works contract was covered by Entry No.2 as the assessee had to air-condition the plant to be erected by it. The commissioner and the Tribunal dismissed assessee's appeal. Aggrieved, the assessee filed a Special Civil application invoking Writ jurisdiction, before the Gujarat HC. High Court ruled in favour of Revenue holding that assessee's works contract fell under 15% rate slab. Aggrieved, the assessee preferred an appeal before the Supreme Court.

The assessee argued that having regard to the inalienable and essential constituents of the works contract as per the work order, fabrication as well as the installation of the water chilling plant were distinctly different items of works and thus assessee was taxable at the composition rate of 5%. Further, assessee whilst drawing support from the work order argued that the water chilling plant of the customer was to be configured in conformity with the design parameters referred therein and not on readymade specifications on the election or discretion of the assessee.

Assessee further argued that design parameters prescribed by the customer, to cater to its requirement amongst others of the temperature of the chilled water and the volume thereof to be used for its process of manufacturing pigment did assuredly involve design and fabrication of the essential composition of the system which by no means could be equated with the installation thereof simplicitor as the end device. Further, the customer was persistently particular on the adherence to its prescribed design parameters which was apparent from the work order, demonstrated that the works contract could not be drawn within the contours of 15% rate.

Revenue argued that as the supply of the water chilling plant as per the works contract did not envisage any process of fabrication, the appellant was liable to be taxed at the composition rate of 15%. It was further argued that the basic and functional components of the water chilling plant being identical to that of an air-conditioning plant, the appellant's plea of application of 5% composite rate was wholly misplaced.

SC observed the scheme of the Sales Tax Act and noted that the Notification issued by the Government of Gujarat was in exercise of powers conferred by u/s 55A of the Act and therefore the interpretations sought by rival contentions were to be in furtherance of the underlying objective of the said provision. SC further observed that since a dealer has been given the option to pay in lieu of the amount of tax payable, a lump sum by way of composition, at the rate fixed by the State Government, the State Government has to be mindful about the nature of the works contract executed while fixing the composition rate of tax. SC remarked that *"The scheme of composition as envisaged by Section 55A therefore in our comprehension does not admit of any synonymity with that of exemption as contemplated in law. This pre-supposition of the High Court as one of the contributing factors in concluding that the works contract in question did fall within the framework of Entry No.2 of the Notification is apparently erroneous."*

SC observed that the work order in clear terms did enjoin that the design parameters pertaining to tonnage of refrigeration, final temperature of the water to be made available for the process of manufacturing pigments and the quantity of the chilled water essential therefore, were indispensable and were in addition to the other specifications as offered by assessee. The rigour of the insistence for the adherence to the design parameters was patent also from the request of the customer requiring assessee to provide it with the lay out detail, foundation drawing and other necessary information essential for the erection of the water chilling plant. Thus, the exercise as a whole as contemplated by the work order was neither intended nor could be reduced to mere installation of the finally emerging apparatus. The work order noticeably did not refer to any readymade or instantly available devices, meeting the requirements of the customer so much so to be only installed at its factory. Instead, the work order was apparently tailormade to the requirements from which no departure was intended or comprehended. SC stated that in this perspective, the word "fabrication" appearing in Entry No.5 [5% rate] of the Notification assumed a decisive significance.

SC noted that the Aiyan's Advanced Law Lexicon (Vol.II), 3rd Edition 2005, defined the word "fabrication' as "to manufacture" whereas the Oxford Dictionary defined the same to mean 'to construct or manufacture an industrial product'. SC stated that the word "manufacture" as per the Aiyan's Advanced Law Lexicon (Vol.II) in its plainest form and shorn of other details was the process of transforming or fashioning of raw materials into a change of form for use. Thus, the process of fabrication therefore conceptually would involve a lay out for the ultimate device to be installed, preceded by a design of the parameters prescribed, configuration of the resultant components, and integration thereof to structure the ultimate mechanism or product. Installation would be a subsequent step to finally position the plant to complete the works contract. Since fabrication in terms of the work order in the instant case was a distinctly independent yet integral segment of the works contract contributing to the final physical form of the water chilling plant with the characteristics intended, it was not to be construed to be, synonymous to the installation.

SC stated that any endeavour to drag the works contract involved within the framework of Entry No.2 would be repugnant to the basic principles of interpretation of statutes and subordinate legislations like the statutory Notification under Section 55A of the Act. To exclude the work of fabrication from the works contract as per the work order would render the works contract truncated to a form not intended by the customer.

HELD:

Assessee's works contract for fabrication and installation of water chilling plant at the factory of Anupam Colours and Chemicals at Vapi would fall under Entry 5 [5% rate] of the Schedule to the Notification dated 18.10.1993 issued under Section 55A of the Act.

Company Law

LD/63/96

K. M. Capital & Ors

vs.

Registrar of Companies & Ors

17th April, 2015

Complaint for non-receipt of dividend quashed for being time barred

Criminal proceedings alleging non-receipt of *dividend by investors declared for 1995-96, u/s 205/205A of Companies Act, 1956, quashed as they were filed beyond limitation period of one year; Respondent had not filed any application for condonation of delay. Without condonation of delay cognizance of offence cannot be taken. Also no charges were framed for 12 years after filing of the complaint by the Respondent.*

The Registrar of Companies (RoC) [Respondent] had filed a complaint u/s 205/205A against the petitioner company alleging that for the year 1995-96, the petitioner had declared an interim dividend @12.5% which was to be paid within stipulated period of 42 days from the date of declaration and the petitioner failed to pay the same within the stipulated time. The petitioners filed instant petition u/s 482 of CrPC before Delhi HC for quashing of above complaint pending before Tis Hazari Court. Section 482 of CrPC gives inherent powers to High Courts to quash criminal complaints to prevent abuse of the process of any court or otherwise to secure the ends of justice.

The petitioners referred to Section 468 of CrPC which bars Courts to take cognisance of an offence after the expiry of the period of limitation. However, respondent contended that in absence of any instruction/directions from Department of Company Affairs the complaint could not have been filed in the Court in time. Respondent stated that since the necessary direction was accorded on January 31, 1999, the complaint could only be filed on November 3, 1999.

HC analysed Section 205/205A and also Sec 207 which provided for penalty, for not paying interim dividend within 42 days of its declaration, in form of simple imprisonment for a term extending upto seven days alongwith fine. HC observed that of the the Respondent ought to have filed the complaint within one year of occurrence of the alleged offence whereas the Respondent had actually filed the complaint after three years and therefore the complaint was hopelessly time barred.

HC noted that as per the complaint, dividend was allegedly declared for the year 1995-96 whereas the respondent did not mention the date of such declaration of dividend. The complaint was filed on 3rd November, 1999 *i.e.* after a delay of more than three years.

HC observed that respondent had not filed any application for condonation of delay. HC referred to judgment in case of Hindustan Wire And Metal Products [(1983) 54 Comp. Cas 104(Cal.)] wherein it was held that that without the condonation of delay cognizance of offence cannot be taken and unless the bar of limitation was lifted by condonation of delay through an order of the magistrate under Section 473 Cr.P.C, cognisance of an offence cannot be taken by mere filing of the complaint.

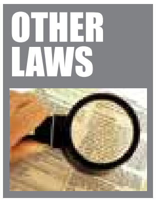
HC noted that Section 5 of the Act provided that the liability in respect of offences committed under the Act devolved upon the officer in default but the Respondent had not mentioned the name of any officer in default. It had arrayed all the directors including directors who had resigned before the alleged declaration of dividend for the year 1995-96. Section 207 of the Act mentioned that only the directors who are knowingly a party to the default are liable for the offence. There was no allegation as to which director was knowingly a party to default. Further, in the complaint no averments were made as to whether the non recipients of the dividend were the shareholders of the Company. Therefore, in the absence of primary evidence no offence could be deemed to have been made out.

Further, the HC noted that respondent had not mentioned as to which director was in default. Perusing Section 207 read with Section 5 of the Act (which provides that the liability in respect of offences committed under the Act devolves upon the officer in default), HC observed that instead of mentioning name of officer in default, respondent had arrayed all the directors including directors who had resigned before the alleged declaration of dividend for the year 1995-96. HC also noted that, "In the complaint no averments have been made as to whether the non recipients of the dividend were the shareholders of the Company as the copy of the share certificate were not placed on record. In the absence of primary evidence no offence can be deemed to have been made out."

Petitioner also submitted that the Respondent had failed to frame any charges for more than 12 years after filing the complaint.

HELD:

Proceedings were quashed due to delay in filing of complaint and on account of delay of 12 years in framing the charges.



Banking Law

LD/63/97

HMT Watches Ltd.
vs.
M. A. Abida & Anr.
19th March, 2015

Cheque dishonour due to "stop payment" instruction also attracts Section 138 of Negotiable Instruments Act, 1881; SC discussed parameters of jurisdiction of the High Court in exercising its jurisdiction u/s 482 Cr.P.C; High Court erred in quashing the criminal complaints filed by the appellant in respect of offence punishable u/s 138, in exercise of powers under Section 482 of the Code of Criminal Procedure by accepting factual defences of the respondent/ accused which were disputed ones. Such defences, if taken before trial court, after recording of the evidence, can be better appreciated.

Negotiable Instruments Act, 1881-Section 138, 139 and 140

The appellant, HMT Watches Ltd. filed criminal complaint cases against respondent M.A. Abida stating that as many as 57 cheques were issued by her in discharge of outstanding liability towards the appellant HMT Watches Ltd. and when the same were presented for collection they were received back, dishonoured by bankers with the endorsement- "payment stopped by the drawer". When a notice of demand was sent to the respondent, the liability to pay was disputed by her. In the petitions filed before the High Court, the respondent submitted that the respondent submitted that business with the appellant was done till September, 2003 on "cash and carry" basis. After 2003 the appellant company used to collect cheques towards the amount covered by distinct invoices with respect to various consignments for securing payment of amount covered by the invoices. High Court accepted the plea of the respondent and quashed the criminal complaint cases. Aggrieved, the appellant preferred the instant appeal before the Supreme Court.

Before the Supreme Court, the appellant argued that High Court committed a grave error of law in quashing the proceedings of the criminal complaint cases whereas the respondent contended that since the cheques were given as security, as such there was no liability to make the payment, and the ingredients of the offence punishable u/s 138 of the Negotiable Instruments Act were not made out.

SC analysed Section 138 of Negotiable Instruments Act, 1881. It further observed that Section 139 of the Negotiable Instruments Act, 1881 provides that there shall be a presumption in favour of holder of a cheque as to the debt or liability, whereas Section 140 of the Negotiable Instruments Act, 1881 prohibits what cannot be a defence in a prosecution in respect of offence punishable u/s 138 of the Act.

SC remarked that the High Court should not have expressed its view on the disputed questions of fact in a petition u/s 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of Negotiable Instruments Act stood uncomplied, even though the respondent had admitted that he replied the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction u/s 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.

SC rejected Respondent's contention that the instant case was not a case of insufficiency of funds. Placing reliance upon ruling in *Pulsive Technologies P. Ltd. vs. State of Gujarat*[(2014) 9 SCALE 437], SC stated that an instruction of "stop payment" issued to the banker could be sufficient to make the accused/respondent liable for an offence punishable under Section 138 of the Negotiable Instruments Act. Further reliance was also placed on ruling in *Modi Cements Ltd. vs. Kuchil Kumar Nandi*[(1998) 3 SCC 249] in which it was held that if a cheque is dishonoured because of stop payment instruction even then offence punishable u/s 138 gets attracted.

Thus, allowing the appeals, SC held that the High Court has committed grave error of law in quashing the criminal complaints filed by the appellant in respect of offence punishable u/s 138, in exercise of powers under Section 482 of the Code of Criminal Procedure by accepting factual defences of the accused which were disputed ones. SC directed the trial courts to proceed with the trial in the criminal complaint cases and abstained itself from expressing any opinion on the correctness of the defence pleas taken by the Respondent. ■

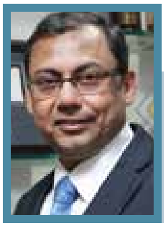
The Companies (Auditor's Report) Order, 2015 – A Perspective

The users of the auditor's report have always been innumerable. With the growth of domestic and global economy, and the transformation of the manner in which businesses are now done, the contours of the users and potential users and also their information needs and expectations from the auditors, have grown exponentially. But what has remained unchanged, and runs common among the various users of the auditor's report is their need for information on "exercise of ethics/propriety/ due care in business by the management", in addition to the auditor's opinion on the true and fair view of the financial statements.

In India, in the case of companies, Section 227(4A) of the erstwhile Companies Act, 1956 tried to align the aforesaid "common" information need by empowering the Central Government to issue an Order thereunder, that required the statutory auditors of specified classes of companies to report on a number of additional matters, in addition to their opinion on the true and fair view of the financial statements. The first of one such Orders was the Manufacturing Companies (Auditor's Report) Order, 1975 issued by the Department of Company Affairs (as the Ministry of Corporate Affairs was then known) *vide* G.S.R. 553(E), dated 7th November, 1975. The said Order was applicable to all manufacturing, service, trading and finance companies and contained 22 reportable clauses. This Order was superceded by the Manufacturing and Other Companies (Auditor's Report) Order, 1988 by the Ministry of Corporate Affairs *vide* their notification No. G. S. R. 909(E), dated 7th September, 1988. This 1988 Order had 27 reportable clauses for the auditors. The 1988 Order was superceded in June 2003 (amended in 2005) by the Companies (Auditor's Report) Order, 2003, issued by the Ministry of Corporate Affairs *vide* GSR (480E) dated 12th June, 2003, having 21 reportable clauses.

CARO, 2003 was in force till 31st March 2014, *i.e.*, the date upto which the Companies Act, 1956 was in force. The Companies Act, 2013 which came into force from 1st April, 2014 also contains a section, *i.e.*, Section 143(11), similar to Section 227(4A) of the Companies Act, 1956, which empowers the Central Government to specify by a general or a special Order, additional matters that the auditors of a company may be required to report upon. In exercise of this power under Section 143(11), the Ministry of Corporate Affairs on 10th April, 2015 notified the Companies (Auditor's Report) Order, 2015 (CARO, 2015).

A plain reading of such successive Orders highlights how the Government, through these Orders, tried to harness the services of the statutory auditors to provide the stakeholders with information on such critical aspects of a company's functioning that can give a fair amount of idea to the stakeholders, about how the Directors of the



CA. Abhijit Bandyopadhyay

(The author is a member of the Institute. He can be reached at babhijit@icai.org.)

CARO, 2003 was in force till 31st March 2014, *i.e.*, the date upto when the Companies Act, 1956 was in force. The Companies Act, 2013 which came into force from 1st April, 2014, also contains a section, *i.e.*, Section 143(11), similar to Section 227(4A) of the Companies Act, 1956, which empowers the Central Government to specify, by a general or a special order, additional matters that the auditors of a company may be required to report upon. In exercise of this power under Section 143(11), the Ministry of Corporate Affairs on 10th April, 2015 notified the Companies (Auditor's Report) Order, 2015 (CARO, 2015).

Company are discharging their stewardship role. For example, in each of these Orders, the statutory auditors are required to report, in one way or the other, on the checks and controls on fixed assets and inventory. Similarly, information on transactions with related parties is understandably another area on which the various versions of the Orders have sought information from the statutory auditors. Compliance with regulatory requirements, to the extent that it relates to public deposits, has also been on the radar of these Orders. Existence of internal audit is an important component of internal controls put in place by the management and is expected to help the latter in improving its stewardship practices. Hence, almost all the Orders have required the statutory auditors to report on the existence of internal audit system in the company.

The changes brought in each of the Orders could be seen from the Government and other stakeholders' experience, and perspective of the probable sore points in the functioning of the companies, particularly relating to application of funds raised from financial institutions and capital markets, as also information asymmetry on these matters. Some of the matters included in the CARO, 2003 are a pointer in this direction, such as:

- whether the company has given any guarantee for loans taken by others from bank or financial institutions, the terms and conditions whereof are prejudicial to the interest of the company;
- whether term loans were applied for the purpose for which the loans were obtained;
- whether the funds raised on short-term basis have been used for long term investment; If yes, the nature and the amount is to be indicated;
- whether the management has disclosed the end use of money raised by public issues and the same has been verified;
- whether any fraud on or by the company has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated.

The stress, it seems, is to keep a tab on the financiers and investors' interests.

CARO, 2015 has been issued after an engaging consultation with the Institute of Chartered Accountants of India. While deliberating on the possible reporting clauses for CARO 2015, it was noted that since the issuance of CARO, 2003, the financial reporting and auditing environment in India has matured considerably. On the one hand, over the twelve year long period since 2003, there is in place, a comprehensive suite of Accounting Standards developed by the Institute of Chartered Accountants of India (ICAI), following a rigorous due process that includes public consultation, and finally approved and notified for implementation by companies by the National Advisory Committee on Accounting Standards under Section 211(3C) of the Companies Act, 1956. Also, while these Standards continue to be in force for the time being under the Companies Act, 2013, ICAI has invested considerable time and resources for development of IndAS to be notified under the Companies Act, 2013 in due course. Similarly, the Schedule III of the Companies Act, 2013 and the Rules issued thereunder contain far more and comprehensive disclosures required to be given alongwith the financial statements than the Schedule VI of the Companies Act, 1956.

In the same vein, over these 12 years, the Institute of Chartered Accountants of India has, through its Auditing and Assurance Standards Board, developed and issued full-fledged suite of auditing standards in harmonisation with the International Standards on Auditing issued by the International Auditing and Assurance Standards Board. These, in turn, are supported by a number of Implementation Guides issued by the Board. Further, the auditor's reporting requirements, particularly, those relating to expressing an opinion on the adequacy and operating effectiveness of internal financial controls {Sec 143(3)(i)} and reporting on frauds to the Central Government {Sec 143(12)}, are comprehensive enough to cover, as a part of an audit, the matters required to be separately reported upon under CARO, 2003. The following table gives an overview of how the provisions of CARO 2003 (which incidentally, is the base for CARO 2015) are, in principle, covered by the various financial statements disclosure requirements of the Companies Act, 2013, and hence by implication, by the audits. Some of them are covered in one way or the other by the additional reporting required, pursuant to Section 143(1) and (3) of the Act. Also, some of the clauses have come to be integrated with the principles and procedures outlined in the Standards on Auditing mandated by ICAI. Similarly, quite a few of the provisions of the Companies Act, 1956 on which these clauses of CARO 2003 were based, are now no longer in force.

Clause	Covered by
(i) (a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;	Internal Financial Controls as defined in the Explanation to Section 134(5)(e) of the Companies Act, 2013 are defined to mean: *"Policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information."* Section 143(3)(i) requires auditors to report on the operating effectiveness of Internal Financial Controls. Since fixed assets are a financial statement item, while reporting on IFCs, the statutory auditor would look into these aspects also. Hence, separate reporting as envisaged in CARO 2003 is not required. In case of any major observations, the same would be adequately brought out by the auditor in his report u/s 143(3)(i). In addition: • The auditor is required to state u/s 143(3)(b) if the company has maintained proper books of account. Fixed assets records are an integral part of the books of account. Further, u/s 143(3)(h), the auditor should state any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith. • The auditor is required to state that they have taken into consideration the provisions of the Companies Act when forming their opinion on the financial statements. Any material deviation in the maintenance of the fixed assets records will be appropriately considered for reporting in the audit report, where required.
(b) whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;	• Given the fact that the auditors are now also required to report on the operating effectiveness of Internal Financial Controls (IFCs), since fixed assets are a financial statement item, while reporting on IFCs, the statutory auditor would look into these aspects also. In case of any major observations, the same would be appropriately dealt with by the auditor in his report u/s 143(3)(i). • In an audit of financial statements, the Standards on Auditing ("SAs") issued by the ICAI, which is deemed to be the auditing standards as required to be complied with under Section 143(10), require the auditors to address the "existence" assertion in relation to Fixed Assets. Sufficient appropriate audit evidence in accordance with SA 500 "Audit Evidence" may be obtained either by physically inspecting the assets or obtaining a report from another auditor of verification conducted by them. In case there are any material discrepancies noted at the time of such inspection, the auditor shall deal with the same in accordance with SA 450 "Evaluation of Misstatements Identified during the Audit" and accordingly in the audit report.
(c) if a substantial part of fixed assets have been disposed off during the year, whether it has affected the going concern;	• ICAI has issued Standard on Auditing (SA) 570, "Going Concern" which requires the auditors to assess the appropriateness of going concern in the preparation of the financial statements by the management. Specifically, the auditor is required to: (a) To obtain sufficient appropriate audit evidence about the appropriateness of management's use of the going concern assumption in the preparation and presentation of the financial statements; (b) To conclude, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the entity's ability to continue as a going concern; and (c) To determine the implications for the auditor's report. • Further, the auditor is required to report u/s 143(3)(f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company. As such, if there is a disposal of fixed assets that affects the going concern assumption, the said matter will be appropriately reported by the auditor in the audit report as required u/s 143(3)(f), as required.

Clause	Covered by
(ii)(a) whether physical verification of inventory has been conducted at reasonable intervals by the management;	• Since Inventory is a financial statement item, while reporting on IFCs, the statutory auditor would look into this aspects also while evaluating the operating effectiveness of the internal financial controls. Hence, separate reporting as envisaged in CARO 2003 is not required. In case of any major observations, the same would be appropriately dealt with by the auditor in his report u/s 143(3)(i), as required. • Besides, in an audit of financial statements, the SAs require the auditor to address the "existence" assertion in relation to Inventory. Sufficient appropriate audit evidence in accordance with SA 500 "Audit Evidence" may be obtained by physically inspecting the inventory. In case there are any material discrepancies noted at the time of such inspection, the auditor shall deal with the same in accordance with SA 450 "Evaluation of Misstatements Identified during the Audit" and accordingly in the audit report. These aforesaid audit procedures will be carried out by the auditor notwithstanding any reporting requirement to that effect in CARO.
(b) are the procedures of physical verification of inventory followed by the management reasonable and adequate in relation to the size of the company and the nature of its business. If not, the inadequacies in such procedures should be reported;	In addition to what has been stated above in respect of the auditor's responsibility to report on internal financial controls, it may be noted that: • The duties and responsibilities of the auditor while attending a stock taking by the management are governed by the principles laid down in the Standard on Auditing (SA) 501, "Audit Evidence–Specific Considerations for Selected Items", issued by the ICAI. The auditor should establish the reasonableness and adequacy of procedures adopted for physical verification of inventories having regard to the nature of inventories, their locations, quantities and feasibility of conducting the physical verification. • The scope of reporting under the aforesaid standard is more comprehensive than the requirement of CARO.
(c) whether the company is maintaining proper records of inventory and whether any material discrepancies were noticed on physical verification and if so, whether the same have been properly dealt with in the books of account;	• Since Inventory is a financial statement item, while reporting on IFCs, the statutory auditor would look into these aspects also. Hence separate reporting as envisaged in CARO 2003 is not required. In case of any major observations, the same would be appropriately dealt with by the auditor in his report u/s 143(3)(i), as required. In addition: • Auditor's are required to state u/s 143(3)(b) if the company has maintained proper books of account. Inventory records are an integral part of the books of account. Further, u/s 143(3)(h), the auditor should state any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith. • Auditor's are required to state that they have taken into consideration the provisions of the Companies Act when forming their opinion on the financial statements. Any material deviation in the maintenance of inventory records will be appropriately dealt with by the auditors in the audit report, as required.
(iii) (a) has the company granted any loans, secured or unsecured to companies, firms or other parties covered in the register maintained under Section 301 of the Act. If so, give the number of parties and amount involved in the transactions; and	• Section 143(1) of the Companies Act, 2013 requires the auditor to report *"whether loans and advances made by the Company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the Company or its members."* • Also, as per Schedule III to the Companies Act, 2013, *General Instructions for Preparation of Balance Sheet*, clause L, *Long Term Loans and Advances* and clause M, *Other Non-current Assets*, require following disclosures in the balance sheet/notes to accounts: *"L. Long Term Loans and Advances:* *(i) Long term loans shall be classified as:* …………….. ………….. *(c) Loans and advances to related parties (giving details thereof)* ……………….. …………….. *(iv) Loans and advances due by directors or other officers of the company or any of them either severally or jointly with any other persons or amounts due by firms or private companies respectively in which any director is a partner or a director or a members should be separately stated.* *M. Other Non-current Assets*

Clause	Covered by
(b) whether the rate of interest and other terms and conditions of loans given by the company, secured or unsecured, are *prima facie* prejudicial to the interest of the company; and (c) whether receipt of the principal amount and interest are also regular; and d) if overdue amount is more than rupees one lakh, whether reasonable steps have been taken by the company(for recovery of the principal and interest;	*Other non- current assets shall be classified as:* *..............................* *(iii)..........* *(c) debts due by directors or other officers of the company or any of them either severally or jointly with any other persons or amounts due by firms or private companies respectively in which any director is a partner or a director or a members should be separately stated."* • As per SA 550 "Related Parties" the auditors should obtain sufficient appropriate evidence about the assertion made by the management that the related party transactions were conducted on terms equivalent to those prevailing in an arm's length transaction. Hence, obtaining information about loans/other transactions with related parties as per the Act including whether those are at arm's length would be part of the audit process performed by the auditor in accordance with SA 550. • Sections 185 and 186 of the Act has laid down more stringent requirements with respect to related party transactions as compared to the erstwhile Companies Act, 1956, including severe punishment of imprisonment and fine upon contravention with such requirement. • As per SA 250 "Consideration of Laws and Regulations in an Audit of Financial Statements" the auditor is required to consider compliance with laws and regulations applicable to the company and report it in accordance with SA 705 on "Modifications to the Opinion in the Independent Auditor's Report". • Moreover, listed companies and certain other class of companies as may be prescribed are required to submit, along with their board's report, a report of secretarial audit as per Section 204 of the Act. Such audit requires a more comprehensive reporting with respect to compliance with laws and regulations than a statutory audit. Since the Act now specifies a more comprehensive statutory compliance and reporting requirement than those suggested by CARO with respect to related party transactions, reporting under this clause of CARO will only lead to reporting the same matter multiple times.
(e) has the company taken any loans, secured or unsecured from companies, firms or other parties covered in the register maintained under section 301 of the Act. If so, give the number of parties and the amount involved in the transactions; and (f) whether the rate of interest and other terms and conditions of loans taken by the company, secured or unsecured, are *prima facie* prejudicial to the interest of the company; and (g) whether payment of the principal amount and interest are also regular.	• As per Schedule III to the Companies Act, 2013, clause C, Long Terms Borrowings and Clause F, Short Terms Borrowings, following disclosures are required in the balance sheet: *C. Long-term Borrowings* *(i)(e) Loans and advances from related parties* *(vi) Terms of repayment of term loans and other loans shall be stated* *(vii) Period and amount of continuing default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.* *F. Short-term Borrowings* *(i)(b) Loans and advances from related parties* *(iv) Period and amount of continuing default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.* • As per SA 550 "Related Parties" the auditors should obtain sufficient appropriate evidence about the assertion made by the management that the related party transactions were conducted on terms equivalent to those prevailing in an arm's length transaction. Hence, obtaining information about loans/ other transactions with related parties as per the Act including whether those are at arm's length would be part of the audit process performed by the auditor in accordance with SA 550. • As per SA 250 "Consideration of Laws and Regulations in an Audit of Financial Statements" the auditor is required to consider compliance with laws and regulations applicable to the company and report it in accordance with SA 705 on "Modifications to the Opinion in the Independent Auditor's Report". • Moreover, listed companies and certain other class of companies as may be prescribed are required to submit, along with their board's report, a report of secretarial audit as per Section 204 of the Act. Such audit requires a more comprehensive reporting with respect to compliance with laws and regulations than a statutory audit. Since the Act now specifies a more comprehensive statutory compliance and reporting requirement than those suggested by CARO with respect to related party transactions, reporting under this clause of CARO will only lead to reporting the same matter multiple times.

Clause	Covered by
(iv) is there an adequate internal control system commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods and services. Whether there is a continuing failure to correct major weaknesses in internal control system.	• Section 143(3)(i) of the Act requires reporting on internal financial controls which shall be applicable from 1 April 2015 and is significantly larger and wider than the reporting on internal controls under the CARO. Under CARO, the reporting on internal controls was limited to the adequacy of controls over purchase of inventory and fixed assets and sale of goods and services. As such, CARO did not require reporting on all controls relating to financial reporting and also did not require reporting on the "adequacy and operating effectiveness" of such controls. • Companies have started working towards adoption of such internal financial controls which shall form the basis for such reporting requirement for the forthcoming financial years.
(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; and (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; (This information is required only in case of transactions exceeding the value of five lakh rupees in respect of any party and in any one financial year).	• In conducting an audit of financial statements, the auditor is required to consider the legal and regulatory framework applicable to the company. This includes maintenance of various registers such as the register of contracts and arrangements in which the directors are interested. In case of non-compliance, the auditor will evaluate the impact of the same as per SA 250 "Consideration of Laws and Regulations in an Audit of Financial Statements" and report it in accordance with SA 705 on "Modifications to the Opinion in the Independent Auditor's Report". • An audit of financial statements is conducted in accordance with the SAs issued by the ICAI. As per SA 550 "Related Parties" the auditors should obtain sufficient appropriate evidence about the assertion made by the management that the related party transactions were conducted on terms equivalents to those prevailing in an arm's length transaction. Hence, obtaining information about transactions made in pursuance of such contracts or arrangements with related parties as per the Act including whether those are at arm's length would be part of the audit process performed by the auditor in accordance with SA 550. • Section 188 of the Act has laid down more stringent requirements with respect to related party transactions as compared to the erstwhile Companies Act, 1956.
(vi)in case the company has accepted deposits from the public, whether the directives issued by the Reserve Bank of India and the provisions of Sections 58A, 58AA or any other relevant provisions of the Act and the rules framed there under, where applicable, have been complied with. If not, the nature of contraventions should be stated; If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any Court or any other Tribunal whether the same has been complied with or not?	• In conducting an audit of financial statements, the auditor is required to consider the legal and regulatory framework applicable to the company. Testing the company's compliance with regulatory requirements applicable to the company is imperative in an audit of financial statements. In case of non-compliance, the auditor will evaluate the impact of the same as per SA 250 "Consideration of Laws and Regulations in an Audit of Financial Statements" and report it in accordance with SA 705 on "Modifications to the Opinion in the Independent Auditor's Report". • Auditor's are required to state that they have taken into consideration the provisions of the Companies Act when forming their opinion on the financial statements. Any material deviation in the acceptance of deposits by a company will therefore be appropriately dealt with by the auditors in the audit report, as required. • The Companies Act, 2013 requires the auditor to certify separately the returns to be filed by a company in case they accept public deposits. • In addition, acceptance of deposits is governed by the Reserve Bank of India, which also requires separate certification by the auditors.

Clause	Covered by
(vii)in the case of listed companies and/or other companies having a paid-up capital and reserves exceeding ₹50 lakh as at the commencement of the financial year concerned, or having an average annual turnover exceeding five crore rupees for a period of three consecutive financial years immediately preceding the financial year concerned, whether the company has an internal audit system commensurate with its size and nature of its business;	• In terms of section 138 of the Companies Act, 2013 read with the Companies (Accounts) Rules, 2014 prescribed thereunder, specified classes of companies are, in any case, mandatorily required to be subjected to internal audit. • Also the thresholds specified in the Rules are different from those specified under this clause.
(viii)where maintenance of cost records has been prescribed by the Central Government under clause (d) of sub-Section (1) of Section 209 of the Act, whether such accounts and records have been made and maintained;	• Cost records are maintained by the class of companies as prescribed under Cost Records and Audit Rules, 2014. The specific requirement of reporting on the maintenance of cost records will be performed by the Cost auditor as part of his duties and the scope of his work is more comprehensive than that of the statutory auditor. • Auditor's are required to state u/s 143(3)(b) if the company has maintained proper books of account. Cost records are an integral part of the books of account. Further, u/s 143(3)(h), the auditor should state any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith. • In many companies, the volume of cost records is extremely huge and moreover, cost records contain information that is no way related to financial statements. Hence, a statutory auditor cannot reasonably be expected to report on them. • Statutory auditors can only do a prima facie examination of the cost records, as had been mentioned in the Statement on the Companies (Auditor's Report) Order, 2003, issued by ICAI.
(ix) (a) is the company regular in depositing undisputed statutory dues including Provident Fund, Investor Education and Protection Fund, Employees' State Insurance, Income-tax, Sales-tax, Wealth Tax, Service Tax, Custom Duty, Excise Duty, cess and any other statutory dues with the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated by the auditor.	• Under Schedule III to the Companies Act, 2013, clause G, Other Current Liabilities, the following disclosure is required under sub clause (j): *"other payables (specify)"* • Instead of requiring a separate reporting by the statutory auditor under CARO, companies could be required to give more detailed disclosures under this head regarding statutory dues as stated in the clause(ix)(a) of CARO 2003. • In an audit of financial statements, an auditor is required to consider the legal and regulatory framework applicable to the company. This includes testing of compliance with various statutory regulations applicable to the company. In case of non-compliance, the auditor will evaluate the impact of the same as per SA 250 "Consideration of Laws and Regulations in an Audit of Financial Statements" and report it in accordance with SA 705 on "Modifications to the Opinion in the Independent Auditor's Report". • Section 143(3)(j) read with Rule 11 of the Companies (Audit and Auditors') Rules 2014 requires the auditor to report as to whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement. Dues of sales tax/income tax/custom tax etc. on account of dispute are covered under the definition of "pending litigations" and will instigate reporting under said Section. • Further, the auditors are required to report on the payment of statutory dues under other legislations too such as the Tax Audit report under the Income-tax Act, *etc.* • Section 134(5)(f) of the Companies Act, 2013 casts a responsibility on the Board of Directors for ensuring an adequate system for compliance with laws and regulations applicable to a company and the operating effectiveness of such system and stating this responsibility in the Board report. As such if there are significant delays in remittance of statutory dues which are material, the same may need to be appropriately dealt with by the Board in terms of Section 134(5)(f).

Clause	Covered by
(b) in case dues of Income tax/ Sales tax /Wealth tax/ Service tax/ Custom duty/ Excise duty/ cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the Department shall not constitute a dispute).	• In this case, two scenarios can be there: (i) Amount is disputed but has been provided for by the company in the financial statements Or (ii) Disputed amount is not acknowledged as debt against the Company and reflected as a Contingent Liability in terms of clause T of Schedule III to the Companies Act 2013 • In both the scenarios, companies can be required to make additional disclosures. • Further, the auditor, in terms of the reporting requirements u/s 143(3)(j) is required to state whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statements. Since disputed taxes are pending litigations, this matter will in any case be appropriately dealt with by the auditor in the audit report u/s 143(3)(j),as required.
(x)whether in case of a company which has been registered for a period not less than five years, its accumulated losses at the end of the financial year are not less than fifty per cent of its net worth and whether it has incurred cash losses in such financial year and in the immediately preceding financial year;	• Pursuant to the requirements of SA 570, "Going Concern", the auditor in any case looks into the aspect of erosion of net worth as a matter that indicates a doubt about the going concern. Also, information in respect of cash losses is available through the Cash Flow Statement. • Further, the Cash Flow Statement is now required to be prepared and reported on as part of the financial statements, which statement states the cash operating profits and cash flow from operations.
(xi)whether the company has defaulted in repayment of dues to a financial institution or bank or debenture holders? If yes, the period and amount of default to be reported;	• In terms of Schedule III to the Companies Act, 2013 - "General Instructions for Preparation of Balance Sheet" (Clause C-Long Term Borrowings, point (vii), period and amount of continuing default as on balance sheet date in repayment of loans and interest, shall be specified in each case. • This reporting in the balance sheet applies to all the categories of Long Term Borrowings given in Clause C, including Bonds/Debentures, Term Loans from Banks and Other Parties, *etc.*
(xii)whether adequate documents and records are maintained in cases where the company has granted loans and advances on the basis of security by way of pledge of shares, debentures and other securities; If not, the deficiencies to be pointed out.	• Section 143(1)(a) of the Companies Act, 2013 requires the auditor to inquire whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members. In case the auditor observes any deviation, the same will be reportable u/s 143(3).
(xiii) whether the provisions of any special statute applicable to chit fund have been duly complied with? In respect of Nidhi/ mutual benefit fund/societies;	• The Government has issued the Nidhi Rules, 2014 pertaining to Chapter XXVI, Nidhis, of the Act. Rule 5.d of the aforesaid Rule requires a Nidhi to maintain a Net Owned Fund ratio of 1:20. • Further, Rule 22 of the aforesaid Rules, the auditor of a Nidhi company is required to give a certificate (annual) that "the company has complied with all the provisions contained in the rules" and this certificate is to be annexed to the audit report. Also, any non-compliance with the Rules has to be specified in the Certificate.
(a) whether the net-owned funds to deposit liability ratio is more than 1:20 as on the date of balance sheet;	

Clause	Covered by
(b) whether the company has complied with the prudential norms on income recognition and provisioning against sub-standard/doubtful/loss assets;	• The Government has issued the Nidhi Rules, 2014 pertaining to Chapter XXVI, Nidhis, of the Act. Rule 20 of the aforesaid Rule lay down the requirements in respect of "Prudential Norms". • Further, Rule 22 of the aforesaid Rules, the auditor of a Nidhi company is required to give a certificate (annual) that "the company has complied with all the provisions contained in the rules" and this certificate is to be annexed to the audit report. Also, any non-compliance with the Rules has to be specified in the Certificate
(c) whether the company has adequate procedures for appraisal of credit proposals/requests, assessment of credit needs and repayment capacity of the borrower;	• The Government has issued the Nidhi Rules, 2014 pertaining to Chapter XXVI, Nidhis, of the Act. Rule 15 of the aforesaid Rule lay down the conditions subject to which a Nidhi can grant a loan. • Further, Rule 22 of the aforesaid Rules, the auditor of a Nidhi company is required to give a certificate (annual) that "the company has complied with all the provisions contained in the rules" and this certificate is to be annexed to the audit report. Also, any non-compliance with the Rules has to be specified in the Certificate.
(d) whether the repayment schedule of various loans granted by the nidhi is based on the repayment capacity of the borrower;	• The Government has issued the Nidhi Rules, 2014 pertaining to Chapter XXVI, Nidhis, of the Act. Rule 15 of the aforesaid Rule lay down the conditions subject to which a Nidhi can grant a loan as also the repayment terms. • Further, Rule 22 of the aforesaid Rules, the auditor of a Nidhi company is required to give a certificate (annual) that "the company has complied with all the provisions contained in the rules" and this certificate is to be annexed to the audit report. Also, any non-compliance with the Rules has to be specified in the Certificate.
(xiv)if the company is dealing or trading in shares, securities, debentures and other investments, whether proper records have been maintained of the transactions and contracts and whether timely entries have been made therein; also whether the shares, securities, debentures and other investments have been held by the company, in its own name except to the extent of the exemption, if any, granted under Section 49 of the Act;	• In an audit of financial statements, the SAs require the auditor to address the "existence" assertion in relation to Investment. Sufficient appropriate audit evidence in accordance with SA 500 "Audit Evidence" may be obtained by physically verifying the investments or through confirmations. In case there are any material discrepancies noted at the time of such inspection, the auditor shall deal with the same in accordance with SA 450 "Evaluation of Misstatements Identified during the Audit" and accordingly in the audit report. • Auditor's are required to state that they have taken into consideration the provisions of the Companies Act when forming their opinion on the financial statements. Any material deviation in the account balance of investments *vis-à-vis* the requirements of the Companies Act, 2013 will in any case be appropriately dealt with by the auditor in the audit report, as required.
(xv)whether the company has given any guarantee for loans taken by others from bank or financial institutions, the terms and conditions whereof are prejudicial to the interest of the company;	• Section 143(3)(f) requires the auditor to comment on financial transactions or matters that have an adverse effect on the functioning of the Company. Guarantee given for loans taken by others from banks or financial institutions fall under the purview of "financial transactions" and any such transaction which is prejudicial to the interest of the company and material to the financial statements could be commented upon under this section, as required. • In addition in terms of Rule 11(b) of the Companies (Audit and Auditor's) Rules, 2014, the auditor is required to report whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts. This would include guarantees too.
(xvi)whether term loans were applied for the purpose for which the loans were obtained;	• Under the Companies Act, 2013, financial statements include a Cash Flow Statement which would reflect the source of funds through long-term borrowings and the utilisation of funds in investing activities. Based on this users of the financial statements can determine if the term loans were utilised for the purpose they were obtained.

Clause	Covered by
(xvii) whether the funds raised on short-term basis have been used for long term investment; If yes, the nature and amount is to be indicated;	• As a part of audits of financial statements, the auditors in any case make assessment of the appropriateness of "Going Concern" in terms of the requirements of SA 570. Excessive reliance on short term borrowings to finance long term assets is one of the factors that may cast a doubt about going concern assumption. Thus, a separate reporting in CARO for this purpose is not required. • Further, under the Companies Act, 2013, financial statements include a Cash Flow Statement which would reflect the long-term source of funds and the utilisation of funds for long-term purposes. Based on this users of the financial statements can determine if the short-term funds were used for long-term purposes.
(xviii) whether the company has made any preferential allotment of shares to parties and companies covered in the Register maintained under Section 301 of the Act and if so whether the price at which shares have been issued is prejudicial to the interest of the company;	• An audit of financial statements is conducted in accordance with the SAs issued by the ICAI. As per SA 550 "Related Parties" the auditors should obtain sufficient appropriate evidence about the assertion made by the management that the related party transactions were conducted on terms equivalents to those prevailing in an arm's length transaction. Hence, obtaining information about transactions made in pursuance of such preferential allotment of shares to related parties as per the Act including whether those are at arm's length would be part of the audit process performed by the auditor in accordance with SA 550. • Further, the Companies Act, 2013 specifies the requirements for preferential allotment of shares, such that they are not prejudicial to the interests of the Company. Since the auditors are required to state that they have taken into consideration the provisions of the Companies Act when forming their opinion on the financial statements, any material deviation in compliance with the preferential allotment norms *vis-à-vis* the requirements of the Companies Act, 2013 will therefore be reported in the audit report.
(xix)whether security or charge has been created in respect of debentures issued;	• In terms of Schedule III to the Companies Act, 2013 - "General Instructions for Preparation of Balance Sheet" (Clause C-Long Term Borrowings, point(ii) specifically requires the following disclosure in the Balance Sheet: *"(ii) Borrowings shall be further sub-classified as secured and unsecured. Nature of security shall be specified separately in each case."*
(xx)whether the management has disclosed on the end use of money raised by public issues and the same has been verified;	• In terms of Schedule III to the Companies Act, 2013 - "General Instructions for Preparation of Balance Sheet", clause V, the following disclosure is required in the balance sheet: *"Where in respect of an issue of securities made for a specific purpose, the whole or part of the amount has not been used for the specific purpose at the balance sheet date, there shall be indicated by way of a note how such unutilized amounts have been used or invested."* • Further, as per the Listing Agreement, where a company has raised money by way of public issues, it is required to prepare a statement of funds utilised for purpose other than those stated in offer document/prospectus/notice and this needs to be certified by the Statutory Auditor of the Company.
(xxi) whether any fraud on or by the company has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated.	• Section 143(12) of the Companies Act 2013 and the Rules thereunder lay down responsibilities of the statutory auditor with respect to reporting of frauds to the Central Government.

In the above background, CARO, 2015, contains only 12 reporting clauses. In fact, all except one of these have been taken from CARO, 2003. The only exception is Clause (vii)(c) of paragraph 3, which requires the auditors to report whether the amount required to be transferred to investor education and protection fund, in accordance with the relevant provisions of the Companies Act, 1956 (1 of 1956) and rules made thereunder has been transferred to

CARO, 2015 has been issued after an engaging consultation with the Institute of Chartered Accountants of India. While deliberating on the possible reporting clauses for CARO 2015, it was noted that since the issuance of CARO, 2003, the financial reporting and auditing environment in India has matured considerably.

CARO, 2015, contains only 12 reporting clauses. In fact, all except one of these have been taken from CARO, 2003 itself. The only exception is clause (vii)(c) of paragraph 3 which requires the auditors to report whether the amount required to be transferred to investor education and protection fund in accordance with the relevant provisions of the Companies Act, 1956 (1 of 1956) and rules made there under, has been transferred to such fund within time.

such fund within time. This clause, in fact, is also appearing as sub-Rule (c) of Rule 11 of the Companies (Audit and Auditors) Rules, 2014. As is clear, none of the clauses of CARO 2015 would require the companies to have any new information systems in place to generate the necessary information. At the same time, the auditors too would not be required to undertake any new or additional procedures to report on the information in CARO, 2015. As a result, the statutory auditors can continue to draw guidance from the relevant paragraphs of the existing Statement on Companies (Auditor's Report) Order, 2003, issued by ICAI. The Institute of Chartered Accountants of India has already issued an Announcement providing guidance to the members in this regard. This Announcement is available on the website of the Institute *i.e.*; www.icai.org.

It would also be noted that CARO, 2015 has not brought in any changes with regard to exemption thresholds prescribed by CARO, 2003 for the private companies, in terms of paid up capital and reserves, outstanding loan from any bank or financial institution and turnover. In addition to continuing to keep the banking, insurance and companies licensed to operate under Section 8 of the Companies Act, 2013, out of the purview of the Order, on a cost-benefit consideration of additional reporting requirements, one person companies {as defined under Section 2(62)} and small companies {as defined under Section 2(85) of the Companies Act, 2013} have also been exempted from CARO, 2015.

An important point to note in this regard is that Section 129(4) of the Companies Act, 2013 envisages a *mutatis mutandis* application of the provisions relating to preparation and audit of standalone financial statements, to the consolidated financial statements as well. One interpretation of this requirement is that the use of the words "*mutatis mutandis*" implies that the provisions are to be applied to the extent possible and practicable with suitable changes. Hence, the auditor of the CFS should not be required to report on any matters other than the true and fair view of the CFS. On the other hand is the interpretation, that all the reporting requirements under Section 143(1),(2),(3) and (11) apply equally to the auditors of CFS. Accordingly, the auditor of the consolidated financial statements would need to also make a report on Section 143(11). This, however, seems a very impractical interpretation of the provision of Section 129(4) as the "Group" *per se* is not a legal entity in respect of which the clauses of CARO 2015 can be reported upon. It is only the components of the Group that would have any separate legal entity. So, the only recourse available to the auditor of CFS would be to base his comments on the reports of the auditors of the components, that too only such components which are Indian companies, since the other components' auditors would not be required to make any report under CARO 2015. Of course, the concepts of materiality and exercise of professional skepticism remain the bedrock of such reporting. In the absence of any consensus view on the interpretation of Section 129(4), particularly, regulators seemingly taking the latter interpretation, the CFS auditors seem to be left with no choice than report on CARO 2015 also.

In the above background, it may not be an exaggeration to say that the present regime of Companies Act, 2013 and the Rules, contain tighter provisions relating to the duties of the directors, independent directors, audit committee, related party transactions, *etc.*, that are aimed at ensuring greater transparency and fairness for the stakeholders, in the running of the day to day affairs of a company. The relevance of any such

None of the clauses of CARO 2015 would require the companies to have any new information systems in place to generate the necessary information. At the same time, the auditors too would not be required to undertake any new or additional procedures to report on the information in CARO, 2015. As a result, the statutory auditors can continue to draw guidance from the relevant paragraphs of the existing Statement on Companies (Auditor's Report) Order, 2003, issued by ICAI.

separate Order needs to be relooked, to provide such information which was hitherto not available or cannot be made available, through the financial statements and accompanying notes or through auditors' report under Section 143(3)(1), (2) and (3) of the Companies Act, 2013.

At this juncture, it may also be worthwhile to note that, at the international level, a number of critical changes have been brought in the auditor's report of listed entities to make it more robust in terms of providing more sensitive and focussed information about the auditee and the audit to the users of the auditor's report. These changes have been brought in by the International Auditing and Assurance Standards Board after a lengthy process of consultation with the various stakeholders on their information needs and expectations from auditor's report.

The resultant ISA 701, *Communicating Key Audit Matters in the Independent Auditor's Report*, therefore requires a dedicated section in the auditor's report *viz.*, "Key Audit Matters" (or KAM). These KAM are those matters that, in the auditor's professional judgment, were of the maximum significance in the audit of the financial statements of the current period. KAM are selected by the auditor from areas of higher assessed risk of material mis-statement, or significant risks identified in accordance with ISA 315, or significant auditor judgements relating to areas in the financial statements that involved significant management judgement, including accounting estimates that have been identified as having high estimation uncertainty, or the effect on the audit of significant events or transactions that occurred during the period. The Auditing and Assurance Standards Board has already started on the project of examining this ISA 701 and its implementation challenges in India, including how it can be calibrated with the Order issued under Section 143(11) of the Companies Act, 2013 to avoid duplication and make the auditor's report more meaningful. ■

Guidance on Reporting under The Companies (Auditor's Report) Order, 2015 (CARO, 2015) and Consequential Amendment to the Format of The Auditor's Report Of A Company[1]

I. Reporting Under CARO, 2015

1. As the members are aware, the Ministry of Corporate Affairs, on 10th April, 2015, notified the Companies (Auditor's Report) Order, 2015 (CARO, 2015). The text of the Order is available on the URL http://www.mca.gov.in/Ministry/pdf/Companies_Auditors_Report_Order_2015.pdf
2. Members would have noted that, *inter alia*, the exemption criteria applicable to private companies as laid down in the paragraph 1(v) of the CARO, 2015 is same as that in the Companies (Auditor's Report) Order, 2003(CARO, 2003). Also, it is noted that the twelve reporting clauses given in paragraph 3 of CARO, 2015 are similar in their requirements to the corresponding clauses in paragraph 4 of the CARO, 2003. Further, the requirement to state reasons for unfavourable or qualified answers as given in paragraph 4 of the CARO, 2015 is also similar to that contained in paragraph 4 of the CARO, 2003. Accordingly, members are advised to continue to draw in principle guidance from the relevant paragraphs of the Statement on the Companies (Auditor's Report) Order, 2003, issued by the Institute of Chartered Accountants of India.
3. For the benefit of the members, following is a reference table of reporting clauses of CARO, 2015 and the corresponding paragraphs of the Statements on CARO, 2003, wherefrom relevant guidance can be drawn (subject to necessary changes in the context of the provisions of the Companies Act, 2013 and the Rules issued thereunder):

Clause of CARO, 2015	Relevant Paragraph/s of the Statement on CARO, 2003
(i) (a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;	44(a) to (n)
(b) whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;	45(a) to (g)
(ii)(a) whether physical verification of inventory has been conducted at reasonable intervals by the management;	47(a) to (d)

[1] *This Announcement is being issued in terms of the decision taken at the 342nd meeting of the Council of the Institute of Chartered Accountants of India.*

Clause of CARO, 2015	Relevant Paragraph/s of the Statement on CARO, 2003
(b) are the procedures of physical verification of inventory followed by the management reasonable and adequate in relation to the size of the company and the nature of its business. If not, the inadequacies in such procedures should be reported;	48(a) to (k)
(c) whether the company is maintaining proper records of inventory and whether any material discrepancies were noticed on physical verification and if so, whether the same have been properly dealt with in the books of account;	49(a) to (h)
(iii) whether the company has granted any loans, secured or unsecured to companies, firms or other parties covered in the register maintained under Section 189 of the Companies Act. If so,	50(a) to (f)
(a) whether receipt of the principal amount and interest are also regular; and	52(a) to (e)
b) if overdue amount is more than rupees one lakh, whether reasonable steps have been taken by the company for recovery of the principal and interest	53(a) to (c)
(iv) is there an adequate internal control system commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods and services. Whether there is a continuing failure to correct major weaknesses in internal control system.	57(a) to (m)
(v) in case the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of Sections 73 to 76 or any other relevant provisions of the Companies Act and the rules framed there under, where applicable, have been complied with? II not, the nature of contraventions should be stated; If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other Tribunal, whether the same has been complied with or not?	60(a) to (l)
(vi) where maintenance of cost records has been specified by the Central Government under sub-Section (1) of Section 148 of the Companies Act, whether such accounts and records have been made and maintained;	62(a) to (g)
(vii) (a) is the company regular in depositing undisputed statutory dues including provident fund, employees' state insurance, income-tax, sales-tax, wealth tax, service tax, duty of customs, duty of excise, value added tax cess and any other statutory dues with the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated by the auditor.	63(a) to (r)
(b) in case dues of income tax or sales tax or wealth tax or service tax or duty of customs or duty of excise or value added tax or cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the concerned Department shall not constitute a dispute).	64(a) to (h)

Clause of CARO, 2015	Relevant Paragraph/s of the Statement on CARO, 2003
(c) whether the amount required to be transferred to investor education and protection fund in accordance with the relevant provisions of the Companies Act, 1956 (1 of 1956) and rules made thereunder has been transferred to such fund within time.	The members may note that the provisions relating to the Investor Education and Protection Fund (IEPF) are contained in Section 205C of the Companies Act, 1956 and the IEPF (Awareness and Protection of Investors) Rules, 2001. For the purpose of reporting on this clause, the members would need to examine the date of transfer *vis-a-vis* the time prescribed in the aforesaid provisions and Rules and report accordingly.
(viii) whether in case of a company which has been registered for a period not less than five years, its accumulated losses at the end of the financial year are not less than fifty per cent of its net worth and whether it has incurred cash losses in such financial year and in the immediately preceding financial year;	65(a) to (h)
(ix) whether the company has defaulted in repayment of dues to a financial institution or bank or debenture holders? If yes, the period and amount of default to be reported;	66(a) to (h)
(x) whether the company has given any guarantee for loans taken by others from bank or financial institutions, the terms and conditions whereof are prejudicial to the interest of the company;	71(a) to (h)
(xi) whether term loans were applied for the purpose for which the loans were obtained;	72(a) to (j)
(xii) whether any fraud on or by the company has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated.	77(a) to (k)

4. Members may also continue to draw guidance, to the extent relevant, in respect of applicability of the CARO, 2015, form of report and Board's report, from the guidance given in the Statement on Companies (Auditor's Report) Order, 2003 (subject to necessary changes in the context of the provisions of the Companies Act, 2013 and the Rules thereunder).

II. Consequential Amendment to the Format of the Auditor's Report of A Company

5. The Auditing and Assurance Standards Board had, in December 2014, issued illustrative formats of the auditor's report on financial statements of a company under the Companies Act, 2013. While reporting on the requirements of CARO, 2015, a reference thereto also needs be added in the main audit report under the "Report on Legal and Other Regulatory Matters" paragraph as follows:

   "**Report on Other Legal and Regulatory Requirements**

   As required by the Companies (Auditor's Report) Order, 2015 ("the Order"), issued by the Central Government of India in terms of sub-section (11) of Section 143 of the Companies Act, 2013, we give in the Annexure a statement on the matters specified in paragraphs 3 and 4 of the Order, to the extent applicable.

   As required by Section 143 (3) of the Act, we report that:

   ....

   ...."

The aforesaid illustrative formats of the auditor's report, accordingly, stand amended to that extent.

Chairman,
Auditing and Assurance Standards Board.

Clarification on Auditor's Report in Respect of Financial Statements of A Company for Accounting Years Beginning Before 1st APRIL, 2014 [1]

1. The Ministry of Corporate Affairs *vide* its General Circular No 07/2014, *Dissemination of Information With Regards to the Provisions of the Companies Act, 2013 as Notified Till Date vis a vis Corresponding Provisions of the Companies Act, 1956*, dated 01st April 2014 had provided information in respect of such sections of the Companies Act 1956 which will cease/continue to have effect after 01st April 2014 (*i.e.* the date when a number of sections of the Companies Act 2013 came into force).
2. Also, the Ministry of Corporate Affairs had on 04th April, 2014 issued a General Circular No. 8/2014 regarding "Commencement of provisions of the Companies Act, 2013 with regard to maintenance of books of accounts and preparations/adoption/filing of financial statements, auditor's report, Board's report and attachments to such statements and reports-Applicability with regard to relevant financial Year".
3. The aforesaid General Circular of 04th April 2014 inter alia, mentioned that "*.................. it is hereby notified that the financial statements (and documents required to be attached thereto), auditor's report and Board's report in respect of financial years that commenced earlier than 1st April, 2014 shall be governed*

[1] This "Clarification" was approved by the Council of the Institute of Chartered Accountants of India at its 342nd meeting held on 15-16 April, 2015.

by the relevant provisions/Schedules/rules of the Companies Act, 1956 and that in respect of financial years commencing on or after 1st April, 2014, the provisions of the new Act shall apply."

4. Also, such companies whose financial years ended at a date other than 31st March, are in the process of aligning their financial year to meet the definition of "financial year" as per the Companies Act, 2013.
5. The matters described in paragraph 1 above have given rise to a situation wherein, with effect from 01st April 2014, the various documents, minutes and registers, *etc.*, are being maintained by companies in accordance with the provisions of the Companies Act, 2013. Consequently, in case of companies whose financial years commenced before 31st March 2014 but would end on or before 31st March 2015, w.e.f. 01st April 2014, various documents, minutes and registers, *etc.*, may not be maintained in accordance with the provisions of the Companies Act, 1956 for such part of the financial year that falls after 01st April 2014 (*i.e.*, the date when the Companies Act, 2013 comes into force).
6. The aforesaid situation is giving rise to practical difficulties for the statutory auditors while reporting in terms of certain provisions of Section 227 of the Companies Act, 1956 in respect of the companies described in paragraph 5 above since necessary documents, minutes and registers, *etc.*, under the Companies Act, 1956 may not be available for such part of the financial year that falls after 01st April 2014. Specifically, these difficulties relate to reporting under Section 227(3)(f), relating to disqualification of the Directors under Section 274(1)(g) of the Companies Act 1956. Similarly, problems would be faced while reporting on certain clauses of the Companies (Auditor's Report) Order, 2003 (CARO 2003). For example, clause (iii) relating to loans to/from parties covered in the register maintained under Section 301 of the Companies Act 1956; or clause (v)(a) and (b) relating to contracts or arrangements referred to in Section 301 of the Companies Act 1956; or clause (vi) relating to provisions of Section 58A and 58AA of the Companies Act, 1956 relating to acceptance of deposits from the public; or clause (viii) relating to maintenance of cost records; or clause (xiv) relating to dealing or trade in shares, securities, debentures, other investments, *etc vis-a-vis inter alia*, exemption under Section 49 of the Companies Act, 1956 or clause (xviii) relating to preferential allotment of shares to parties and companies covered in the register maintained under Section 301 of the Companies Act, 1956. It may also be noted that in terms of MCA's aforesaid General Circular No 07/2014, of 01st April, 2014, Sections 49, 58A, 58AA, 209, 274, 301 of the Companies Act, 1956 cease to have effect from 01st April 2014.
7. It is, therefore, suggested that in case of aforesaid situation, the statutory auditors should report on the relevant clauses only for that part of the financial year upto which the concerned provisions of the Companies Act 1956 were in force (*ie*, upto 31st March 2014). Also, the statutory auditors should clearly bring out this fact in the relevant portions of their audit reports. An illustrative manner of such disclosure is as follows:

   "**Other Matters**

   The Ministry of Corporate Affairs had on 01st April, 2014, *vide* its General Circular No. 07/2014, *Dissemination of Information with Regards to the Provisions of the Companies Act, 2013 as Notified Till date vis a vis Corresponding Provisions of the Companies Act, 1956*, identified such sections of the Companies Act, 1956 that would cease/continue to have effect from 01st April 2014. Accordingly, in terms of the aforesaid Circular, our reporting in respect of Section 227(3)(f) of the Companies Act, 1956, and clauses (iii), (v)(a) and (b), (vi), (viii), (xiv), (xviii) of the Companies (Auditor's Report) Order, 2003 (dealing with Sections 49, 58A, 58AA, 209(1)(d) and 301 of the Companies Act, 1956) is only for the period beginning from ie .... (*date*) till 31st March 2014 since as per the aforementioned MCA Circular these Sections have ceased to have effect from 01st April, 2014."
8. This Announcement is effective from the date of its hosting on ICAI's website.

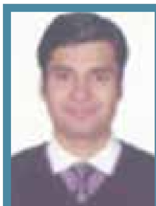
Chairman,
Auditing and Assurance Standards Board.

Due Diligence – A Perspective

Due diligence is an on-going, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict. A strong due diligence process is critical to make aware the proposed investor of all aspects of the deal and provides access to vital intelligence that is used to negotiate the final price and integrate the new corporations more effectively. The due diligence report should provide a recommendation, based on the risks that have been identified, as to whether a proposed transaction should be entered into with the target company or not. The article looks at the basics of due diligence, its purpose and how it differs from audit, the role of the chartered accountant in the process of due diligence and the methodology, reporting and other aspects relating to the subject. Read on…

Overview

"Believe nothing merely because you have been told it. Do not believe what your teacher tells you merely out of respect for the teacher. But whatsoever, after due examination and analysis, you find to be kind, conducive to the good, the benefit, the welfare of all beings -- that doctrine believe and cling to, and take it as your guide" – Buddha. Due diligence philosophy is in line with this doctrine and belief of Buddha. The primary purpose of due diligence is to enable the potential investor to make informed decisions concerning the risks present and the opportunities available in the proposed transactions. It provides an assurance on current earnings, assets realisation, unrecorded or understated liabilities, financial statement projection evaluations, cash flows and potential frauds. In other words, it is a mechanism



CA. Jitin Kapur

(The author is a member of the Institute who may be contacted at jitinkapur86@gmail.com.)

by which future negative consequences to either party involved in the proposed transaction, can be prevented.

Due diligence is generally conducted after the buyer and seller have agreed in principle to a deal, but before a binding contract is signed. Or it can be said that it is the investigation of the affairs of a company by, or on behalf of, a potential investor or purchaser before the transaction is completed. Conducting due diligence is the best way to assess the value of a business.

Due diligence is generally performed by a lawyer, chartered accountant or any other business adviser from different perspectives. The due diligence process may uncover information that will require addressing the critical question of whether or not to proceed with the transaction.

Generally, 'due diligence' is of the following types:

1. Financial due diligence
2. Legal due diligence
3. Operational due diligence

Financial due diligence should be undertaken whenever a company is considering acquiring new business (by either acquiring share capital of an existing company or purchasing the business operations and assets only). However, the benefits of financial due diligence reviews are not limited to merger and acquisition decisions. They can also be useful in assessing the merits of disposing of certain existing business divisions within an organisation. A financial due diligence review is also an essential component of assessing investment requirements for venture capital arrangements.

A financial due diligence review would not only look at the historical financial performance of a business but also consider the forecast financial performance of the company under the current business plan and consider the reasonableness of such forecasts. Also, under financial due diligence, reviewers investigate the reasons for the trends observed in the operating results of the company over a relevant time period and report on this in terms of relevancy for the proposed transaction.

Clearly, the scope of each financial due diligence will be unique depending upon the nature of the transaction and the size of the company or business operations being acquired. In general, a financial due diligence would typically involve a review of the following areas: historical financial results, current financial position, forecast financial results, working capital requirements, employee entitlements provisions, valuation implications, identification of risks and opportunities, and taxation implications.

The key to determine an appropriate scope for financial due diligence is clear identification of the risks surrounding the potential acquisition.

Due Diligence vs. Audit

Financial due diligence is not similar to an audit. An audit is only concerned with historical financial information and provides an assurance as to whether the financial information gives a "true and fair view" of the company's operations. On the other hand, a financial due diligence is wider in scope.

Financial due diligence may apply certain aspects of auditing standards, but an audit assignment must apply all applicable auditing standards.

As mentioned above, the primary objective of the due diligence assignment is not to express an opinion on the truth and fairness of a target's financial statements; it is merely to provide a potential investor with crucial information, gathered as a result of the due diligence assignment, to enable the potential investor to make informed decisions about the potential investment/acquisition in/of a target company.

Reviewer (generally, chartered accountants) performs certain aspects of the due diligence assignment in accordance with Standards on Auditing (SAs), but in contrast to statutory audit, the scope of the due diligence assignment is very much driven by the nature, size, complexity and client-requirements.

The reviewer may undertake a certain degree of the financial due diligence by applying SAs.

"Financial due diligence should be undertaken whenever a company is considering acquiring new business (by either acquiring share capital of an existing company or purchasing the business operations and assets only). However, the benefits of financial due diligence reviews are not limited to merger and acquisition decisions. They can also be useful in assessing the merits of disposing of certain existing business divisions within an organisation."

Knowledge of accounting standards is required to ensure that transactions and events have been properly accounted for in annual financial statements and any interim financial statements that the reporting accountant may use in his/her review.

Similar to any other assurance engagement, sufficient planning is also crucial in due diligence assignments, to enable the reviewer to carry out the necessary procedures and to carry out the assignment to the highest standards.

In many cases, the reviewer may be required to undertake a due diligence exercise on the company in which he may not necessarily have any past experience or dealings. In such circumstances, it is vital that the reviewer plans the due diligence carefully and obtains an understanding of the target company and the environment in which it operates. The reviewer may, therefore, consult the provisions in standard on auditing (SA) 315 "Identifying and assessing the risk of material misstatement through understanding the company and its environment".

Role of A Chartered Accountant in Due Diligence

Merger and acquisitions are very often nowadays. A due diligence review can be conducted either internally, or by independent external experts. Chartered accountants play a significant role in the financial due diligence process, because they are considered as financial experts. It is a good opportunity in our way. We can advise on the best structures and breakdown of sale/acquisition/merger /any other agreements after due consideration to tax planning.

Information Gathering

Once instructions have been taken from the client, the terms of the engagement have been agreed and sufficient planning has taken place, information can be gathered to enable the reviewer to report back to the client. The extent of verification of such information will largely depend on the requirements of the client and the scope of the engagement.

"A due diligence review can be conducted either internally, or by independent external experts. Chartered accountants play significant role in the financial due diligence process because they are considered as financial experts."

An illustrative list of requirements/information that the reviewer would be needed in order to perform financial due diligence is given as follows:

1. Details of the group structure (wherever applicable);
2. Shareholding pattern of the target company along with detail of shares pending allotment;
3. MOA and AOA of the target company;
4. Minutes of meetings of the shareholders or members, board of directors, or any committee thereof, for the last 3 years;
5. All external correspondences (either with business parties or with authorities) having significant matters and material agreements/deeds/arrangements including relating to acquisitions/financing during last 10 years, if any with the company;
6. Documentation relating to all joint venture, partnership, mergers, acquisitions relating to the company or any of its subsidiary;
7. All accounting records especially relating to revenue, fixed assets, inventory, cash and cash equivalent, employee related cost, accrual of expenses, *etc.* including accounting and HR policies/tax records/ list of options, rights, and warrants, *etc.*/ registers/returns;
8. Audited financial statements of the target company including internal reporting packages for the last three years, with the auditor's report, as the case may be, together with supporting analysis;
9. Un-audited financial statements of the target company for the most recent month or quarter end including the company's forecast projections for performance for the next three years;
10. List of any off-balance sheet arrangements, liabilities or obligations of any nature;
11. Comparison of last two years forecasted budgets compared to actual performance;
12. Detail of capital expenditures for the last three years;
13. Obtain receivables and payable aging schedule;
14. List of pending litigations and regulatory matters;
15. Obtain disaster recovery plan/policy of the company;

16. Obtain corporate governance policy and procedures.

Methodology

Checking methodology will remain almost similar to audit to an extent. Sample testing is used in performing both control and substantive procedures. This would comprise meetings, site visits, communications, and data analysis which include trend analysis, budget vs. actual analysis, benchmark (based on competitive data) analysis, *etc.*

The reviewer analyses the collected data based on the aforesaid approach and arrives at a conclusion based on critical factors like business criticality, functional complexity, technical complexity, infrastructure requirements, *etc.* During the course of testing, the reviewer understands the organisation's financial health, its capacity to deliver in future, its reputation and approach to working. The reviewer also gets a perspective on the leadership of the organisation.

Working Papers

There are no strict guidelines for preparing work papers during such type of assignments. Generally, work undertaken during the due diligence is documented in accordance with the procedures performed by the reviewer. Again, whilst the due diligence exercise is not an audit, however, compliance with standard on auditing (SA) 230 (revised) "Audit Documentation" may be considered appropriate by the reviewer.

It should demonstrate clearly the basis of results/ findings of due diligence engagement. This would be helpful in giving deliberated answers to the questions asked by the client (potential investor).

Reporting

The form and content of reporting should be agreed at the outset of the assignment. It should serve the purpose for which potential investor had asked for due diligence report to identify ongoing and potential risks in order to be able to make informed decisions about the target company.

Typically, a due diligence report would normally consist of the following:

(a) Scope of the engagement;
(b) Executive summary;

"Generally, work undertaken during the due diligence is documented in accordance with the procedures performed by the reviewer. Again, whilst the due diligence exercise is not an audit, however, compliance with standard on auditing (SA) 230 (revised) "Audit Documentation" may be considered appropriate by the reviewer."

(c) History of the target;
(d) Nature of the target company including its business, group structure, internal processes, principal activities, *etc.*;
(e) Financial reporting and accounting controls;
(f) Critical accounting policies;
(g) Summary of the latest approved financial statements and a summary of any available up-to-date management/interim accounts;
(h) Review of the financial position, financial performance and cash flows of the target for the relevant period;
(i) Details of significant matters such as relating to mortgages, financing, charges, taxations, *etc.*;
(j) Reviews of budgeted information and projections including future plans of business;
(k) Other relevant matters.

Conclusive Remarks

The due diligence process is more than collecting information and simply checking boxes. Most acquisitions are based on the value of future cash flows. Although it is important to ascertain and understand the specific assets you are buying or the liabilities you are assuming, it is equally important to analyse the information in the context of how future cash flows will be affected by the issues examined during due diligence. The chartered accountantss have an important role to play in the financial due diligence since they are considered as financial experts.

Is the New Regulation of Depreciation Going to Increase Profits?

Depreciation on fixed assets is now governed by Schedule II of the Companies Act, 2013 which has been made effective from 1st April 2014 vide MCA Notification dated 26th March 2014. Schedule II requires that depreciation is the 'systematic allocation' of the depreciable amount of an asset over its 'useful life' unlike the previous Schedule XIV of the earlier Companies Act, 1956 which prescribed the minimum rates of depreciation to be charged by a company. The depreciable amount is the cost of an asset or other amount substituted for cost, less its residual value which normally is not to be more than 5 % of the original cost of asset. The new approach of calculating depreciation will result in a different amount of depreciation charged to profit and loss account as compared to the older approach under the Companies Act 1956, thereby affecting the profits of the entities. This article analyses the new regulations of depreciation provided under the Companies Act, 2013 along with some illustrated examples for better understanding of the readers. Read on…

Applicability of Schedule II of the Companies Act, 2013

The Act provides that Schedule II shall be applied as follows:

- In case of prescribed class of companies whose financial statements are required to comply with the accounting standards specified under Section 133, useful life should not be normally different from the life specified in the Schedule. However, if such a company uses different useful life or residual value, it shall disclose the reasons for doing so.
- For other companies, the useful life and residual value of an asset should not be higher than prescribed in the Schedule.
- In respect of companies controlled or regulated by any authority constituted under an Act of Parliament or by the Central government, the useful life or residual value should be taken as notified for accounting purpose by such authority.

CA. Sachin Goyal

(The author is a member of the Institute who may be reached at casachingoyal93@gmail.com.)

Useful Life

The useful life of an asset is the period over which an asset is expected to be available for use by an entity, or the number of units expected to be obtained from the asset. The useful lives prescribed in the Schedule II of the Companies Act, 2013 will result in their depreciation over a different period than what was applicable under Schedule XIV of the Companies Act, 1956. Here are some of the assets mentioned in Part C of Schedule II:

Nature of Assets	Depreciation rates specified in Schedule XIV of the Companies Act, 1956	Useful life prescribed in Schedule II of Companies Act, 2013	Depreciation rates worked out on the basis of Useful life
	(a)	(b)	[95% value of asset/(b)]

Nature of Assets	Depreciation rates specified in Schedule XIV of the Companies Act, 1956	Useful life prescribed in Schedule II of Companies Act, 2013	Depreciation rates worked out on the basis of Useful life
Building (other than factory buildings) RCC Frame structure	1.63	60 Years	1.58
Factory buildings	3.34	30 Years	3.17
Plant and Machinery other than continuous process plant not covered under specific industries	4.75	15 Years	6.33
Plant and Machinery-continuous process plant for which no special rate has been prescribed	5.28	8 Years	11.88
General furniture and fittings	6.33	10 Years	9.50
Motor cycles, Scooters and other Mopeds	9.50	10 Years	9.50
Motor buses, Motor cars and Motor lorries other than used in a business of running them on hire	9.50	8 Years	11.88
Server and Networks	16.21	6 Years	15.83
Computer- end user devices *i.e.* Laptops and desktops, *etc.*	16.21	3 Years	31.67

Component Approach to Compute Depreciation

Schedule II of the Companies Act, 2013 mandates that when the cost of a part of the asset is significant to the total cost of the asset and useful life of that part is different from the useful life of the original asset, then useful life of that significant part should be determined separately.

This requirement is similar to that specified in Ind-AS. Currently under the present accounting system, companies need to expense such costs in the year of incurrence while under the component accounting, companies will capitalise these costs and depreciate it over the useful life of that component.

Recently, MCA has notified *vide* Notification No. 456 dated 29th August 2014 that the requirements of component approach are voluntary in respect of financial year commencing on or after 1st April 2014 and mandatory for financial statements for the periods commencing on or after 1st April 2015. This amendment was issued based on the requests from companies regarding difficulty in adopting component accounting immediately from financial year 2014-15.

Transition Provisions

From the date the new regulations come into effect, the carrying amount of an asset on that date:

- shall be depreciated over the remaining useful life of the asset prescribed in Schedule II of the Companies Act, 2013; or
- after retaining the residual value, shall be recognised in opening retained earnings where the remaining useful life of the assets is Nil.

Let's understand the following illustration to make this provision clear:

Illustration A: A Company acquired a building other than factory building and RCC frame structure at a cost of ₹100 lakh on 01.04.2000. The company is depreciating the building as per rate provided in Schedule XIV of 1956 Act *i.e.*, 1.63%. Now Schedule II of 2013 Act became effective from 1st April 2014 in which useful life for this building is specified 30 years.

Now as on 01.04.2014

Original cost: ₹100 lakh

Depreciation up to 31st March 2014: ₹100 lakh*1.63%*14 years = ₹22.82 lakh

Carrying value of the asset: ₹77.18 lakh

The carrying value as on 1st April 2014 will be depreciated over the remaining life of the asset as per Schedule II which is (30-14) 16 years, hence, depreciable amount of ₹ 77.18 lakh will be depreciated over 16 years and the annual depreciation from FY 2014-15 would be ₹ 4,58,256 [₹ 73.32 lakh (₹ 77.18 lakh * 95%) /16 years]

Illustration B: Suppose in above example, that building was acquired on 01.04.1982. In this case, the situation would be as follows:

Original cost: ₹100 lakh

Depreciation up to 31st March 2014: ₹100 lakh*1.63%*32 years = ₹52.16 lakh

Carrying Value of the asset: ₹47.84 lakh

Since useful life of the asset is 30 years and the asset has already been depreciated for 32 years, hence, the carrying amount excluding residual value as on 1st April 2014 will be adjusted with opening retained earnings of 2014-15 and no depreciation will be levied in prospective years.

Contradiction Between Depreciation Provisions As Per Schedule II and Accounting Standard 6

There is a contradiction between transition provisions prescribed in the Companies Act, 2013 and provisions of change in method of depreciation contained in Accounting Standard (AS)-6 "Depreciation Accounting". Now there are two aspects which need to be considered at the time of application of Schedule II:

1. Accounting Standard (AS) 6 provides that in case the change in the method results in deficiency in depreciation in respect of past years, the deficiency should be charged in the statement of profit and loss while as per Schedule II, where remaining life of the asset is Nil then the carrying amount of assets after retaining residual value should be adjusted with opening balance of retained earnings.

   Example: An electric equipment was purchased on 1st April 1998 for ₹10, 00,000. Its accumulated depreciation as on 31st March 2014 is ₹8,44,800 considering the rate of depreciation @ 5.28% and WDV is ₹1,55,200 with remaining life of 2 years. Now as per Schedule II of the Companies Act, 2013, useful life of electric equipment is 10 years. So, ₹1,05,200 (₹1,55,200- 5% of ₹10,00,000) will be adjusted with opening retained earnings while AS 6 requires that ₹1,05,200 should be charged in profit and loss account of FY 2014-15.
2. As per aforesaid accounting standard, the deficiency or surplus arising from retrospective computation of depreciation in case of change in method should be adjusted in the accounts in the year in which the method of depreciation is changed but on the other hand Schedule II provides that the carrying amount of assets shall be depreciated over the remaining useful life of the asset.

   Example: Suppose a machine of ₹50 lakh was purchased on 1st April 2000. Its accumulated depreciation as on 31st March 2014 is ₹36.96 lakh considering the rate of depreciation @5.28% and WDV is ₹13.04 lakh with remaining life of 4 years. Now Schedule II specifies the useful life of the same machine 25 years and as per its provision, remaining WDV should be depreciated over the remaining life of 11 years while AS 6 provides that retrospective calculation is to be done in case of change in method and resultant difference should be charged in the profit and loss account of FY 2014-15.

While as per preface to the AS issued by ICAI, if a particular accounting standard is not in conformity with the law, the provisions of the said law or statute will prevail over that accounting standard. Therefore, considering this provision, we can say that transition provisions given under the Companies Act, 2013 will prevail over accounting standard (AS) 6.

Introduction of New Specific Provisions in Schedule II

- The useful life of an asset may be the number of production units expected to be obtained from the asset. This means that the companies may now use units of production (UOP) method for depreciation which was restricted under Schedule XIV.
- Under Schedule II, it is clearly mentioned that depreciation is provided on historical cost or the amount substituted for historical cost. So in case of revaluation, depreciation will be charged on the revalued amount and the amount standing to the credit of revaluation reserve may be transferred directly to general reserve rather than credited in profit and loss account.
- The Companies Act, 2013 classified various assets with different useful lives which were not specifically categorised in earlier schedule. Some of those are listed below:

Nature of Asset under Companies Act, 1956	Depreciation rate as per Companies Act, 1956	Nature of Asset under Companies Act, 2013	Useful life	Depreciation rate as per Companies Act, 2013
Building other than factory buildings	1.63%	Building (other than factory building) RCC Frame structure	60 Years	1.67%
Building other than factory buildings	1.63%	Building (other than factory building) other than RCC Frame structure	30 Years	3.33%
As per Note 1: Buildings include bridges, wells and tube wells	1.63%	Fences, wells, tube wells	5 Years	20%

Nature of Asset under Companies Act, 1956	Depreciation rate as per Companies Act, 1956	Nature of Asset under Companies Act, 2013	Useful life	Depreciation rate as per Companies Act, 2013
Purely temporary structure	100%	Others (including temporary structure, etc.)	3 Years	33.33%
Plant and Machinery other than continuous process plant	4.75%	Office equipment	5 Years	19%
Plant and Machinery other than continuous process plant	4.75%	General Laboratory equipment	10 Years	9.50%
Data processing machines including computers	16.21%	Servers and Networks	6 Years	15.83%
Plant and Machinery continuous process plant	5.28%	Electric Installation and equipment	10 Years	9.50%

- Now in the new Act, there is no specific requirement of 100% depreciation on assets whose actual cost does not exceed ₹5,000.
- The method of actual number of working days to the prescribed number of days for calculation of depreciation rate for double shift or triple shift is no longer required in the new Act. Now if the asset is used in extra shift for anytime, depreciation will be increased by 50% in case of double shift and 100% in case of triple shift for that period.

Disclosure in Financial Statements

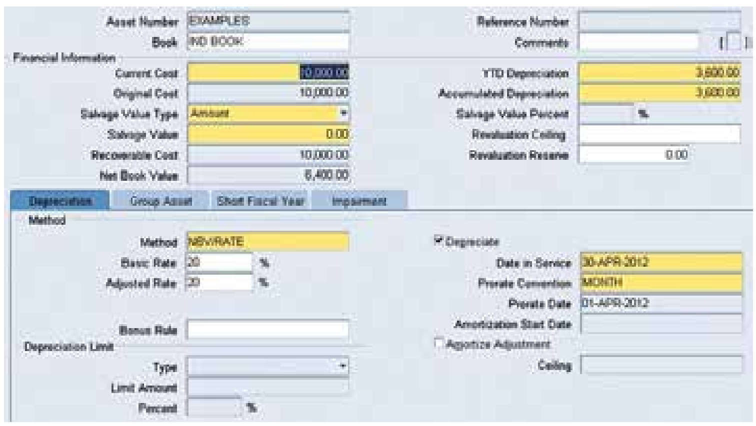
The following information is required to be disclosed under significant accounting policies in the annual accounts, namely:

a) Depreciation methods used; and
b) The useful lives of the assets for computing depreciation, if they are different from the life specified in the Schedule.

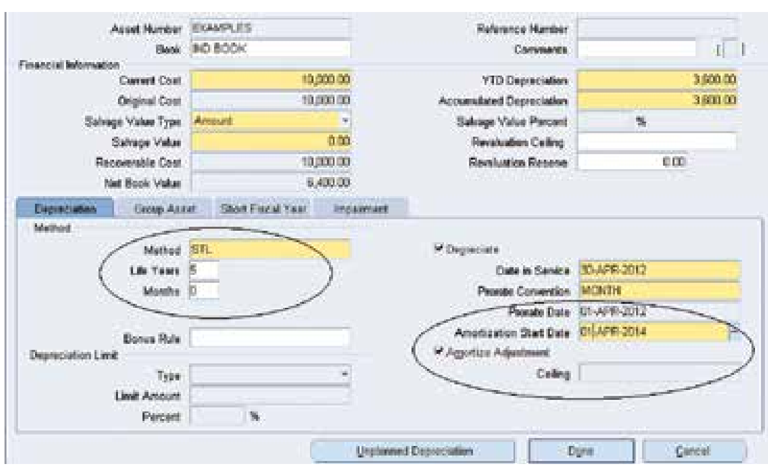
Points To Be Considered At the Time of Changes in System Used For Accounting of Fixed Assets

a) New assets which are added after 1st April 2014, the depreciation method/life in months should be the life which is mentioned in the Schedule II.
b) Suppose existing assets as per the Companies Act, 1956 are depreciating based on WDV method then with effect from 1st April 2014, all these assets need to be moved to the life based method and remaining cost of the asset needs to be depreciated during remaining life of the asset.

For example, an asset with a cost of ₹10,000 and with a date placed in service of 1st April 2012 and is currently depreciating with a WDV 20%. As on 1st April 2014, it has an accumulated depreciation of 3,600. The below screen shot shows the current status of the asset in application:



As per the new Act, useful life of the asset is 5 years. So, now we have to change the depreciation method of the asset from WDV 20% to straight line method with useful life of 5 years and amortise it from 1st April 2014.



"The useful life of an asset may be the number of production units expected to be obtained from the asset. This means that the companies may now use units of production (UOP) method for depreciation which was restricted under Schedule XIV."

In the screen shot below, you can see that the life is changed to STL 5 years and we have also check the amortisation check box and amortisation start date is populated as 1st April 2014.

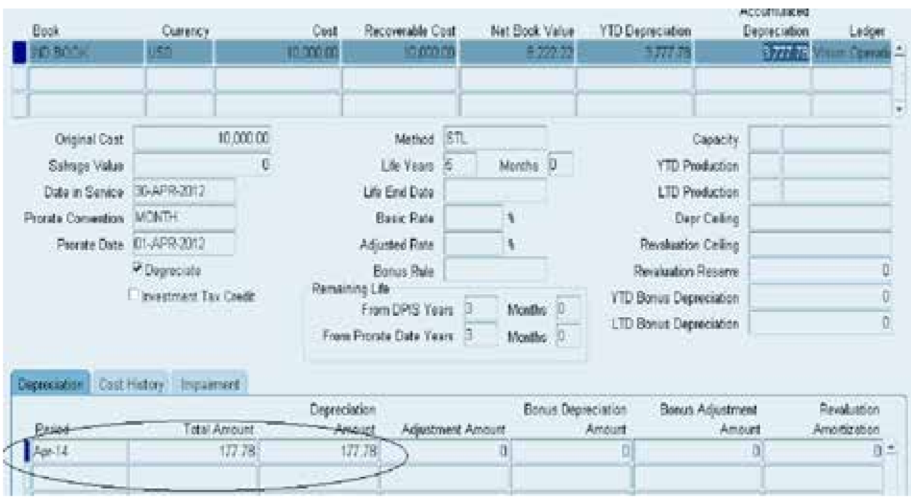
So for this asset, depreciation amount from 1st April 2014 will be:

= Remaining cost / Remaining life

= (10,000-3,600) / (5 years – 2 years)

= 2133.33 will be the annual depreciation amount

= 177.78 will be the monthly depreciation



c) As we know that Schedule II introduces various new categories of assets, let us say that the category of factory building doesn't include offices, go-downs, staff quarters which now have been specified separately having different useful lives. Thus the asset that are offices, go-downs, staff quarters in the factory building category would need to be reclassified to a separate category. Once they are reclassified, they need to be depreciated separately depending on the life specified in Schedule II.

d) Historical data in respect of cost of acquisition, date of capitalisation, depreciation rate, useful life, residual value, *etc.* up to 31st March 2014 should remain unchanged.

e) If there is no provision in system for automatic adjustment of remaining value of asset with opening retained earnings where the useful life is Nil, then any depreciation clearing account may be used to take its effect and later on, balance of depreciation clearing account would be transferred to opening retained earnings through any kind of manual entry.

Conclusion

We can say that there are many challenges in the application of new provisions of depreciation. Each and every asset in fixed asset register has to be thoroughly checked and scrutinised for the purpose of revised working because assets also need to be categorised as per new specified categories. In large manufacturing industries even software support used for accounting of fixed assets is required to introduce new concept of useful life in system. Moreover, depreciation in prospective years has to be charged on the basis of remaining useful life, so there should be proper mechanism in the software to adopt this change.

The useful life of assets having the nature of 'plant and machinery' has been increased from 18 years to 25 years and in respect of depreciation rates, it has been changed from 5.28% to 3.80%. Specially, manufacturing industries have more than 70% assets in the nature of plant and machinery, so there will be major change in amount of depreciation to be charged in profit and loss statement in comparison to previous years. On the other hand, it can be construed that it will increase profits of manufacturing industries because less depreciation will be charged in profit and loss account due to application of the new provisions. As far as tax treatment is concerned, there will not be any impact in respect of depreciation allowance in arriving at taxable income because a separate method of calculating depreciation on the basis of block of assets is used under Income Tax law for the purpose of computing allowable expenditure. ■

New Formula of Revenue Recognition Likely To Change the Prescription for Pharma Industry

In May 2014, FASB issued Accounting Standards Update (ASU) 2014-09, Revenue from Contracts with Customers (Topic 606), and the International Accounting Standards Board (IASB) issued International Financial Reporting Standards (IFRS) 15, Revenue from Contracts with Customers that will supersede virtually all revenue recognition requirements in IFRS and US GAAP. FASB and the IASB have basically achieved convergence with these standards with some minor differences such as collectability threshold, interim disclosure requirements, early application and effective date, impairment loss reversal and nonpublic entity requirements. This paper discusses the impact of the five-step model prescribed in the new revenue standard on the entities operating in Pharma industry. It also outlines the considerations for these entities and for the entities in India during the implementation of the new standard.

New Revenue Standard: A Call of the Hour

Today's financial world puts a great emphasis on meeting targets of numbers. The most common measure used to gauge whether one has met targets is revenue. Revenue typically drives the success of most businesses, as it is a means of generating profits and increasing equity. For this reason, attaining proper revenue recognition is paramount and most of the business models revolve around it. Under the erstwhile regime, revenue was recognised when all four of the traditional revenue recognition criteria were met: 1) price can be determined, 2) collection is probable, 3) there is persuasive evidence of an arrangement, and 4) delivery has occurred. However, revenue in some of the more complicated industries like Pharma is typically contract-driven and determined on a customer-by-customer basis, and even a contract-by-contract basis. These contracts many times, include multiple-element arrangements. These are just a few examples of the

CA. Shruti Hajirnis

(The author is a member of the Institute who may be contacted at shrutihajirnis@gmail.com.)

nuances related to the industry.

Given the need for guidance and clarification on the existing and new revenue models, the Financial Accounting Standards Board (FASB) developed numerous industry-specific standards for revenue recognition. However, these standards are extremely detailed which impairs comprehensiveness and have led to inconsistent treatment of similar types of transactions across industries. In addition, companies in their initial years of operations can be overwhelmed by the various iterations of revenue recognition throughout the accounting standards, particularly when they do not fit into the cookie-cutter, industry-specific guideline categories. Although IFRS provides less guidance on revenue recognition, the flip side of that is availability of limited guidance on important topics such as revenue recognition for multiple-element arrangements.

Under the erstwhile regime, revenue recognition requirements in US GAAP differed from those in IFRS. This acts as a barrier to compare financial performance across the world among peers in the similar industry. For example, while comparing revenue numbers of two leading companies in Pharma – Pfizer and GlaxoSmithKline, we have to take into consideration the differences in accounting regime as the former reports revenue as per US GAAP, while the latter reports as per IFRS. The new revenue standard seeks to clarify the principles for recognising revenue and develop common revenue standard US GAAP and IFRS. This standard is also a response to the increasing concern in the financial world related to inconsistencies across companies and industries regarding revenue recognition.

Five-Step Model: Crossroad to Revenue Recognition

The new revenue standard contains principles that an entity will apply to determine the measurement of revenue and timing of when it is recognised. The underlying principle is that an entity will recognise revenue to depict the transfer of goods and services to customers at an amount that the entity expects to be entitled to, in exchange for those goods and services. Companies will now have specific principles and steps to follow to determine proper revenue recognition. The principles in the new revenue standard will be applied using the following five steps:

- Step 1: Identify the contracts with the customers
- Step 2: Identify the separate performance obligations in the contract
- Step 3: Determine the transaction price
- Step 4: Allocate the transaction price to separate performance obligations
- Step 5: Recognise revenue when each performance obligation is satisfied.

This principle based approach for determining revenue recognition will eliminate many of the inconsistencies brought on by the industry-specific guidance, specifically with respect to revenue generated from contracts with customers. It will serve as a uniform standard that will supersede most of the previously issued guidance and provide a framework that all industries can follow.

While this "one size fits all" principle based approach has an impact on each industry to some extent, industries like Pharma wherein the entities enter into more complicated contracts – especially those bundle of products and services are likely to experience significant changes in how and when they report revenues.

While this "one size fits all" principle based approach has impact on each industry to some extent, the industries like Pharma wherein the entities enter into more complicated contracts – especially those bundle products and services are likely to experience significant changes in how and when they report revenues.

Transition to New Model: Navigating the Change

IFRS 15 is effective for annual periods beginning on or after 1st January 2017. Early adoption is permitted for IFRS preparers, provided that fact is disclosed. The effective date of the standard for public entities applying US GAAP is 15th December 2016, which is essentially the same as for IFRS preparers. However, FASB is currently considering deferral of effective date by one year.

The effective date of the new standard, January 2017, may seem a long way off as of now. However, the companies will need to disclose the expected impact of the new standard right away. Also, one key decision needs to be made soon – how to transit to the new standard. The entities are allowed either 'full retrospective' adoption in which the standard is applied to all of the periods presented or a 'modified retrospective' adoption. Modified retrospective adoption in which an entity will have to recognise the cumulative effect of initially applying the standard to the opening balance is suitable for industries that expect little change as a result of applying the new standard. For industries like Pharma, wherein the entities expect significant changes to their revenue accounting as a result of applying new standard, full retrospective adoption is a more relevant option as it would affect a presentation of comparable trend information. While implementing full retrospective adoption, the entities are also required to make decision about practical expedient available. The following table shows three practical expedients given under the standard:

Sr. No.	Particulars	Relevance
Practical expedient 1	For completed contracts an entity need not restate contracts that began and ended in the same annual reporting period.	Entities with large populations of short term contract
Practical expedient 2	For completed contracts that have variable consideration, an entity may use the transaction price at the date on which the contract was completed.	Entities with long-term contracts that include variable consideration
Practical expedient 3	For all periods presented before the date of initial application, an entity neither needs to disclose the amount of the transaction price allocated to remaining performance obligation, nor an explanation of when it expects to recognise that amount as revenue.	Entities that have long-term contracts where performance is delivered over time.

In the Pharma industry, the entities have a number of contracts or combination of contracts for which the above mentioned practical expedients are useful. Therefore, the entities require to carefully assess the contracts and make relevant decision about the implementation.

For industries like Pharma, wherein the entities expect significant changes to their revenue accounting as a result of applying new standard, full retrospective adoption is more relevant option as it would affect a presentation of comparable trend information.

New Formula for Pharma

The entities in the Pharma industry may need to change certain revenue recognition practices as a result of the new revenue recognition standard. These entities may also want to monitor the discussions of the Boards' Joint Transition Resource Group for Revenue Recognition (TRG). The Boards created the TRG to help them determine whether more implementation guidance or education is needed. Separately, the American Institute of Certified Public Accountants (AICPA) has established 16 industry task forces including therein Pharma industry to help develop a new Accounting Guide on Revenue Recognition and to aid industry stakeholders in implementing the standard. Following are the key considerations for the Pharma industry while implementing the new revenue recognition standard.

	Revenue Model	Implication Considerations	Conside-rations
Step 1	Identify contract with the customer	• Collaborations for pharmaceutical development	• Part or all of collaboration may not be revenue
Step 2	Identify separate performance obligation	• Other services/goods combined with contract	• Determine if separate or combined with other services/ goods impacts remaining steps
Step 3	Determine transaction price	• IP sales licenses • Royalties, bonus, returns, milestones, discount	• License exception may be applicable only in limited cases • Dealing with bundles of services may create issues

	Revenue Model	Implication Considerations	Conside-rations
Step 4	Allocate transaction price	• Milestones/ other variable consideration	• Recognition vs. payment patterns • Allocation to different performance obligations
Step 5	Recognise revenue when performance obligation is satisfied	• Licensing • Distribution	• May impact timing of revenue recognition for licenses • Sell-in vs. Sell-through may create some practice changes

Collaboration and Licensing Arrangements

The entities operating in Pharma industry frequently enter into strategic collaborations and licensing arrangements. For example, two Pharma entities collaborate on the development of an experimental product candidate. The new standard requires entities to assess whether the counterparty to the arrangement is 1) a customer or 2) a collaborator sharing in the risks and benefits of the arrangement. If such arrangements are outside the scope of revenue standard, the related income might not meet the definition of revenue, but instead be recorded as a reduction of R&D expenses or as other income. Identifying the customer can be difficult, especially when multiple parties are involved and the evaluation may require significant judgment.

Licenses and Rights to Use

Revenue recognition for licenses could be challenging under the new revenue standard. The new revenue standard requires the entity to determine whether a license is distinct from other goods and services in an arrangement. If the license is not distinct, then the license is combined with other goods or services for the purpose of recognition of revenue and therefore, the revenue is recognised as the entity satisfies the combined contract. For example, certain biotechnology entities do not sell licenses without R&D services for early-stage products. In this case, the license may not be a separate contract because the customer cannot benefit from the license without the R&D services and the total transaction price is recognised as revenue as the contract is satisfied over the period R&D services are performed.

There are two types of licenses described in the new standard. 1) The first is a license that provides a customer the right to use an entity's IP as it exists at the point in time the license is granted. For these licenses, revenue is recognised at a point in time when control transfers to the licensee and the license period begins. These licenses provide the customer with a right to IP and the IP does not change after the license transfers to the customer. 2) The second type is a license that provides access to an entity's IP as it exists throughout the license period. Licenses that provide access are performance obligations satisfied over time and, therefore, revenue is recognised over time.

Variable Consideration

Common examples of arrangements with variable consideration in Pharma industry include licensing arrangement with milestone payments and sales-based royalties and distributor arrangements with rebates, price protection or other incentives. Under the new standard, revenue will be recognised on contingent milestones when the performance obligation is satisfied and the entity determines that it is "likely to occur" (IFRS) or "more likely than not" (US GAAP) that there will not be a significant reversal of revenue in future periods. Entities will need to evaluate each milestone in contract, to determine whether including a variable consideration in the transaction price could result in a significant reversal of revenue in the future. For example, milestones based on a specific clinical outcome are subject to factors outside the control of entity, such as clinical trial results and regulatory approval; therefore, entities may conclude that amounts related to these milestones are subject to significant revenue reversal in the future. On the other hand, revenue recognition is likely to accelerate by recognising variable consideration prior to achieving a milestone

Many entities operating in Pharma industry recognise revenue using a 'sell-through' approach. Under the sell-through approach, revenue is not recognised until the product is sold to the end customer. Under the new standard, revenue is recognised upon the transfer of control to customer.

in case where the entity has established history of providing service in similar contracts without a significant reversal.

Royalties

Under the new revenue recognition standard, there is specific exception for license of IP with consideration that varies entirely based on the customer's subsequent sales or usage of the IP – for example – a sales-or usage-based royalty. For these licenses, the consideration is not included in the transaction price until it is no longer variable. The complexity for the Pharma industry relates to evaluating how exception applies to a contract with multiple performance obligations. The boundaries for determining when the sales- and usage-based exception applies might be an area of significant judgment under the new revenue standard.

Distributor Sales and Consignment Stock

Many entities operating in the Pharma industry recognise revenue using a 'sell-through' approach. Under the sell-through approach, revenue is not recognised until the product is sold to the end customer. Under the new standard, revenue is recognised upon the transfer of control to customer. Entities that previously accounted for arrangements using a sell-through approach will need to consider at what point control has passed to the customer based on the indicators provided in the standard, which could impact the timing of revenue recognition. The entity would evaluate the return right as variable consideration. This might result in earlier revenue recognition than under current standards, which focus on the transfer of risks and rewards.

Summary of Impact of Change in Accounting on EBITDA

Change in Accounting	Impact on EBITDA	Reason
If the licence is not distinct, then the license is combined with other goods or services for the purpose of recognition of revenue and therefore, the revenue is recognised as the entity satisfies the combined contract.	Decrease	Decrease due to deferment of revenue
Under the new standard, revenue is recognised upon the transfer of control to customer. The entity would evaluate the return right as variable consideration. This might result in earlier revenue recognition than under current standards, which focus on the transfer of risks and rewards.	Increase	Increase due to early recognition of revenue
The entities might recognise revenue earlier, if there is an amount of variable consideration that is not subject to significant reversal in the future.	Increase	Increase due to early recognition of revenue
Royalty revenue is a form of variable consideration that is not subject to significant reversal in the future and therefore, revenue might be recognised earlier. There is specific exception for sales or usage based royalty for IP in which case the revenue is not recognised until it is no longer variable.	Increase / Decrease	Increase or decrease based on terms of contract

An Indian subsidiary of a global parent company reporting under new revenue recognition standard is likely to be required to alter its business practices in order to facilitate consolidation with its parent company.

Enhanced Transparency in Disclosures

The new revenue standard provides explicit presentation and disclosure requirements. It requires a number of disclosures intended to enable users of financial statements to understand the nature, amount, timing and uncertainty of revenue and related cash flows. The following are the key considerations for the entities operating in Pharma industry while implementing new disclosure requirements:

Disclosure Requirements	Considerations
Disaggregation of revenue to illustrate how the nature, amount, timing and uncertainty about revenue and cash flows are affected by economic factors.	The Boards decided not to prescribe a specific characteristic of revenue as the basis for disaggregation because entities are encouraged to make this determination based on entity-specific and/or industry-specific factors. The entities in Pharma industry are required to exercise significant judgment in this area due to number of entity-specific and/or industry-specific factors.
Significant judgment and changes in judgments made in applying the guidance to those contracts	The entities could face challenges in estimating stand-alone selling price for certain deliverables such as licences as well as determining the transaction price for variable consideration and the judgments and methods used to make the estimates will have to be disclosed.
The amount of remaining performance obligation and the expected timing of the satisfaction of those performance obligations for contracts with duration of greater than one year	This could have significant impact on Pharma industry where long term contracts are a significant portion of an entity's business.

The disclosure requirements are significantly greater than existing disclosure requirements for revenue under IFRS and US GAAP. This could require the entities in Pharma industry to implement new systems, processes and internal control to capture information that has historically not been needed for financial reporting purposes.

Preparing for the change

Although the new standard is not effective until 2017, now is the time to evaluate potential impacts on the entities and to prepare for a change. Gaining an understanding of the effect of the standard, providing early communication to stakeholders and planning ahead are crucial for a successful implementation. The entities in the Pharma industry may consider entering into new contracts or revising the existing contract that may help the entities in the revenue acceleration. The new standard may bring into practice changes in inventory stocking for entities in the Pharma industry. Since an entity's objective is to generate revenue, it is not surprising that changes to the accounting requirements for revenue could affect multiple business functions and capabilities. The following are the actions that the entities may consider during implementation.

Investor relations	• Consider early communication on impact for key constituents • Anticipate potential changes to underlying key metrics, including gross margins
Processes and systems	• Update key processes and controls for any changes in accounting • Develop IT systems and manual processes for data accumulation and expanded reporting requirements • Plan for financial statement presentation changes including expanded note disclosures
Tax planning	• Identify any impact on existing tax strategies and planning • Consider whether any changes to transfer pricing are necessary
Management information	• Plan for potential adjustments to key performance indicators • Consider changes to internal management reporting to better align with new external disclosures • Adjust financial planning and analysis based on effect of new standard

Business operations	• Modify contracting procedures • Understand any effect on existing regulatory requirements • Communicate information needed for estimates and judgment to finance function.

Impact on Indian Pharma Industry

An application of the new revenue recognition standard across the globe will have its repercussions on Indian entities which are required to report their revenues as per Indian GAAP (AS-9) in which revenue recognition is mainly based on general principles that are applied to different types of transactions. The entities operating in the Indian pharma industry will have an impact of the application of the new revenue recognition standard in two different scenarios: 1) An Indian entity like Cipla which competes in the global market is likely to face challenges in comparison with its global peers which will henceforth have consistency in their reported revenue. 2) An Indian subsidiary of a global parent company reporting under new revenue recognition standard is likely to be required to alter its business practices in order to facilitate consolidation with its parent company. Therefore, while there are winds of changes across the globe, Indian pharma entities cannot just shut the windows and stay calmly inside the regime of current reporting requirements. They also have to gear up for upcoming changes proactively. For example, an Indian pharma entity competing in global market may be required to go ahead and provide additional disclosures as per new revenue recognition standard in order to gain confidence of the stakeholders in a global market. Also, with a consideration of transition of Indian Accounting Standards into IFRS, Indian pharma entities may also get directly impacted by these winds of changes. Therefore, it would be helpful to closely observe the changes and challenges faced by their global peers, in order to prepare themselves for smooth transition in the near future time.

Conclusion

The new revenue standard has potential impact of changing revenue line numbers for the entities in the Pharma industry. These entities are encouraged to assess their business model and terms of contract in order to clearly assess and communicate the impact of new standard to their stakeholders. This standard is likely to alter some business practices in terms of key deliverables such as licences in the Pharma industry. The greater amount of estimates and judgments in revenue recognition procedure may call upon enhanced operational controls and disclosures in the Pharma industry. ■

THE CHARTERED ACCOUNTANT JOURNAL
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
SET UP BY AN ACT OF PARLIAMENT

Non-Receipt of *The Chartered Accountant* Journal

This is for the information of Members/subscribers who fail to receive *The Chartered Accountant* journal despatched to them either due to un-intimated change of address or postal problems.

Members and Students are requested to inform the respective regions immediately after you change the address to ensure regular and timely delivery of journals to you as the mailing list is drawn from ICAI's centralised database updated till 15th of every month. Subscribers are requested to mail their changed address to eb@icai.in.

Members can also update their address online in the 'Members' section placed on the top bar of ICAI website. The required link in the 'Members' section is titled 'Members: Update Your Residential and Professional Addresses' (http://www.icai.org/addupdate/). Fill the Membership No and Date of Birth to open the Form. Fill the Form to update your changed address.

After updating the address online, the member is also required to download the updated Form and submit the same at their respective regions with their signature. Please note that once updated in the respective regional head offices' records, the new address gets automatically updated in the centralised data base of the Institute, from where the journal mailing list is prepared.

While updating the address members can opt for their 'Residential Address' to receive the copy of the journal by clicking the option "Do you want to get your journal on Residential Address" at the bottom of the Form. Thereafter you will get your copy of the Journal at your residential address.

Any queries or complaints in this regard can also be sent by email at journal@icai.in (for members) and eb@icai.in (for students and Subscribers) or contact at 0120-3045921.

Applicability of Transfer Pricing on Marketing Intangibles

In recent years, the Indian Revenue Authority (IRA) has been in continuous spotlight for taking aggressive positions in the audit proceedings, particularly with respect to Transfer Pricing (TP) matters. The key focus of the IRA has been on the most contentious issue of Advertisement Marketing and Sales Promotion (AMP) expenditure incurred by Indian affiliates of the Multinational Enterprises (MNEs), operating as a manufacturer and/or distributor. The Delhi High Court has recently delivered its decision on applicability of transfer pricing norms on marketing intangibles, bringing clarity on controversies surrounding the AMP expenditure and answered several vexed questions related to TP of marketing intangibles. The article discusses the ruling of the Court along with the background of the AMP issue and older judgements on the said issue for proper understanding of the readers.

1. Introduction

The IRA has been alleging that by incurring of "excessive" AMP expenditure compared to its comparables, the Indian affiliate have created a marketing intangible for its foreign parent/associated enterprise (AE) which legally owns the brand and for which it was required to compensate the Indian affiliate for such brand building services along with an arm's length mark-up.

Manifestly, the said issue has been taken up aggressively by the IRA resulting in a large amount of TP adjustments in the hands of MNEs which adversely affected the investment sentiment in India. Having regard to the considerable importance of the issue, the Special Bench had been constituted in 2013 which had delivered its ruling, deciding the issue in favour of Revenue.

Being aggrieved by the Tribunal rulings which were on similar lines of the Special Bench rulings, a group of litigants/taxpayers, with a lead case being that of *Sony Ericsson Mobile Communications India Pvt. Ltd. [TS-96-High Court-2015(Delhi)-TP],* had

CA. Dhinal Shah and CA. Sagar Shah

(The author duo are members of the Institute who may be contacted at dhinalshah@yahoo.com.)

filed an appeal before the Delhi High Court. The Delhi High Court pronounced the landmark verdict in March 2015 on the most vexed issue of AMP expenditure, setting up clear directions on principles on which adjustment could be made, which has been discussed in detail as under:

2. Ruling of the Delhi High Court

The Delhi High Court, in its landmark verdict, has addressed the controversies surrounding the TP adjustment on marketing intangible *i.e.*, AMP expenses, arising out of the ruling of the Special Bench in the case of *LG Electronics India Pvt. Ltd.* ('LG India'), and answered several vexed questions related to TP of Marketing Intangible. It is pertinent to note that even though LG India was not the subject matter of challenge before the High Court, the High Court in its ruling has extensively referred to the case to indicate points on which it concurs with the Special Bench and on which it disagrees.

Before discussing the ruling of the High Court, for reader's understanding, we have given below an overview of AMP issue along with a summary of the Special Bench ruling *i.e.*, the article has been divided as under:

1) *Background of AMP issue*
2) *Summary of Special Bench ruling*
3) *Overview of case before the High Court*
4) *Analysis of High Court ruling*

2.1. Background of AMP Issue

A. Corporate Tax Audit Proceedings

In the past, the IRA in the course of corporate tax audit proceedings while dealing with deductibility of 'marketing spend', had disallowed certain percentage of AMP expenses on the ground that a portion of such expenditure benefits the brand owner and hence, such portion does not relate to business of the Indian affiliates.

However, the above adjustment has been struck down by the courts in cases of Nestle India, Star India, Sony India and Adidas India Marketing on the ground that the expenses incurred by the taxpayers were solely for the benefit of its business and benefits derived by the foreign affiliates if any, were merely incidental and hence, such expenses are fully deductible.

It is pertinent to note that even though LG India was not the subject matter of challenge before the High Court, the High Court in its ruling has extensively referred to the case to indicate points on which it concurs with the Special Bench and on which it disagrees.

B. Transfer Pricing Audit Proceedings

This issue had been first considered by the IRA few years ago in TP assessment proceeding of some of the Indian affiliates of MNEs. The IRA had held that the AMP expenditures incurred by Indian affiliates are excessive and such excessive expenses results in creation/enhancement of marketing intangibles which are owned by foreign MNEs. In such cases, the IRA applying the Bright Line Test ('BLT') held that such excess AMP expenditure compared to comparable companies should be reimbursed to Indian affiliate by overseas AEs owning such intangibles. Further, the IRA had also applied an *ad hoc* percentage of mark-up (in the range of 10% - 12%) to such excess expenditure to be recovered from overseas AEs for rendering services.

The IRA had not considered/given due cognisance to the fact that the Indian affiliates have incurred AMP spend to boost up their sales and profit, and proceeded with their preconceived notion that such excess AMP expenditure results in creation/enhancement of marketing intangibles with respect to the brands legally owned by the MNEs. Pursuant to which the IRA had contended that non-routine marketing efforts of a subsidiary of the MNEs should be categorised as "service" rendered to their AE and accordingly, it should be compensated for the same along with an arm's length mark-up. This focus has intensified and has resulted in severe adjustments in case of several Indian affiliates of MNEs in recently concluded transfer pricing audit proceedings.

2.2. Summary of Special Bench Ruling

Considering the growing importance of the AMP issue in enormous taxpayers and to examine the sanctity of action of the IRA, a Special Bench of the Delhi Tribunal had been constituted in the case of LG India to examine the highly vexed issue pertaining to TP adjustment AMP expenditure.

The Special Bench, *vide* its order dated 23rd January, 2013, in a majority decision[1], largely ruled in favour of the IRA, a summary of key observations of the Special Bench is as under:

Issue	Key Observation of the Special Bench
Transaction And International Transaction	Given the fact that the Taxpayer promoted its products and brand owned by the foreign AE coupled with excessive AMP expenditure implied an agreement between the Taxpayer and its AE. Accordingly, in the case of the Taxpayer, incurring AMP expenses towards brand legally owned by the foreign AE constituted an 'international transaction' subject to TP provisions and was in the nature of provision of service.
Bundled Approach For Benchmarking Purpose	The Special Bench held that since the transactions of purchase of goods from foreign AE and provision of brand building services were not closely linked, the same could not be bundled for benchmarking purpose under the Transactional Net Margin Method (TNMM).
Bright Line Test (BLT)	The Special Bench held that BLT is not a method to determine arms' length price (ALP) but a mechanism to determine cost/value of transaction related to ALP. However, the Special Bench has rejected Transfer Pricing Officer's (TPO) choice of comparables for applying the BLT and further listed down various factors that need to be considered while determining the presence of a transaction and quantification of the same.
Expenses To Be Excluded From AMP	The Special Bench held that expenses incurred 'in connection with sales' do not lead to brand promotion and hence cannot be brought within the ambit of AMP expense.
Arm's Length Mark-Up To Be Charged	The Special Bench also upheld that since the transaction was in the nature of services and hence, mark-up needs to be applied on the same. However, it rejected mark-up considered by the Dispute Resolution Panel ('DRP') and directed the TPO to determine the quantum of mark-up based on the mark-up that would be charged by a third party for provision of similar services.

2.3. Overview of case before the High Court

Being aggrieved by the Tribunal rulings which were on similar lines of the Special Bench rulings, a group of litigants/taxpayers, with a lead case being that of *Sony Ericsson Mobile Communications India Pvt. Ltd.*, had filed an appeal before the Delhi High Court. Summarised below is a background of the case and question of law involved before the High Court:

A. Background of the case

- The litigants are engaged in import, distribution and marketing of products manufactured by their foreign AEs under their brands and further, the marketing intangible were owned and controlled by the foreign AE.
- The litigants had benchmarked their international transactions of import of finished goods for resale, by adopting TNMM with profit level indicator (PLI) of operating profit/total cost ratio, or resale price method (RPM) with PLI of gross profit/sales.
- The TPO considered that incurrence of substantial AMP expenses by the taxpayers, in relation to the marketing intangibles owned by the foreign AE, were in the nature

The High Court while holding that AMP spend may be considered an international transaction, has concluded that the compensation for AMP expenses may be included or subsumed in the purchase price of goods imported from AEs or a lower charge for royalty.

1 The Special Bench ruling is the view of two out of the three members of the bench. The Judicial Member (JM), who did not concur with the majority view, has issued a dissenting order.

of services for creation or improvement of marketing intangibles and, therefore, the same have been for the benefit of respective foreign AEs. Thus, the TPO concluded that the taxpayers should have been compensated by the foreign AEs, at arm's length.

- The litigants have filed an appeal before the DRP as well as the Tribunals wherein the Tribunal have in principal followed the path of Special Bench and directed the TPO to give effect to the same.
- Aggrieved, the taxpayers as well as the Revenue filed appeals under Section 260A of the Income-tax Act, 1961 ("Act") before the High Court.

B. Question of law raised before the High Court

Following are the substantial questions of law raised by the litigants/Revenue before the High Court:

- Whether TPO had jurisdiction to examine the AMP expenses when no specific reference was made to him by the Assessing Officer ("AO").
- Whether AMP expenses can be treated and categorised as an international transaction under Section 92B of the Act.
- Whether TP adjustments can be made in respect of AMP expenses, and if so, under what circumstances.
- Whether the Tribunal was right in holding that TP adjustment in respect of AMP expenses should be computed by applying Cost Plus Method.
- Whether the Tribunal was right in directing that fresh benchmarking/comparability analysis should be undertaken by the TPO by applying parameters laid down in paragraph 17.4 of the Special Bench Ruling.
- Whether the Tribunal was right in distinguishing and directing that selling expenses, such as trade/volume discounts, rebates and commission, *etc.*, cannot be included in AMP expenses.

2.4. Analysis of High Court Ruling

The Delhi High Court, in its landmark ruling, has accepted as well as rejected various ratios applied by the Special Bench in the case of LG India. Following is a brief overview of the ruling along with detailed analysis:

In Brief

The High Court while holding that AMP spend may be considered an international transaction, has concluded that the compensation for AMP expenses may be included or subsumed in the purchase price of goods imported from AEs or a lower charge for royalty.

The High Court has held that the arm's length nature of the arrangement may be tested by way of an aggregate or bundled analysis with other transactions relating to the distribution activity. If the IRA seeks to unbundle the transactions, they should elucidate its reasons for doing so. The High Court emphasised that transfer pricing is an income allocating exercise and should not result in over or double taxation.

The High Court also rejected the application of the so called "Bright Line Test" advanced by the IRA for determining whether the taxpayer needs to be compensated for its promotional efforts.

The High Court has restored the matters back to the Appellate Tribunal for a final determination, taking into account the principles laid down by the Court.

In Detail

i. Jurisdiction of the Transfer Pricing Officer

The Transfer Pricing provisions, as existing at the time of scrutiny assessment of the captioned cases, allowed the TPO to determine ALP of a transaction referred to him by the AO only and thereby the TPO could not assume jurisdiction over a transaction not referred to him. However, the Finance Act 2012 amended the provision retrospectively (with effect from 1st June 2002) which gives power to the TPO to test any transaction that has not been reported in the TP certificate *i.e.,* Form 3CEB but comes to his notice during assessment proceedings.

Given that the transfer pricing orders of the captioned cases had been passed during 2010 *i.e.,*

The High Court has held that the arm's length nature of the arrangement may be tested by way of an aggregate or bundled analysis with other transactions relating to the distribution activity. If the IRA seeks to unbundle the transactions, they should elucidate its reasons for doing so.

before the amendment, the taxpayer had argued that the amended provisions, albeit of retrospective effect, cannot be invoked to regularise the otherwise invalid action of the TPO.

Findings of the High Court

The High Court, in its ruling, held that after the retrospective amendment inserted in the Finance Act, 2012, the Special Bench was correct in stating that the TPO was empowered to examine the ALP of the international transaction which came to his notice during the course of audit proceedings and that were not reported or furnished by the assessee in Form 3CEB. The High Court also held that no specific reference was required to be made to the Assessing Officer for the same.

ii. AMP Expenses Treated As International Transaction

The taxpayers had contended that there was no understanding either oral or written, between the taxpayer and its AE for promotion of the brand owned by the latter and hence, in the absence of the same, there was no transaction of brand building services.

The tax authority on the other hand had been arguing that an oral arrangement is apparent from the facts that the taxpayer is the wholly owned subsidiary of its foreign parent and had incurred excessive AMP expenditure which would not have been incurred by a third party distributor in an uncontrolled scenario.

Findings of the High Court

The High Court, in its ruling, has accepted the ratio of the Special Bench and held that the expenditure of AMP will be treated as an International Transaction and also held that the AMP expenditure towards promotion of brand constituted a transaction of provision of services as per Section 92B of the Income-tax Act, 1961.

Further, the High Court, differentiating provisions of Chapter X from Section 37(1) of the Income-tax Act, has observed that the tax department is not questioning the quantum of expenditure rather they are questioning the adequacy of compensation with respect to the AMP expense incurred under the TP provisions *i.e.*, they seek to determine ALP of compensation for marketing and distribution function performed by an Indian affiliate of MNEs.

However, the High Court has also observed that in a case where a taxpayer is undertaking manufacturing, distribution and marketing, it may not be appropriate to combine and benchmark all three transactions together under TNMM. In such a scenario, the appropriate approach may be to benchmark manufacturing separately and distribution and marketing separately.

iii. Bundling of the Transaction And Application Of TNMM

The Taxpayer had argued that their operating margins were higher than those of comparables and while arriving at an operating margin of tested party, AMP expenditure has already been subsumed for. Accordingly, once the IRA had accepted the ALP of the reported international transactions, they cannot be allowed to segregate the AMP expenditure and benchmark the same separately. Further, the taxpayers had also contended that the higher profitability earned by them meant that their AE supplied goods at lower prices to compensate Indian affiliates for their efforts towards advertising and marketing.

The Special Bench held that each transaction has to be benchmarked separately unless two transactions are so closely linked that they cannot be separately benchmarked. The Special Bench further held that the transactions of purchase of goods from AE and provision of brand building services were not closely linked and hence, the same could not be benchmarked together using TNMM.

The Special Bench has further held the higher profitability earned by the taxpayer can be due to several different factors and it needs to be established with tangible evidence that the foreign parent sold goods to the taxpayer at a lower price to compensate for AMP expenses. The taxpayer cannot be allowed to reduce its real profits by including certain expenses which are for the benefit of foreign AE.

Findings of the High Court

a) Bundling of Transaction

The High Court held that as per Section 92C(1) of the Act, a class of transaction can include a number of closely linked transactions and clubbing of such transactions for benchmarking purpose is permissible under the Indian TP regulations.

Since in the present case, distribution and marketing are intertwined and thereby may be examined as bundled/inter-connected transactions and thereby, no segregation is required for benchmarking purpose subject to the fact that functionally similar comparables are available. However, the High Court has also observed that in a case where a taxpayer is undertaking manufacturing, distribution and marketing, it may not be appropriate to combine and benchmark all three transactions together under TNMM. In such a scenario, the appropriate approach may be to benchmark manufacturing separately and distribution and marketing separately.

b) Application of TNMM

The High Court also acknowledged the fact if the IRA accepts and adopts TNMM as the most appropriate method and chooses to treat the AMP expenditure separately and not as a bundled transaction, it would lead to incorrect results due to the reason that while computing the margins under the TNMM, the treatment of AMP expenditure would already have been taken care of.

The High Court noted that under the TNMM analysis, once the comparables pass the functional analysis test and profit margin of the taxpayer is commensurate with that of arithmetic mean of comparables, it leads to an affirmation of the transfer price as the ALP and post which it is not permissible to make a comparison of a particular item of costs without segregation of profits as well. However, the High Court also noted that when suitable comparables are not available and/or it is not possible to make suitable adjustments, it would be advisable to adopt and apply other methods.

Manifestly, the High Court, relying on the OECD TP Guidelines, held that when a subsidiary engaged in distribution and marketing activities incurs AMP expenses, the compensation may be in the form of lower purchase price, no or reduction in royalty or by way of direct compensation to ensure an adequate profit margin.

The High Court also stated that the set off in the case of aggregation or bundling of transactions is well accepted by the OECD guidelines and UN Transfer Pricing Manual, if the transactions are closely interlinked.

iv. Brand Building

The IRA had been bifurcating AMP expenditure into routine and non-routine expenditure and considering non-routine expenditure to be towards brand building for the AE for which the taxpayer was required to be compensated.

Against which the taxpayers had argued that the AMP expenditure have been incurred to enhance sales of taxpayers only and thereby increase their profitability and not to improve the value of the brand and accordingly, they could not be asked to get compensation of the same from its AEs.

Findings of the High Court

The High Court ruled that value of a Brand reflects the reputation which the Brand owner has earned over a period of time and largely depends upon the nature and quality of goods and services sold or dealt with and thereby treating brand building as direct resultant of AMP expenditure would be largely incorrect. The High Court also acknowledged the fact the taxpayers do not undertake advertiseming with the purpose of increasing the value of the brand, but to increase their sales and thereby earn higher profits.

The High Court, giving credence to the taxpayer's argument that there was a benefit to the taxpayer from the increase in sales, provided substantial guidance in this landmark ruling on how the taxpayer and IRA should approach the issue on marketing intangibles.

v. Bright Line Test

The BLT concept had been espoused by the US Tax Court in the case of *DHL Inc. and Subsidiaries vs. Commissioner* (TCM 1998-461). Taking principles from the same, the IRA applied the BLT for determining the ALP of AMP expense, as the difference between AMP expenses to sales ratio of Taxpayer *vis-à-vis* AMP expenses to sales ratio of comparable companies.

The High Court held that for the purpose of mark-up, prime lending rate cannot be used under Rule 10B(1)(c) and that the mark-up has to be benchmarked with comparable uncontrolled transactions or transactions for providing similar services.

The taxpayer had contended that the BLT used by the IRA to determine the ALP of an international transaction was not one of the recognised methods under the Indian TP regulations and hence, need to be rejected.

The Special Bench has held that the IRA had not used BLT to determine the ALP of the transaction but used it to determine the value/cost of the transaction as the taxpayer had not provided any assistance in determining the value of the international transaction.

Findings of the High Court

The High Court, overturning the ruling of the Special Bench, rejected use of BLT as a way of identifying a cost/value of an international transaction. The High Court noted that it is difficult to compartmentalise promotion of product or promotion of brand expenses and record them as separate from each other.

The High Court held that direction of the Special Bench of applying BLT on basis of parameters prescribed in paragraphs 17.4 and 17.6 of its ruling tantamount to prescribing a mandatory procedure which has not been stipulated under the Act or Rules. Given the fact that there was nothing in the Act or Rules to that effect, the High Court noted that AMP could not be subject to BLT and thereby the IRA could not consider non-routine AMP expenditure as separate transaction.

Manifestly, the High Court, relying on the OECD TP Guidelines, held that when a subsidiary engaged in distribution and marketing activities incurs AMP expenses, the compensation may be in the form of lower purchase price, no or reduction in royalty or by way of direct compensation to ensure an adequate profit margin. Further, the High Court reiterated the observations of the Delhi tribunal in the case of *BMW India Pvt. Ltd.* wherein it has been held that net profit under the TNMM may be a sufficient proof of adequate compensation to the taxpayer from the AE.

vi. Concept of Economic Ownership

The Special Bench held that the Income Tax Law recognises only legal ownership of intangibles and economic ownership exists only in a commercial sense and further held that in the instance of sale of brand by the AE, the Taxpayer would not be entitled to a share in the total consideration towards sale of brand by virtue of it being an economic owner.

Findings of the High Court

The High Court, contrary to the Special Bench ruling, has well appreciated that economic ownership of brand and marketing intangibles is important factor for determining the pricing mechanism of distributors, having long term distribution licenses. The High Court also ruled that the need for TP valuation to determine an exit charge would arise upon termination of the distribution-cum-marketing agreement or upon transfer of economic ownership to a third party.

vii. Miscellaneous Issues

a) Scope of AMP Expense

The High Court uphold the Special Bench ruling that the selling expenses such as discounts, rebates and sales incentives are in the nature of direct selling expenses and are not incurred for the publicity and advertisement of the products sold and therefore, such expenses are not in the nature and character of 'brand promotion' and thereby would not form part of the AMP expenditure.

b) Resale Price Method

The High Court held that RPM can be applied as a most appropriate method if the functions performed by the tested party and the comparables are similar in nature. It was also observed that adjustment can be made while applying the RPM if the IRA finds that the taxpayer has incurred substantial AMP expenses in comparison to the comparables. It also held that in a scenario where it is not possible to make adjustments, then RPM may not be the most appropriate method.

c) Mark-Up

The High Court held that for the purpose of mark-up, prime lending rate cannot be used under Rule 10B(1)(c) and that the mark-up has to be benchmarked with comparable uncontrolled transactions or transactions for providing similar services.

d) Order of Remand

The High Court has remanded the matters back to the Tribunals for *de novo* consideration as the legal ratios applied by the Tribunal were erroneous and unacceptable in certain cases.

Further, the High Court directed the Tribunal to verify facts of the case and apply the legal ratios laid down in the decision. Also, directed the Tribunal to endeavour to dispose of the appeals rather than passing an order of remand to the lower level authorities.

3. Concluding Remarks

The Delhi High Court has pronounced a landmark ruling providing clarity on legal aspects related to Transfer Pricing treatment for Marketing Intangible and also laid down significant albeit broad principles of law to be applied to facts of each case. The High Court acknowledged the fact Transfer Pricing issue of marketing intangibles is highly factual which largely depends on the Function, Asset and Risk Analysis of each taxpayer and thereby common principles as laid down by the Special Bench cannot be applied universally to all taxpayers.

The key principles emanating from the High Court ruling is that a related party that makes contribution *i.e.*, incurs AMP expenses particularly to develop or enhance the value of intangible such as a trademark or a brand name owned by AE is entitled for arm's length compensation for such contribution. However, the High Court acknowledges the fact that such compensation may be in the form of lower purchase price, non or reduced payment of royalty or by way of direct payments to ensure adequate profit margin which will ensure proper payment of taxes and curtails avoidance or lower taxes of the Indian subsidiary.

The High Court, by stressing on the comparability aspect, has affirmed the fundamental principle that the distributor's share of benefits should

The High Court has clarified that TP regulation is an anti-avoidance regulation and thereby the IRA should take care that it must not end up in 'double taxation'.

be determined based on what an independent distributor would receive in comparable circumstances as in a number of situations the distributor's efforts may be enhancing the value of its own intangibles, namely its distribution rights.

The High Court has clarified that TP regulation is an anti-avoidance regulation and thereby the IRA should take care that it must not end up in 'double taxation'. The High Court while acknowledging the fact that the Act and Rules are supreme, reliance can be placed on international guidance *i.e.*, OECD TP Guidelines, UN TP Manual and the ATO guidelines.

Also worthwhile to note that the High Court in this ruling have examined different business models for distributors and how the AMP issue needs to be dealt in such arrangements, the ruling does not provide much clarity on the AMP issues in case of manufacturing arrangements.

The Delhi High Court ruling clearly demonstrates the continued efforts of the IRA to attribute value to activities that result in development or enhancement of marketing intangibles. However, the challenge for taxpayers and tax authorities alike is to grapple with how it is to be applied and implemented.

To conclude, it can be inferred that the principles laid down by the Delhi High Court will help in restoring the confidence of MNEs and thereby increasing their footprints in India. ■

Harmonious Interpretation of DTAA on Principles of PE & FTS

Taxability of Fees for Technical Services (hereinafter referred to as 'FTS') has been one of the most litigated aspects of international taxation in recent times. Judiciary has been contributory in defining the scope of FTS under the Act, the Double Taxation Avoidance Agreements (DTAA/ synonymously referred to as treaties) as well as their interplay. However, the judicial precedence in this context should be relied upon keeping into consideration the different factual matrix of each case. The taxability of services relating to installation, commissioning or assembly and categorisation thereof, has been a matter of judicial debate in the past. Generally source rule of taxation is followed with respect to FTS i.e. if a payment qualifies the definition of FTS as per the respective DTAA, the same shall be taxed on gross basis in the hands of the foreign entity. Alternatively, if the services are found to be effectively connected to a Permanent Establishment ('PE' in short), the same shall be subject to tax as business profits on net basis of taxation.

I. Introduction

Services in the nature of construction, installation or assembly project or supervisory activities in connection therewith, are specifically covered under Article 5 on Permanent Establishment. Article 5 of the Organization for Economic Development ("OECD" in short) Model Treaty includes specific provisions in paragraph 3 that a building site or construction or installation project constitutes a PE only where it lasts more than 12 months. Indeed, the treaties may vary from the Model Convention in this respect and different durations are specified in many of the treaties entered into by India. Moreover, for clarity in the model treaty, 12 months' duration has been taken to be a sufficient indication that the activity is a fixed place of business permanent establishment.

(Contributed by Committee on International Taxation of the ICAI. Comments can be sent to citax@icai.in)

The controversy, which has persisted during the years, in relation to taxability of services in the nature of installation, commissioning and assembly (triggering an Installation PE) have hovered around the following issues:

a. The period of commencement and cessation of an installation PE;
b. In case of multiple sites, whether the threshold is applicable to each site/project;
c. Whether work executed by a subcontractor can be projected as a potential PE;
d. Whether supervisory activities are included within the ambit of PE only if executed by the contractor himself: *etc.*

The interplay between applicability of FTS or PE rule though being a contentious issue, has not traversed much across levels of judicial forums. The Jabalpur Bench of Income-tax Appellate Tribunal (hereinafter referred to as 'Tribunal' or 'ITAT') in the case of Birla Corporation[1] has analysed the taxability of remittance of fees by the Indian company to a foreign company for services of installation and commissioning of plant (sold offshore to the Indian company). The Tribunal has, after a comprehensive analysis of the nature of services rendered, propounded a law on the interplay between Article 5 read with Article 7 and Article 12 to hold that the services shall not be taxable in India in view of the following:-

a) The installation PE, in terms of Article 5 of various treaties, is not triggered and the activities do not meet the threshold provided in the respective DTAA's.
b) The services would not be classified as Fees for technical services as specified in Article 12/13 in absence of fulfilment of 'make available' condition in the respective DTAA's.

II. Background

a. Facts of the Case

- The taxpayer (Birla Corporation Limited), an Indian company, is engaged in the business of manufacturing and selling cement.
- During the year under consideration *i.e.* AY 2010-11 and AY 2011-12, the taxpayer entered into an agreement for import of plant, equipment and machinery with various vendors fiscally domiciled in seven counties *viz.* Austria, Belgium, China, Germany, Switzerland, UK and US. Apart from sale of the equipments, the vendors also provided incidental services in connection with installation and commissioning of these machines.
- The taxpayer did not with hold any taxes from payments made in relation to the cost of such machines contending that the payments represented cost of supply of equipment outside India and, hence, not chargeable to tax in India. However, taxes were duly withheld at applicable rates, from payments made subsequently for installation and commissioning services classifying the same as FTS.
- The tax authorities raised demand for default in withholding taxes from the consideration payable towards supply of plant, equipment and machinery.

b. Tax Authority's Contention

- The Assessing Officer ('AO' in short) contended that the payment was not only for purchases but also for incidental services in connection with installation and commissioning of these machines.
- The contract entered was a composite contract falling under the category of 'works contract' and separate payments made by the taxpayer constituted additional remuneration to the technicians and reimbursement of certain expenditure. In some instances, the AO observed that the cost of services was also embedded in the cost of material.
- The taxpayer was required to approach the tax authority in terms of Section 195(2) to determine the income in respect to which tax is to be deducted at source, which he failed to do so.
- In absence of such application made by the taxpayer, the tax authority treated the taxpayer as a defaulter for not withholding taxes at source and raised demands @ 42.23% of the total amount payable for supply of plant and machinery.

c. Taxpayer's Contention

- Since the vendors in the supply contracts did not have a permanent establishment in India, no part of their income could be taxed in India.
- Since no part of the income embedded in the payment is exigible to tax in India, and, it is for this reason that the assessee did not have any obligation to deduct tax at source.

[1] Birla Corporation Ltd vs. ACIT(TDS) ITA No 251 & 252 dtd 24.12.2014

- Since the amounts are not taxable even under the provisions of the Act, there was actually no need to examine the taxability under the respective treaties.

Issue before the Tribunal

- The taxpayer appealed to the First Appellate Authority which upheld the order of the AO and consequently the taxpayer preferred an appeal before the Tribunal to determine the taxability in India in respect of foreign remittances made towards purchase of equipment, plant and machinery.

Tribunal's Ruling

- **Taxability under the Income-tax Act: -**
  - Once the tax treaties are notified, such treaties form an integral part of the domestic tax legislation. To the extent a tax treaty applies on the facts of the case, the provisions of the Act are applicable only to the extent that such provisions are more beneficial to the assessee.
  - The Tribunal negated the objections raised by the tax authority that, the assessee should not be entitled to claim treaty protection since the issue was not raised before the lower authorities. A legal issue can certainly be taken up before the Tribunal even if the issue is being raised for the first time and there cannot be any estoppel against the law.
  - Income shall be taxable in India where the consideration for purchase of equipment can be attributed to installation, commissioning or assembly of the plant and equipment, or any supervision activity in connection thereto. Since the economic activity is carried out in India, the income evidently accrues or arises in India.
  - Since the income accrues or arises in India, the deeming provision for taxation of income (which is deemed to accrue or arise in India) need not be referred to. In other words, something which accrues and arises in India need not be deemed to accrue and arise in India as well.
  - Moreover, the deeming provision of section 9 excludes from its scope 'consideration for any construction, assembly, mining or like project'. These expression used in the exclusion clause being illustrative rather than exhaustive, the installation, commissioning and erection of plant seem to be included in the exclusionary clause. And thus would be out of the deeming provision of the Act.

- **Taxability under the DTAA's**
  - **Article 5 (specific clauses of different treaties dealt with in this ruling are appended as Chart-1)**
    - The underlying principle is that unless the installation or assembly project or supervisory activities in connection therewith cross the specified threshold time limit, the non-resident enterprise cannot be treated to have a PE in India.
    - As evident from Chart-1, the India-Belgium and India-UK DTAA's in addition to the threshold time limit, stipulates an additional condition of value of such services to be more than 10% of the sale value of related machinery or equipment to be brought to tax.
    - The UN Model Convention has observed that the reason for the time limit (indeed for the permanent establishment threshold more generally) is to encourage businesses to undertake preparatory or ancillary operations in another State that will facilitate a more permanent and substantial commitment later on, without becoming immediately subject to tax in that State. In view of the relevant article of respective DTAA's and the views expressed in the UN Model Convention, it is held that as long as threshold time limit for PE is not satisfied, the consideration for such installation, assembly or supervisory activities cannot be brought to tax in the source country. In none of the cases the conditions for creation of PE are satisfied and therefore, it shall be out of the ambit of Article 5.

- **Article 7 (specific clauses of different treaties dealt with in this ruling are appended as Chart-2)**
  - The taxability of business income of the non-resident vendors is dependent on the existence of a PE in India. Unless there is a PE in India, no part of the income can be brought to tax in India. However, once a PE is established, the taxability shall be

determined in terms of provision of Article 7(1) of the respective DTAA.
- Reliance placed on Motorola[2] Inc's case wherein it was held that "the burden is first on the Revenue to show that the assessee has a taxable income under the DTAA, and then the burden is on the assessee to show that its income is exempt under DTAA".
- There is no discussion on existence of a PE in India. The existence of Installation PE thus, would depend on the nature of activities as specified in the respective DTAA's, establishing existence of an Installation PE.

- **Article 12/13 (specific clauses of different treaties dealt with in this ruling are appended as Chart-3)**
  - The FTS clause in the Indo-US and Indo-UK treaty has a 'make available' clause which implies that the taxing rights of a source country is restricted unless the services are such that the person acquiring the services applies the technology contained therein.
  - In the instant case, the taxpayer cannot perform such services on his own without recourse to the service provider and for this reason also, the installation, commissioning and assembly activities cannot constitute FTS as defined in the Indo-US Treaty.
  - The Indo-Belgium Treaty has a restricted covenant in terms of the Most Favoured nation clause. The narrower scope of the definition of FTS as imported from the Indo-US and Indo-UK treaty shall also apply in respect of the Belgian vendors and therefore even the services rendered by the Belgian vendors shall be out of the ambit of the definition of FTS.
  - The installation, commissioning or assembly activities is ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of such equipment or machinery and in view of specific exclusion of the same in the Indo-Swiss tax treaty it cannot be subjected to tax in India

- **Interplay between Article 5 and Article 12/13**
  - The construction, installation and assembly activities are de facto in the nature of technical services. While the services as described in Article 12/13 are general technical services, Article 5 prescribes specific provision for rendering technical services in the nature of construction, installation and supervision activities.
  - Reliance placed on Supreme Court judgment in case of India Fisheries[3] wherein it was held that "If there is an apparent conflict between two independent provisions of law, the special provision must prevail." Similar view was also expressed in Titagarh Steels Ltd[4].
  - If one were to proceed on the basis that, even if the PE is not triggered, taxability can be held under the FTS provisions, such an approach would render the PE provisions meaningless.
  - It will also be contrary to the spirit of the following observations in the UN Model Convention Commentary which states that, as long as threshold time limit for PE is not satisfied, the consideration for such installation, assembly or supervisory activities cannot be brought to tax in the source country.
  - In a situation in which there are specific PE clauses in relation to a particular type of services, which are covered in the scope of services covered by the scope of the 'fees for technical services' or 'fees for included services', the taxability of consideration for such services must remain confined to taxability of profits under the relevant specific PE clause.

- **Trigger of Taxability**
  - The taxability of FTS arises at the point of time where payment is "actually" made "for" technical services "arising in a contracting state and paid to resident of other contracting state". In other words, the event triggering the taxability under the tax treaties is the payment and not accrual. However, Section 195 of the Act mandates deduction of tax at the time of payment or credit whichever is earlier. The Tribunal placed reliance on the decision of C J International Hotels[5] wherein the trigger of taxability in terms of provision of Section 195 has been elaborately explained.

[2] Motorola Inc vs DCIT (96 TTJ 1) (Del ITAT SB)
[3] Union of India vs. India Fisheries (P) Ltd. [57 ITR 331 (1965)](SC)
[4] ITO vs. Titagarh Steels Ltd [79 ITD 532 (2001)](Kol ITAT)
[5] C J International Hotels Ltd vs ITO [79 ITD 506(2001)(Del)]

- The FTS provisions cannot be invoked for taxing a non-resident on the basis of accrual of liability, whether credited or not, or on the notions of fiction of an element of FTS or FIS being embedded in the business receipts for sale of plant, equipment or machinery. The receipts would certainly be taxable in the hands of the vendors as business income.
- Under the scheme of allocation of taxing rights under the related tax treaties, India does not have the right to tax income. Whether the consideration of such activities was embedded or not in the consideration of the related equipment, plant or machinery is irrelevant.

III. Analysing the judgment

A. Specific provisions override the General Provisions

The well-settled rule of *"generalia specialibus non derogant"* promotes the principle of law that the special provision overrides the general provision. In other words, if an issue is governed both by a special provision as well as a general provision, then the special provision shall have dominance over the general provision. Several judicial precedents support this contention[6] while interpreting tax laws. The Jabalpur Tribunal has held that this principle must also be applicable while interpreting treaty situations as well.

While dealing with taxability of income from installation, commissioning services, the Jabalpur Tribunal held that while Article 12/13 of the treaty (dealing with taxability of FTS) is a general provision applicable to services of technical nature, the installation PE provisions (as specified in respective clauses of Article 5) is a specific provision applicable to services in the nature of construction, installation or project or supervisory services in connection therewith. Applying the above principle, it concluded that taxability of such service should be only tested under Article 5 of the Treaty and not under Article 12/13.

B. Installation PE prevails over FTS

In the subject ruling, the Tribunal held that the services were not classified as FTS in view of the restricted covenants (*viz.* make available condition not fulfilled or services being ancillary and inextricably linked to sale of equipment *etc.*) specified in the respective DTAA's under consideration.

It is clear from the ruling that where in a situation the provisions of PE clause as also the FTS clause apply to the same activity, and the PE test fails, if the services are considered taxable as FTS, not only the PE provisions would be rendered *otiose* but also shall be contrary to the gross versus net basis of taxation. In other words, this ruling seems to suggest that the services in the nature of installation, construction or supervisory services could be taxable only if the non-resident constitutes a PE under the specific clause of the relevant treaty.

This interpretation of the Jabalpur Tribunal would be extremely relevant in situations where remuneration for installation, commissioning services do not get excluded from the scope of FTS article in absence/non-applicability of the restrictions of Article 12/13 in a particular treaty and the threshold of installation PE as stated in Article 5 is not met. Based on the principles of this ruling, one may say that the installation, commissioning services would not be taxable in India. This principle would be applicable in situations where the specific provisions in the treaty do not provide a window for application of the general provisions in the event the specific provisions do not apply thereby giving the source country a right to tax the income.

C. Harmonising provisions of Article 5, 7 and Article 12/13

The issue that arises for consideration is whether on the basis of the principle laid by the Jabalpur Tribunal, Article 5 read with Article 7 shall always have precedence over Article 12/13?

It may be pertinent to note that, para 9 of Article 7 of the Indo UK[7] Treaty provides that if an item of income is dealt specifically in some other article of the convention, then the such specific provisions shall not be altered by the provision of Article 7. While this aspect do not find mentioned in the subject Tribunal ruling, perhaps the Tribunal based on its finding that installation, commissioning services would only be taxable as business income based on the specific provisions of Article 5, arrived at the conclusion that provisions of Article 12/13 would not apply.

Interestingly, Article 12/ 13dealing with taxability of royalties/ FTS provides that the provision of Article 12/ 13 shall not apply if the services are effectively connected to a PE and in such cases, the provisions of Article 7 shall apply. In other words, where the specific provision, subject to conditions refers the

[6] Union of India vs. India Fisheries(P)(Ltd.) [(1965) 57 ITR 331 SC]; ITO vs. Titagarh Steels Ltd [(2001) 79 ITD 532 (Kol)]
[7] The India-UK DTAA has been referred to with an intent of providing clarity on this issue. Similar provisions exist in other treaties as well.

taxation to the general provision, the taxability will be governed by such general provisions.

Delhi ITAT in the case of JCB Excavators, explaining the interplay between Article 7 and Article 13 of the India-UK DTAA, has also affirmed the view expressed in the preceding paragraph. It was held that once Article 7 has excluded royalty or fees for technical services to be considered under Article 12/13 but para 6 of Article 12/ 13 has sent the matter back to Article 7, it is the mandate of Article 7 which shall apply on the amount excluded by para 6 of Article 12/13.

Another important aspect which merits consideration here is that while 'Service PE' specifically excludes from its ambit services which are otherwise classified under FTS clause, no similar exclusion is found in case of installation PE dealing with construction, installation and assembly activities. To this extent it can be concluded that the provisions of Service PE and FTS are mutually exclusive. In absence of a similar exclusion in the installation PE clause, there may be an overlapping effect of Article 5 and that of Article 12/13. The Tribunal ruling seems to suggest that in principle, the specific article will apply and in the event the specific does not apply, it should provide a specific window to make the general provisions applicable to the situation.

Thus it could be concluded that, the applicability of the principle laid down by the Jabalpur Tribunal needs to be examined based on the language of the applicable provisions of the DTAA dealing with the specific transaction and may not have an universal application in all situations.

Chart-1

Comparative Analysis of Article 5 of Relevant Treaties

S.no	Treaty Country	Article	The term Permanent Establishment includes:	Minimum Threshold
1	Austria	5(2)(i)	a building site or construction, installation or assembly project or supervisory activities in connection therewith	More than six months
2	Belgium ($)	5(2)(j)	a building site or construction, installation or assembly project or supervisory activities in connection therewith and($)	More than six months
3	China	5(2)(j)	a building site or construction, installation or assembly project or supervisory activities in connection therewith	More than 188 Days
4	Germany	5(2)(i)	a building site or construction, installation or assembly project or supervisory activities in connection therewith	More than six months
5	Switzerland	5(2)(j)	a building site or construction, installation or assembly project or supervisory activities in connection therewith	More than six months
6	United Kingdom ($)	5(2)(j)	a building site or construction, installation or assembly project or supervisory activities in connection therewith and($)	More than six months
7	United States of America	5(2)(k)	a building site or construction, installation or assembly project or supervisory activities in connection therewith	More than 120 days in any twelve month period

($) Additional condition-value of services exceed 10 per cent of the sale price of the machinery and equipment.

Chart-2

Comparative Analysis of Article 7 of relevant Treaties

S.no	Country	Article of Treaty	Profit is taxable in other contracting state to the extent attributable to :
1	Austria	7(1)	Permanent establishment situated therein.
2	Belgium ($)	5(2)(j)	(A) Permanent establishment situated therein (B) Sale of goods and merchandise of the similar kind as sold through permanent establishment in such other state (C) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.
3	China	7(1)	Permanent establishment situated therein.
4	Germany	7(1)	(A) Permanent establishment situated therein (B) Sale of goods and merchandise of the similar kind as sold through permanent establishment in such other state (C) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.
5	Switzerland	7(1)	Permanent establishment situated therein.
6	United Kingdom	7(1)	Permanent establishment situated therein.
7	United States of America	7(1)	(A) Permanent establishment situated therein (B) Sale of goods and merchandise of the similar kind as sold through permanent establishment in such other state (C) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

Chart-3

Comparative Analysis of Article on FTS of relevant Treaties

S.no	Country	Relevant Article	Make Available clause	MFN Clause
1	Austria	12	No	No
2	Belgium	12	No	Yes
3	China	12	No	No
4	Germany	12	No	No
5	Switzerland	12	Yes	Yes
6	United Kingdom	13	Yes	No
7	United States of America	12	Yes	No

The Undisclosed Foreign Income and Assets (Imposition of New Tax) Bill, 2015 – Laudable On Intent, Daunting On Content?

The phrase "black money" is yet undefined in economic literature. Ordinarily it connotes undisclosed wealth - assets or income from lawful or unlawful activities, which have not been disclosed whether at the time of generation or possession thereof and, thereby, untaxed due to such non-disclosure. The current government, in order to fulfill its commitment for focused action on black money front, has formulated the Undisclosed Foreign Income and Assets (Imposition of New Tax) Bill, 2015 to deal with black money stashed away overseas. The Bill, introduced by the government in March 2015, was passed by Lok Sabha on 11th May, 2015 and by Rajya Sabha on 13th May, 2015. The Bill provides heavy penalties and taxes along with criminal prosecutions for those who had concealed black money abroad. The article looks upon the salient features of the Bill vis-à-vis the government's intents and objectives, and the expected implications. Read on…

CA. Sandeep Dasgupta

(The author is a member of the Institute who may be reached at sandeepnuvo@gmail.com.)

Genesis of the Bill

In India, since long, the scourge of black money has been manifest in public and the parliamentary institutions' debates, in varying magnitudes. The matter attained greater public and apparent government attention for the last five years. During this time and thus far, there have been various media reports revealing stark truths of various facets of the black money impacting India. According to *white paper on black money* in India report, published by the Ministry of Finance in May 2012, the Swiss National Bank estimated that the total amount of deposits in all Swiss banks, at the end of 2010, by citizens of India were CHF 1.95 billion (₹92.95 billion, $2.1 billion). The Swiss Ministry of External Affairs confirmed these figures upon request for information by the Indian Ministry of External Affairs. American intelligence units say that Indians have stashed abroad more than $400 billion in black money. These reports along with many others, which vary on estimates, snowballed into high pitched outcry to combat the venom of shadow economy. PILs, constitution of special investigation teams and introduction of amnesty schemes towards anti-black money drive have been a known phenomenon in India since early 1950s.

During his budget speech, the current Hon'ble Finance Minister, Shri Arun Jaitley underlined his government's commitment to unearth and deal with black money generated and possessed by Indians as stashed abroad. The following statements of the Finance Minister's speech in the context of his direct tax proposals amplify this commitment- *"The first and foremost pillar of my tax proposals is to effectively deal with the problem of black money which eats into the vitals of our economy and society. The problems of poverty and inequity cannot be eliminated unless generation of black money and its concealment is dealt with effectively and forcefully"*. The Undisclosed Foreign Income and Assets (Imposition of New Tax) Bill, 2015 or the UFIA Bill 2015 or popularly, the Anti-Black Money Bill, is a new direct tax bill formulated by the current government, for curbing generation of black money, through the medium of taxation of gross undisclosed income and assets owned by Indian residents. The Bill, proposed to be effective from assessment year 2016-17 and comprising of 7 chapters with around 88 clauses there-under, was tabled before the Lok Sabha on 20th March 2015, during which Indian taxpayers were still decoding the impact of the Union Budget 2015 pronouncements. The Bill was passed by the Lok Sabha on 11th May 2015 and by the Rajya Sabha on 13th May 2015. It is important to note that this Bill is proposed to be enacted to tax only undisclosed foreign wealth (assets and income) as a part of anti-black money drive of the government, as opposed to the domain of extant income tax law, which is aimed at taxation of disclosed income. The Bill seems to be a part of the government's initiative *vis-a-vis* other G20 countries,for adhering to a global framework of automatic information exchange.

The Bill is essentially a part of the comprehensive black money law contemplated by the government, which aims to discourage the generation and non-disclosure of wealth generated by Indian residents outside India, by imposing 30% tax and additional penalty to the tune of 100%/300% of tax, on hitherto undisclosed foreign assets and income. In computing such undisclosed income or asset, no deduction of expenses shall be allowed, whether or not allowable under the Income-tax Act, 1961 (the "ITA").

Objectives of the Bill

The objectives of the new direct tax Bill, as expressed in the preamble to the Bill, are to make provisions for:

1. Undisclosed foreign income and assets,
2. Laying down procedures for dealing with such undisclosed foreign income and assets,
3. Imposition of tax on any undisclosed foreign income and assets, and
4. Matters connected or incidental thereto.

Salient Features of the Bill

The Bill is essentially a part of the comprehensive black money law contemplated by the government, which aims to discourage the generation and non-disclosure of wealth generated by Indian residents outside India, by imposing 30% tax and additional penalty to the tune of 100%/300% of tax, on hitherto undisclosed foreign assets and income. In computing such undisclosed income or asset, no deduction of expenses shall be allowed, whether or not allowable under the Income-tax Act, 1961 (the "ITA").

The charging provisions under clauses (3) and (4) of the Bill stipulate that the charge is in respect of an assessee's *"total undisclosed foreign income and asset of the previous year"* qualified by a *proviso* clarifying that an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the assessing officer. "Undisclosed foreign income and asset" is defined to mean:

(i) income from a source located outside India which has not been disclosed in a return filed under the ITA,

(ii) income from such sources, in respect of which return is not filed at all under the ITA, and

(iii) value of an undisclosed asset located outside India.

The Bill defines an "assessee" for the purpose of this legislation to mean a person who is a "resident" and is liable to pay tax in respect of undisclosed foreign income and assets and every other person who is deemed to be an assessee-in-default under the Bill. Thus, the provisions of the Bill do not apply to a "non-resident" or a "resident but not ordinarily resident" as defined in Section 6(6) of the Income -tax Act. The term "assessee in default" is not defined. Further, "undisclosed asset located outside India" is defined to mean *"an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset or the explanation given by him is, in the opinion of the assessing officer, unsatisfactory."* Additionally, *"undisclosed foreign income and asset" is defined to mean the total amount of undisclosed income of the assessee from a source located outside India and the value of an undisclosed foreign asset referred to in the Bill and computed in a manner laid down in the Bill."* The charge on the asset would be computed by taking the fair market value of the asset in the year in which the asset is noticed by the assessing officer and not in the year of its acquisition.

The computation of tax as per the UFIA Bill 2015 as per clause (5) of the Bill may be depicted as follows:

Particulars	Amount in ₹
Foreign income which has not been disclosed in the ROI furnished under the ITA	XXX
Add: Foreign income in respect of which no ROI is furnished under the ITA	XXX
Add: Fair Market Value of foreign assets (the source of which is not explained or explanation provided is unsatisfactory in the opinion of the AO)	XXX
Less: Income which has been assessed to tax for any assessment year under the ITA prior to relevant AY in which UFIA applies	XXX
Less: Income which is assessable or has been assessed to tax for any assessment year under UFIA	XXX
Less: Proportionate income relatable to the fair market value of immovable property*	XXX
Total Undisclosed Foreign Income and Assets (A)	XXX
Tax on above @ 30% on (A)= (B)	XXX
Penalty on above @ 100% / 300% of (B)**	XXX

Significantly, the Bill proposes to provide a limited, one-time declaration window for resident Indians with undisclosed foreign income or assets through disclosure based payment of tax and equivalent amount of penalty. This one time compliance will ensure that they will not be required to pay wealth tax on these assets, and no separate proceedings under the ITA would be initiated. While the limited compliance window date and duration is yet to be notified, the declaration window may be as short as 60 days.

The disclosures shall be made through the income tax returns and the proposed legislation will be administered by the central board of direct taxes (CBDT) through the income tax authorities.

Provisions with respect to assessments (including best judgment assessments) of undisclosed foreign income and assets, rectifications and appeals in connection thereto as proposed under the Bill are largely akin to corresponding provisions under the ITA. The procedure for assessment as laid down under Section 10 and Section 11 of the Act indicates that if an income tax authority receives any information from another income tax authority or any other authority under any law or any information is brought to his notice, the former can serve a notice on the concerned person to cause

* *The proportionate income shall be the fair market value of the undisclosed of foreign assets as on the first day of the financial year in which the assessing officer notices such asset, in the same proportion which the assessed/assessable foreign income under the ITA/UFIA Bill bears to the total cost of undisclosed foreign asset acquired from such assessed/assessable income. This scenario can arise in a scenario when foreign assets (acquired from assessed or assessable foreign income) remain voluntarily undeclared by the assessee.*

** *The quantum of penalty may vary between 100% to 300% of tax amount, depending on whether voluntarily disclosures are made within the one time disclosure window or undisclosed foreign income / assets are noticed by the assessing officer through reference or his own investigation.*

such person to produce such accounts, documents or evidence as such former officer may require for the purpose of this new legislation on the specified date. The income tax authority is vested with adequate powers of inquiry for the purpose of obtaining full information in respect of undisclosed foreign income and assets of the person for the relevant financial year. Notably, clause (14) of the Bill proposes to empower the income tax authority to make a direct assessment of a person on whose behalf or for whose benefit undisclosed foreign income is receivable or undisclosed asset is held, outside India.

One Time Declaration Window

Significantly, the Bill proposes to provide a limited, one-time declaration window for resident Indians with undisclosed foreign income or assets through disclosure based payment of tax and equivalent amount of penalty. This one time compliance will ensure that they will not be required to pay wealth tax on these assets, and no separate proceedings under the ITA would be initiated. While the limited compliance window date and duration is yet to be notified, the declaration window may be as short as 60 days.

Rigorous penalty provisions are proposed in scenarios where voluntary disclosures are not made through this limited one time declaration window. For instance, if the income tax authority has found that the assessee has not disclosed his foreign income or asset through the limited compliance window, such authority shall be empowered to levy 90% penalty in addition to 30% tax *i.e.*, to the tune of 120% of the value of undisclosed foreign income and asset, as opposed to 60% of the value under the voluntary disclosure scenario.

The Bill also casts stringent prosecution implications which could range from six months' to seven years' rigorous imprisonment on persons guilty of abetment or persons inducing others to make false declarations under the Bill. Section 278 of the ITA provides for similar implications as above besides levy of fine in certain circumstances.

It may be noted that the Bill does not provide for repatriating undisclosed income or assets to India or identification of undisclosed assets or income within India. The Bill simply seeks to impose taxes on undisclosed foreign income and foreign assets of Indian residents. During his budget speech, the finance minister (FM) indicated that amendments under the Foreign Exchange Management Act (FEMA)as well, towards repatriation of black money stashed abroad to India would be an integral part of government's new law on black money.

The salient features of the Bill, as per the government Press Release dated 20th March 2015, are reproduced below:

Scope– *The Act will apply to all persons resident in India. Provisions of the Act will apply to both undisclosed foreign income and assets (including financial interest in any entity).*

Rate of tax– *Undisclosed foreign income or assets shall be taxed at a flat rate of 30 percent. No exemption or deduction or set off of any carried forward losses which may be admissible under the existing Income Tax Act, 1961, shall be allowed.*

Penalties–

(a) Violation of the provisions of the proposed new legislation will entail stringent penalties. The penalty for non-disclosure of income or an asset located outside India will be equal to three times the amount of tax payable thereon, i.e., 90 percent of the undisclosed income or the value of the undisclosed asset. This is in addition to tax payable at 30%.

(b) Failure to furnish return in respect of foreign income or assets shall attract a penalty of Rs. 10 lakh. The same amount of penalty is prescribed for cases where although the assessee has filed a return of income, but he has not disclosed the foreign income and asset or has furnished inaccurate particulars of the same.

Prosecutions– *The Bill proposes enhanced punishment for various types of violations.*

(a) The punishment for willful attempt to evade tax in relation to a foreign income or an asset located outside India will be rigorous imprisonment from three years to ten years. In addition, it will also entail a fine.

(b) Failure to furnish a return in respect of foreign assets and bank accounts or income will be punishable with rigorous imprisonment for a

It is pertinent to note that what constitutes undisclosed income and assets for the Indian government is likely to be different in connotation for foreign regulators and banks, and this difference could pose major challenges in enforcement of the black money law.

Significantly, the Bill casts onerous obligations on every person being a manager of a company at any time during the financial year, to ensure discharge of liabilities under the Bill by the company, failing which such liability shifts to such manager.

term of six months to seven years. The same term of punishment is prescribed for cases where although the assessee has filed a return of income, but has not disclosed the foreign asset or has furnished inaccurate particulars of the same.

The above provisions will also apply to beneficial owners or beneficiaries of such illegal foreign assets.

(c) Abetment or inducement of another person to make a false return or a false account or statement or declaration under the Act will be punishable with rigorous imprisonment from six months to seven years. This provision will also apply to banks and financial institutions aiding in concealment of foreign income or assets of resident Indians or falsification of documents.

Safeguards –

(a) The principles of natural justice and due process of law have been embedded in the Act by laying down the requirement of mandatory issue of notices to the person against whom proceedings are being initiated, grant of opportunity of being heard, necessity of taking the evidence produced by him into account, recording of reasons, passing of orders in writing, limitation of time for various actions of the tax authority, etc.

(b) Further, the right of appeal has been protected by providing for appeals to the Income Tax Appellate Tribunal, and to the jurisdictional High Court and the Supreme Court on substantial questions of law.

(c) To protect persons holding foreign accounts with minor balances which may not have been reported out of oversight or ignorance, it has been provided that failure to report bank accounts with a maximum balance of up to Rs.5 lakh at any time during the year will not entail penalty or prosecution.

(d) Other safeguards and internal control mechanisms will be prescribed in the Rules.

It is pertinent to note that while the ITA deals with the global taxability of residents, non-residents and residents but not ordinarily residents as reported in the Indian income tax returns (ITRs), the UFIA Bill is proposed to deal with the taxability of undisclosed foreign income and assets of residents only.

Certain Issues Embedded In the Draft of the Bill

As mentioned above, one of the key intents of the UFIA Bill is to curb non-disclosure of assets owned and income earned outside India by Indian residents through the cannon of taxation. While the intent to curb black money is indeed laudable considering India's socio-economic and allied conditions, from the present draft of the Bill, it needs to be seen whether the proposed legislation actually achieves the desired objective or mires the legislation in more controversies. One may be reminded of the direct taxes code (DTC) era towards Indian income tax law simplification drive, which unleashed a plethora of controversies of various magnitudes on the proposed drafts of the DTC. Though the DTC has been finally weeded out after some transplants into the ITA after almost seven years of debates and amendments, it leaves behind a trail of wasted man-hours that were consumed in formulation of the code and deliberations thereon, besides deciding on the abandonment thereof. From this perspective, it is yet to be concluded whether this Bill has been deliberated upon well by the legislators and the government before its release, close on the heels of the Finance Bill 2015.

The concept of disclosure *qua* a reporting person is not free from ambiguity–whether disclosure of purchase of foreign assets while effecting foreign remittances under the Liberalised Remittance Scheme could be tainted as "undisclosed" from the perspective of taxpayers merely because hitherto it was not disclosed under any prescribed returns under the ITA? The answer could be in the affirmative as such transaction or asset has not been disclosed in the income tax returns. Further, it may be noted that the taxable subject under the ITA can only be foreign income and not foreign assets *viz.* foreign bank accounts per se. Even under the Indian exchange control regulations, there is no bar on retaining foreign bank accounts or usage of such bank proceeds in a particular way. However, as per the Bill, there could be tax, penalty and even prosecution consequences in a scenario of undisclosed foreign assets exceeding a low threshold of only ₹ 5 lakh for years in which the ITA did not require such disclosures. It is pertinent to note that what constitutes undisclosed income and assets for the Indian government is likely to be different in connotation for foreign regulators and banks, and this difference could pose major challenges in enforcement of the black money law. For instance, if foreign assets are acquired through legitimate disclosures and banking channels in foreign countries, the same cannot not be construed as undisclosed wealth in those countries from the perspective of the declarant, particularly in the absence of disclosure requirement in India.

The term "resident" for the purpose of the Bill means a person who is a resident as per Section 6 of the ITA. Pursuant to the amendments proposed under Section 6 of the ITA, significantly with respect to companies, there is considerable hue and cry on the tax residency of foreign companies having India parentage as well as being part of Indian promoter groups. Specifically, the criterion of 'place of effective management of companies during the relevant financial year' to determine tax residency of companies, have led to considerable doubts in India Inc. Needless to add, pending adequate clarifications from the government with respect to what are the objective tests to determine the place of effective management of foreign companies in India, the current draft of the Bill spells more detriment to the interests of the concerned taxpayers in India. The ramifications of the Bill going through in its current form could therefore lead to piling unwarranted litigations, detrimental to the interests of Indian economy and judiciary as a whole. The taxpayers would ardently hope that the UFIA Bill 2015 is not enacted with these intertwined open issues of significant importance. Specifically, one may expect the government to exclude income which was hitherto not taxable in India on account of tax residency being outside India but has now come within the purview of Indian residence based taxation.

A conjoint issue and seemingly much prevalent uncertainty today, relates to implications of the Bill for long term foreign expats in the country, who are tax residents of India. Typically, such foreign expats may have been reporting only their foreign income in their Indian income tax return as there has been no requirement to report their foreign financial interests thus far. Can their foreign financial interests now partake the character of undisclosed assets? Can such foreign expats be said to be liable to cough up taxes and penalties in India due to retro impact of the provisions under the UFIA Bill? Currently there is no definite answer to these intriguing aspects. Interestingly, even before the Bill seeing the light of the day, the government made an attempt to fetch additional disclosures pertaining to foreign travel and expenses of individual taxpayers through a new schedule FT in the income tax return (ITR). This attempt though aborted due to extreme criticism, affirms the government's attempts in unearthing black money by casting arduous reporting responsibilities on taxpayers. Besides, certain amendments to the disclosure requirements under Schedule FA to the ITR, specifically by a beneficiary of assets raises concerns on the extent of record keeping by taxpayers and his/her acquaintances. Non Resident Indians returning to India permanently whether for employment or retirement reasons, who have not filed ITRs in India, may have to judiciously evaluate the ramifications, specifically possible tax cost associated with their first disclosures of their foreign assets and financial interests before the Indian tax authorities.

Finally, clause 88 of the Bill stipulates that if an Indian resident assessee willfully attempts to evade tax and penalty imposable under the Bill, such action shall be treated as an offence under the Prevention of Money Laundering Act, 2002 (PMLA) as well as under the Indian Penal Code, leading to imprisonment between 3 to 10 years and fine.

Significantly, the Bill casts onerous obligations on every person being a manager of a company at any time during the financial year, to ensure discharge of liabilities under the Bill by the company, failing which such liability shifts to such manager. This provision prompts more uncertainties than solving one – what is the span of responsibility both in terms of time and function for such manager? What are the obligations of a manager if the company is cash strapped at the time when liability under this Bill arises?

Chapter VI of the Bill dealing with tax compliance for undisclosed foreign income and assets is not free from doubts on certain counts. For instance, with respect to declaration of undisclosed foreign income or assets, one needs to be procedurally sure of rectifying declarations made out of inadvertence or otherwise, as the Bill explicitly provides that once a declaration is made by a person with respect to an asset (whether in a representative capacity or otherwise), any further declarations made with respect to such asset shall be void. The Bill further proposes that if taxes and penalties due based on the declarations made are not paid before the stipulated due date, then such declaration shall be deemed to have not been made. So, in light of the above possible restriction on rectification of declarations, one may ponder whether non-payment of tax dues based on original declaration made within the due date could be used as a tool to file a rectified declaration subsequently. Moreover, there may be a pronounced need to clarify whether the term "assessee" includes declarant for the purpose of the Bill. The chapter houses an important provision with respect to refund of taxes and penalty paid pursuant to declarations made. It is provided that taxes and penalties with respect to voluntarily disclosed assets are not refundable. It is worth evaluating whether this principle holds true for similar levies with respect to voluntarily disclosed income as well. Further, it may be deliberated whether the difference between undisclosed foreign income and assets are intentionally blurred at places in the draft or one ought to follow strict interpretation of this penal taxing statute.

The Bill consistently includes "financial interest in any entity" within the purview of the term "asset" in the context of undisclosed assets. In the context of the valuation of such assets, as mentioned earlier, the Bill provides that such value will be the fair market value computed as per the prescribed guidelines. But the phrase "financial interest in any entity" is not defined; as a consequence, it leads to multiple points of debates. One such basic debate could be around what kind of financial interests are contemplated, whether the same could be direct or indirect. Further, whether being a beneficial owner or beneficiary of an asset could mean having financial interest in such asset, how would banks account for such interests in scenarios of mortgage loans and other guarantees, *etc.*, are certain aspects which do not have definite answers at this stage.

The Bill, essentially being a direct tax Bill, provides for tax treaty relief with respect to taxes payable under the UFIA Bill and corresponding law in force in the other contracting state on undisclosed income. While there is no mention with respect to taxes paid on undisclosed assets, it is also uncertain whether all contracting states necessarily have separate legislation on black money. Does this indicate that summarily certain provisions of the ITA are grafted on to the Bill without adequate consideration of ramifications pursuant thereto on the taxpayers, tax administrators and the judiciary?

Clause 76 of the Bill relating to validity of notices served on the assessee bears a testimony to the sweeping arbitrary powers of tax authorities conceived under the draft legislation. The said clause stipulates that a notice shall be deemed to be validly served on a person, if the person on whom such notice is served appears before or co-operates in any manner with such proceedings or assessments. Would it be right to infer the corollary of this provision to preserve immunity to persons genuinely affected by improper notices served by the tax authorities?

Whether the penalty and prosecution provisions appear to be more harsh than desirable could be another point of debate, considering the moot intent of law *vis-à-vis* the texts of the legislations thus far. The provisions stipulating penalty of ₹10 lakh in scenarios where the resident taxpayer has not filed his tax return before the end of relevant assessment year and the tax officer discovers that such tax payer owns foreign assets and income whether in his legal or beneficial capacity or as a beneficiary as well as where the taxpayer may have filed tax return but failed to accurately disclose the correct particulars, does appear to be stringent in the absence of no correlation with the quantum of foreign asset or income. It may be considered whether this quantum of levy could rattle genuine taxpayers and in parallel lead to routes of greater infractions of this law.

Finally, clause 88 of the Bill stipulates that if an Indian resident assessee willfully attempts to evade tax and penalty imposable under the Bill, such action shall be treated as an offence under

The taxpayers may be advised to voluntarily disclose complete details of their foreign income and assets under the limited compliance window which is proposed to be notified in due course. In a scenario of expiry of declaration window on genuine grounds of non-performance (health grounds, presence in India, *etc.*), the tax payer may approach the income tax authority to advise on the best approach for compliance.

the Prevention of Money Laundering Act, 2002 as well as under the Indian Penal Code, leading to imprisonment between 3 to 10 years and fine. It may be noted that while such determination of willful attempt is extremely subjective and contingent upon clarity of provisions of law, this mandate under the draft legislation is excruciatingly detrimental to taxpayers, who besides the complicated tax laws have to be aware of the nuances and implications of economic offences under the criminal laws. One may be inclined to ponder whether the proposed legislation is a criminal law in the making under the garb of a tax law. Even, under criminal law, a person is considered to be innocent until proven to be guilty whereas, under the proposed law, it is matter of unease whether the tax authorities with sweeping powers may just inflict tax, penal and prosecution consequences on taxpayers based on their belief, unless the taxpayers prove otherwise.

Besides the above, there are other aspects of uncertainties *viz.*, valuation methodologies of foreign assets acquired in past years, method of determination of fair market value of foreign assets and by whom, assets acquired prior to the commencement of this draft Bill deemed to be acquired in the previous year when notice of assessment is served on the assessee, *etc.* which contribute to the obscurity cast by the Bill.

Conclusion

The UFIA Bill or impliedly an extended income tax Bill, shall have implications on two segments of Indian tax residents, hitherto unknown to Indian tax authorities–one, who may avail of the limited compliance window of disclosure and pay up taxes and penalties (voluntary declarants) and second, who may not do so (non-declarants). For the second category, the conspicuous implications are harsh, leading to prosecutions. The reasons of existence of second category of tax payers could be as genuine as lack of prohibitive legal enactment at the time of generation of wealth outside India, inability to pay or even protest against infringement of fundamental rights, in some cases. From the daunting content of the Bill, based on recall of earlier trends of voluntary disclosure of income scheme (VDIS) leading to sales tax demands and enforcement directorate (ED) raids, one may not be sure of parallel adverse implications of disclosure *vis-à-vis* other laws, meted by the proposed Indian UFIA Bill. It is worthwhile to watch how the other laws including the Indian exchange control laws are amended in the comings days to cater to the prime objective of diverting the illicit financial flows back into the country.

Since the evil of black money is a testimony of government policy gaps coupled with resonating people mindset, probably it is high time for the government to introspect into those gaps instead of legislations with inherent dampeners for an emerging economy. While punitive provisions like penalties and prosecutions are required in enforcement economic laws, inappropriate trigger points thereof may make the compliances arduous and detrimental. Accordingly, the government may be advised to pronounce a threshold for compliances and applicability penal provisions. Similarly, since the Bill does not currently provide for any specific annual reporting form similar to income tax returns, there could be a possibility of arbitrary usage of materials gathered by the income tax authorities to inflict penal and prosecution consequences on taxpayers. This arbitrary usage of power may be curtailed through appropriate mechanisms of representation and settlement of the matter. To allay the concerns of foreign expats working in India as well as non resident Indians who have recently returned to India, the Bill should provide for exclusion of foreign income and assets from disclosure and taxation while the taxpayers were non-residents in India. For prospective declarants under the limited declaration window, the extent of immunity from other punitive economic laws, like the PMLA, shall be critical.

In conjunction with the above, the taxpayers may be advised to voluntarily disclose complete details of their foreign income and assets under the limited compliance window which is proposed to be notified in due course. In a scenario of expiry of declaration window on genuine grounds of non-performance (health grounds, presence in India, *etc.*), the tax payer may approach the income tax authority to advise on the best approach for compliance. Additionally, the professional advisors to taxpayers ought to ensure that their professional advice is in no way construed as a form of facilitation of false declarations by taxpayers. It must be realised that unless the Bill is treated by taxpayers, professional advisors and the government alike with the correct attitude and mindset, Indian economy cannot be freed from the menace of black money and suffer perpetual underfunding and allied socio-political challenges. ■

Time-Limit for Disposal of Rectification Application— Section 154(8)— *Directory or Mandatory?*

'Rectification of mistake apparent from record' (Section 154) is a very interesting tool provided by the Income-tax Act. It is very important in the sense that most of the obvious issues get resolved at the rectification stage itself, without resorting to the costly & time consuming appellate route. However, any remedy available under the Act is useful only when it is afforded within a specific time frame. This is where sub-Section 8 of Section 154 comes into play which specifies the time limit for passing a rectification order by the assessing officer. However, unfortunately, this remedy has been obstructed by the controversy of Directory vs. Mandatory provision of law. The author in this article discusses the law on Directory vs. Mandatory provisions with reference to the Section 154(8) of the Income-tax Act. Read on…

To invoke the provisions of Section 154, there should be a *mistake apparent from the record.* A cursory look at the record must indicate that there is an error and the same may be rectified under Section 154. Reference to documents outside the records and the law is impermissible while applying the provisions of Section 154. A mistake which can be rectified under Section 154 is one which is glaring, obvious and patent and whose discovery is not dependent on argument or elaboration. Where the controversy can be resolved only by way of a complicated process of investigation, recourse cannot be taken to Section 154. A *rectifiable mistake* is a mistake which is obvious and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions and hence a decision on a debatable point of law is not a mistake apparent from record.

CA. Vinay V. Kawdia

(The author is a member of the Institute who may be contacted at Vkawdia@gmail.com.)

Period of Limitation

Earlier, Section 154(7) provides that rectification order cannot be passed after the expiry of four years from the end of the financial year in which the order sought to be rectified was passed. The said time-limit was uniformly applicable irrespective of whether the rectification order was passed by the Income-tax Authority-

(i) on its own motion; or
(ii) on an application by the assessee; or
(iii) in case of the Income-tax Authority being the CIT(A) on an application by the Assessing Officer.

Section 154(8) has been inserted by the Finance Act, 2001 to provide that 'without prejudice to the provisions of Section 154(7), where an application for amendment under this sub-section is *made by an assessee* on or after 1st June 2001 to an income-tax authority referred to in Section 154(1), the authority shall pass an order within *six months* from the end of the month in which the application is received by it, either making the amendment or refusing to allow the claim.

However, unfortunately, the consequences of failure to pass such an order within the said time-limit of *six months* have not been worded in the Income-tax Act.

CBDT Circular No. 14/2001 - Finance Act, 2001 - Explanatory Notes on Provisions Relating to Direct Taxes [Para 68.5]

Considering the absence of any specific time-limits regarding disposal of application for rectification under Section 154, and *with a view to ensure time-bound disposal of rectification applications,* the Act has inserted a new sub-Section (8) in Section 154 to provide that where an application for amendment under this Section is made by an assessee on or after 1st June 2001 to an income-tax authority referred to in the said Section, the authority shall pass an order within six months from the end of the month in which the application is received by it, either making the amendment or refusing to allow the claim. *The overall time-limit of four years provided in the Section for passing any rectification order shall however continue to apply.* In other words, the period of six months mentioned in the new sub-Section (8) cannot extend, under any circumstances, beyond the overall time-limit of four years from the end of the financial year in which the order sought to be rectified was passed.

These amendments will take effect from 1st June 2001.

Debate

Section 154(8) is in line with sub-Section (2) of Section 12AA of the Act (Procedure for registration of a charitable trust), which says:

> *Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) of sub-section (1) of Section 12A.*

Both the Sections are silent on the consequences of failure to pass such an order by the concerned authority within the said time-limit of six months. Naturally, the CBDT also restrained itself from throwing light on the same. However, it can be argued that, application should be deemed to have been allowed since the word used in both the Sections is *'shall'* and not *'may'*.

Therefore, decisions in case of Section 12AA can be referred to in deciding the cases involving Section 154(8) also, since both Sections use the same language.

Considering the absence of any specific time-limits regarding disposal of application for rectification under Section 154, and *with a view to ensure time-bound disposal of rectification applications, the Act has inserted a new sub-Section (8) in Section 154 to provide that where an application* for amendment under this section is made by an assessee on or after 1st June 2001 to an income-tax authority referred to in the said section, the authority shall pass an order within six months from the end of the month in which the application is received by it, either making the amendment or refusing to allow the claim.

Theory of *Deemed Registration* of Charitable Trusts-Section 12AA

In the case of *Society for the Promotion of Education, Adventure Sport & Conservation of Environment vs. CIT [2008] 171 Taxman 113 (Allahabad)*, the Allahabad High Court upheld the theory of automatic/deemed registration:

> *In the present case, we find that there is not such public interest/element. Taking the view that non-consideration of the registration application within the time fixed by Section 12AA(2) would result in deemed registration, may at the worst cause loss of some revenue or income tax payable by that individual assessee. This would be similar to a situation where the assessing authority fails to make the assessment or reassessment within the limitation prescribed for the same. This also leads occasionally to loss of revenue from individual assessee.*
>
> *On the other hand, taking the contrary view and holding that not taking a decision within the time fixed by Section 12AA(2) is of no consequence would leave the assessee totally at the mercy of the income-tax authorities, inasmuch as the assessee has not been provided any remedy under the Act against non-decision.*

We do not find any good reason to make the assessee suffer because the IT Department is not able to keep its officers under check and control, so as to take timely decisions in such simple matters such as consideration for registration even within the large six month period provided by Section 12AA(2) of the Act.

The decision of the Delhi High Court in *Sambandh Organization* vs. *CIT (2006) 156 Taxman 183* and the ITAT Delhi in *Bhagwad Swarup Shri Shri Devraha Baba Memorial Trust vs. CIT (2007) 111 TTJ (Del)(SB) 424* is also available on the same line. These decisions of the High Court/ITAT in respect of the Section 12AA(2) of the Act can very well be applied to the cases of Section 154(8) of the Act where the same time-limit of six months for passing an order under Section 154 is specified. However, in practice it is seen that, income-tax authorities least bother about the mandatory time limit specified under Section 154(8) by pretending that the time limit prescribed is *directory* only and not *mandatory*.

Decision of the Delhi High Court in *Sambandh Organization vs. CIT (2006) 156 Taxman 183 and the ITAT Delhi in Bhagwad Swarup Shri Shri Devraha Baba Memorial Trust vs. CIT (2007) 111 TTJ (Del)(SB) 424* is also available on the same line. These decisions of the High Court/ITAT in respect of the Section 12AA(2) of the Act can very well be applied to the cases of Section 154(8) of the Act where the same time-limit of six months for passing an order under Section 154 is specified.

Theory of *Deemed Acceptance of Application under Section 154* - Section 154(8): Contrary View- in Favour of Revenue

The ITAT Mumbai in *Desai Investment Pvt. Ltd. vs. ITO (2010) 45 DTR 75 (dt. 31st March 2010)* thought otherwise and held:

Rectification—Validity—Order passed after limitation period mentioned under s. 154 (8)— CIT(A) passed an order on rectification application beyond the period mentioned under sub-s. (8) of s. 154 —Rectification is not deemed to have been automatically allowed and order is not to be treated as time-barred—Even though word 'shall' is used in sub-s. (8) of s. 154, in the case of application under s. 154 , first of all it has to be seen whether there is any rectifiable mistake or not—Deemed allowance of application does not arise and the AO or the other authorities under the Act have to pass an order either allowing or rejecting the claim even if it is belated.

While deciding as above, the ITAT considered all the decisions on Section 12AA(2) and the related theory and rejected the same:

However, on a careful analysis of the contentions of both parties we are of the view that just because there is similarly used phraseology 'shall' available in both the provisions [i.e. Section 12AA(2) and Section 154(8)], the principles established while considering the registration of trust cannot be invoked for rectification of mistakes under Section 154. As submitted by the learned DR the registration of trust does not establish any rights to either parties and the claims of exemptions are to be examined by the AO in the course of assessment proceedings as mandated under Sections 11, 13, etc. <u>Accordingly, even though registration is one of the prescribed methods, the assessees do not get any right automatically to claim exemption under the Act as there are other provisions to safeguard various claims. However, in the case of application under s. 154 , first of all it has to be seen whether there is any rectifiable mistake or not.</u> As considered by the Hon'ble Supreme Court in the case of the T.S. Balaram, ITO vs. Volkart Bros. & Ors. (1971) 82 ITR 50 (SC), a mistake apparent from record must be an obvious and apparent mistake and not something which can be established by a long-drawn process and raising of points on which there may be conceivable two opinions. The decision on debatable point is not a mistake apparent from record. Accordingly once a petition has been filed, it requires application of mind primarily to decide whether there is a mistake apparent from record under the provisions of the Act. Then only the question of allowing or rejecting the issue will come into picture. <u>In view of this, deemed allowance of application does not or should not arise and the AO or the other authorities under the Act have to pass an order either allowing or rejecting the claim even if it is belated.</u> **(Para 13)**

The ITAT further relied on the decision of the Supreme Court in *Sree Ayyanar Spinning & Weaving Mills Ltd. vs. CIT (2008) 216 CTR (SC) 351* [which

While determining whether a provision is mandatory or directory, in addition to the language used therein, the Court generally examines the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application.

was in the context of Section 254(2)] wherein the Supreme Court had held that in case an application for rectification was made within four years it is the Tribunal who took its own time to dispose of the application under Section 254(2) and the order passed by the Tribunal on the application after expiry of four-year period cannot be held to be time-barred.

Relying on the above principle and in view of the similarity in the provisions of Sections 254(2) and 154(8) [the second part of the provisions of Section 254(2) uses the word "shall" if the mistake is brought to the notice of tribunal by the assessee or the AO] it was held by the ITAT that even though the order passed by the CIT(A) was beyond the time-limit prescribed *(i.e.*, beyond six months), since the application was filed within time the order *cannot be nullified* on that principle alone and it has to be considered on merits.

Interestingly, the ITAT Mumbai in one of its earlier decisions, *i.e.*, in the case of *Rajesh R. Shah vs. DCIT (2010) 35 DTR (Mumbai)(Trib) 388 (dt. 20th April 2009),* wherein the AO failed to decide the petition under Section 154 within six months as stipulated in Section 154(8) and then rejected thereafter, while remanding the matter back to the AO for fresh consideration of petition under Section 154 on merits, also approved the theory of *deemed acceptance of application under Section 154(8):*

> *..... It is also further noticed that the AO should have passed the order within six-months under the provisions of s. 154 (8) and if it is not passed it should have been deemed to have been accepted.]* **(Para 6)**

Issue for Consideration - *Directory vs. Mandatory* Provision of Law

The ITAT in *Desai Investment's case (supra)* indirectly concluded that though the word *'shall'* has been used in Section 154(8), the provision is *directory* and not mandatory. In this context, issue arises for consideration is under what circumstances *'shall'* is to be interpreted as *directory only*, especially in taxing statutes.

While determining whether a provision is mandatory or directory, in addition to the language used therein, the Court generally examines the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application. The provision is mandatory if it is passed for the purpose of enabling the doing of something and prescribes the formalities for doing certain things.

In *State of Haryana & Anr. vs. Raghubir Dayal (1995) 1 SCC 133,* the Apex Court observed:

> *<u>The use of the word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand.</u> Normally, the word 'shall' prima facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be described to the word 'shall; as mandatory or as directory accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory.*

Lashmansami G. vs. CIT (1991) 100 CTR (SC) 274: Words and phrases - *'Shall' - The word shall should be construed in the light of the purpose the Act or Rule seeks to serve...The construction ultimately depends upon the provision itself, keeping in view the intendment of the enactment or of the context in which the word 'shall' has been used and the mischief it seeks to avoid.* Under Section 36 of the Tamil Nadu

Revenue Recovery Act, 1894 *specification of the date and place of sale is mandatory -Forms prescribed are only procedural and the omission of specification of the place of sale in the form renders the sale not merly irregular also invalid.*

Lachmi Narain, etc. vs. Union of India [1976 CTR (SC) 1]: The primary key to the problem whether a statutory provision is mandatory or directory, is the intention of the law-maker as expressed in the law, itself. The reason behind the provision may be a further aid to the ascertainment of that intention. If the legislative intent is expressed clearly and strongly in imperative words, such as the use of 'must instead of "shall", that will itself be sufficient to hold the provision to be mandatory, and it will not be necessary to pursue the enquiry further. If the provision is couched in prohibitive or negative language, it can rarely be directory; the use of peremptory language in a negative form is per indicative of the intent that the provision is to be mandatory.

The Supreme Court in the case of *May George vs. Special Tehsildar & others (2010) 13 SCC 98*, after analysing all the precedents available on the subject matter, summarised the law on this issue:

> *...in order to declare a provision mandatory, the test to be applied is as to whether non-compliance of the provision could render entire proceedings invalid or not. <u>Whether the provision is mandatory or directory depends upon the intent of Legislature and not upon the language for which the intent is clothed.</u> The issue is to be examined having regard to the context, subject matter and object of the statutory provisions in question. The Court may find out as what would be the consequence which would flow from construing it in one way or the other and as to whether the Statute provides for a contingency of the non- compliance of the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow there from and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid.*

Is Provision of Section 154(8) Mandatory or Directory in Nature?

A) With the above background, let's analyse sub-Section (8) of Section 154. Firstly legislative intent behind the introduction of Section 154(8) by the Finance Act, 2001 and overall object of the provision needs to be unearthed. Generally, the CBDT circular explaining the amendments by the Finance Act is considered to be the document revealing the legislative intent behind the amendments.

Prior to Section 154(8), the absence of any specific time-limit regarding the disposal of application for rectification under Section 154 was causing serious general inconvenience and injustice to the taxpayers at large. And, to get rid of this *justice delayed is justice denied* kind of scenario finance act introduced Section 154(8). CBDT Circular No. 14/2001 also made it clear in following words:

> *Considering the absence of any specific time-limits regarding disposal of application for rectification under Section 154, and with a view to ensure time-bound disposal of rectification applications, the Act has inserted a new sub-Section (8) in Section 154 to provide that where an application for amendment under this section is made by an assessee on or after 1st June 2001 to an income-tax authority referred to in the said section, the authority shall pass an order within six months from the end of the month in which the application is received by it, either making the amendment or refusing to allow the claim.*

The amendment was specifically made effective for applications made by an assessee on or after 1st June 2001 meaning thereby, the mandatory time limit of six months was not applicable to applications under Section 154 made prior to that and conversely, all applications made on or after 1st June 2001 should be decided within stipulated time of six months, *mandatorily*. Any other view would make nonsense of the time-limit and effective date of applicability of provision.

B) In view of the starting words of sub-Section (8), i.e. *Without prejudice to the provisions of sub*

Thus, if, for example, application under Section 154 is made by assessee three months prior to date of expiry of four years as stipulated in sub-Section (7), the AO shall have to decide the application within three months (and not six months) from date of receipt of application and as per the CBDT, the period of six months mentioned *in the new sub-Section (8) cannot extend, under any circumstances, beyond the overall time-limit of four years.*

section (7) ....” the CBDT further clarified:

...The overall time-limit of four years provided in the section for passing any rectification order shall however continue to apply. In other words, the period of six months mentioned in the new sub-Section (8) cannot extend, under any circumstances, beyond the overall time-limit of four years from the end of the financial year in which the order sought to be rectified was passed.

Thus, if, for example, application under Section 154 is made by assessee three months prior to date of expiry of four years as stipulated in sub-Section (7), the AO *shall have* to decide the application within three months (and not six months) from date of receipt of application and as per the CBDT, *the period of six months mentioned in the new sub-Section (8) cannot extend, under any circumstances, beyond the overall time-limit of four years.*

The words *‘cannot extend, under any circumstances’* used by the CBDT themselves explain the legislative intent of making the provision of Section 154(8) *mandatory*.

C) The above CBDT clarification acquires more significance in view of its earlier Circular No. 73, dt. 7th Jan. 1972 *[pre Section 154(8) scenario]*. Even if the taxpayers had filed rectification applications under *Section 154(2)* within statutory time limit of four years as per Section 154(7), as a routine practice, these applications used to remain unattended by authorities till expiry of limitation period of four years. Thereafter assessing officers were refusing to process the same under the pretext of expiry of limitation period. To curb this, Circular No. 73 (*supra*) clarified that, the application under *Section 154(2)* of the Act filed by an assessee within the statutory time limit, if not disposed of by the authority concerned within the time specified under sub-Section (7) of Section 154, it may be disposed of by that authority even after the expiry of the statutory time limit, on the merits and in accordance with law. [Also refer to *Vithaldas vs. ITO (1969) 71 ITR 204 (All.)]*

This facility extended to entertain 154 applications even beyond four years, by necessary implications, now stands withdrawn with the introduction of sub-Section (8) read with Circular No. 14/2001 which made it abundantly clear that *‘the period of six months mentioned in the new sub-section (8) cannot extend, under any circumstances, beyond the overall time-limit of four years’* resulting in to deemed acceptance of 154 application, if not decided within time stipulated under Section 154(8). If Section 154(8) is construed to be directory, there was no reason for introduction Section 154(8) in view of clarifications and flexibility already available by way of Circular No. 73, dt. 7th Jan. 1972.

Even if taxpayers had filed rectification applications under Section 154(2) within statutory time limit of four years as per Section 154(7), as a routine practice, these applications used to remain unattended by authorities till expiry of limitation period of four years.

D) Even otherwise, provisions regarding time may be considered mandatory if the intention of the legislature appears to impose literal compliance with the requirement of time. If interpreted otherwise, the sections imposing time limits would become meaningless and otiose and would frustrate the intention of legislature.

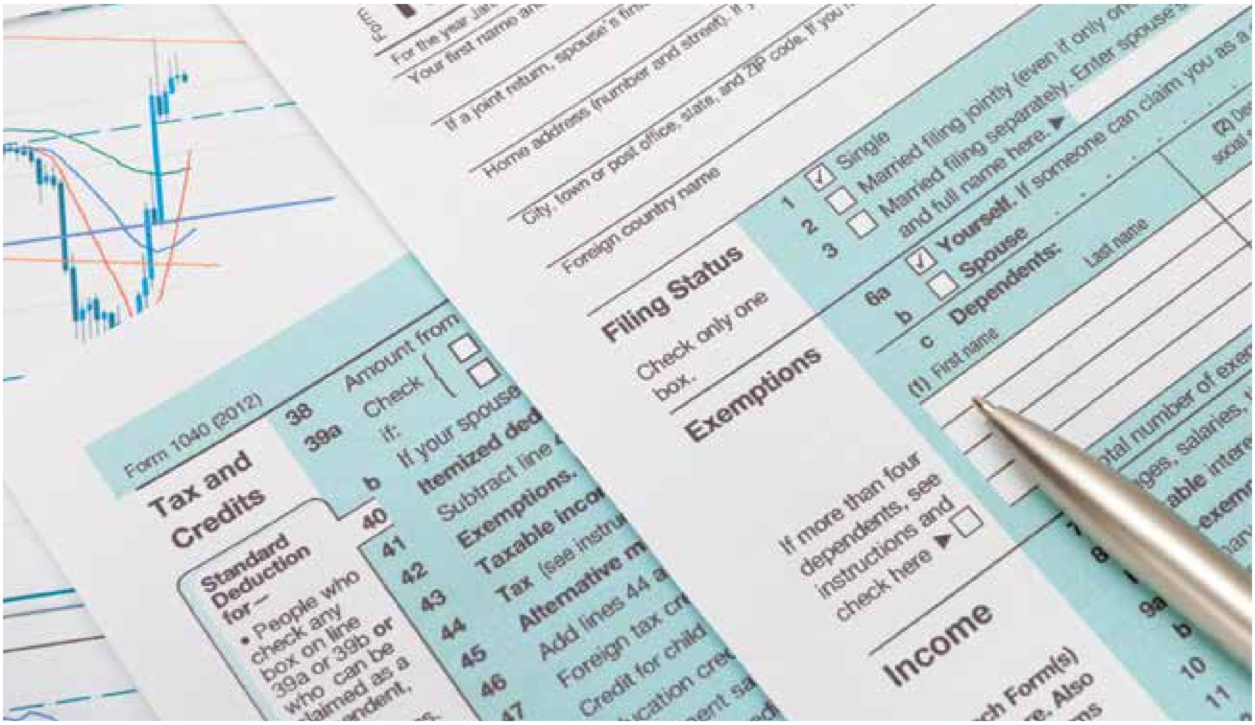
In this context, decision of the Apex Court in *DLF Universal Ltd. vs. Appropriate Authority [2000] 243 ITR 730* is worth readers’ attention, wherein it was held that (though in the context of some other sections), *where a time-limit is provided for offices functioning under the law, it should be treated as mandatory, so that any other view would make a nonsense of the time-limit.*

E) The mischief sought to be plucked [inaction on part of IT officers in processing the rectification applications under Section 154] from the system needs to be focused while interpreting the provisions like Section 154(8). If thought accordingly, one would conclude that the provision is undoubtedly *mandatory* & not *directory.*

Conclusion

In the author’s considered opinion, construing the provision of sub-Section (8) of Section 154 as mandatory would meet the very purpose the provision seeks to achieve. Judicial decisions available in respect of the time-limit of six months specified in Section 12AA(2) as discussed above may be taken help of in deciding the Section 154(8) matters also, since both sections use the same language. To put the controversy at rest, a clarifying amendment in Section 154(8) is necessary. ■

Settlement of Loans and Liabilities - Taxability under Income Tax Act



Business houses and groups invariably obtain and depend on loans, since they obtain the same in order to set up their businesses and subsequently require it to run their business operations. Such loans could be term loans, working capital loans, bridge loans, export limits, unsecured loans and so on. In case of emergencies and crises, usually loan providers request the business organisations for a settlement of the loan amount by way of waivers of certain portion of principal loan amount and interest, i.e. one-time settlement. The author duo in this article discusses the taxability aspect of such settlements i.e. of loans and liabilities, as taxability varies from case to case depending on the terms and conditions and facts of individual cases. Therefore, it will be interesting to analyse this complexity in the light of unique tax treatment of waived amount of loan and interest in an individual case. The author duo checks the Section 28(iv) and the Section 41(1) of the Income-tax Act to discuss the objectives of their article. Read on…

Introduction

Business organisations obtain loans for setting up of business and for running the same. These loans are in the form of term loans, working capital loans, bridge loans, export limits, unsecured loans, *etc.*


CA. Pankaj G. Shah and CA. Manoj Gupta

(The author duo are members of the Institute who may be contacted at pankajgshah@gmail.com.)

When business is in trouble, not doing well or closed, usually banks and financial institutions request for settlement of loan accounts by a waiver of certain portion of principal amount of loan and interest which is popularly called as 'one time settlement'. Tax treatment of such settlement is a very important aspect which varies as the terms and conditions and the facts of each case differs. The separate tax treatment of waived amount of loan and interest further complicates the process. The Taxman makes an effort to hold the amount of loan and interest waived as an income under Section 28(iv) or Section 41(1) of the Income-tax Act. At the outset, attention is invited to the provision of Section 41(1) which reads:

"41(1) *Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first mentioned person) and subsequently during any previous year—*

(a) the first mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or value of benefit accruing to him shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or ...."

The definition of income includes amount chargeable under Section 41 (1) of the IT act and the provisions of Section 41 fall under the chapter for computing income from business and profession. Primarily, addition under Section 41(1) would be triggered in respect of amount for which a deduction or allowance is claimed and allowed in any of the earlier years.

I. Judgments Laying Down Basic Principles of Taxation

1. Normally, waiver of principal amount of loan cannot be regarded as income when the amount originally received by an Assessee is in the nature of loan which is not in the normal course of trading and no deduction was claimed or allowed in the past in respect of the liability that is waived. Hence, a receipt which is not in the first instance, a trading receipt, cannot become trading receipt by any subsequent process. In this regard, attention is invited to two *English decisions in the case of Morley vs. Tattersall (7 ITR 316) and British Mexican Petroleum Company Limited vs. Jackson (16 TC 570)(HL).*

   In the case of *Morley vs. Tattersall,* the following principles have been laid down:

   - Statue of Limitations does not apply to such liability
   - If Initial receipts are not trading receipts, subsequent operations cannot turn them into a trading receipt and
   - The quality and nature of receipts for tax purposes is fixed once and for all.

   Indian Courts have time and again followed the above decisions and upheld the law that debt forgiven or waived cannot be held as income.

Normally, waiver of principal amount of loan cannot be regarded as income when the amount originally received by an Assessee is in the nature of loan which is not in the normal course of trading and no deduction was claimed or allowed in the past in respect of the liability that is waived.

2. The Supreme Court in the case of *Polyflex (India) Pvt. Ltd. vs CIT 257 ITR 343* has examined the constitution of Section 41(1). The court has pointed out that Section 41(1) consists of two main ingredients (a) loss or expenditure and (b) trading liability. The two ingredients of Section 41(1), the court held, have to be read independently. As the first ingredient relates to loss or expenditure and the second ingredient relates to remission or cessation of trading liability, the court has categorically ruled that the words "remission or cessation thereof " shall apply only to a trading liability.

   The Delhi High Court in the case of *CIT vs. Phool Chand Jiwan Ram (1981) 131 ITR 37* and Bombay High Court in the case of *Mahindra and Mahindra Ltd vs. CIT 261 ITR 501* have held that Section 41(1) would be applied only if the assessee has obtained any deduction or allowance in respect of any expenditure or loss. If the assessee has not obtained any such allowance or deduction, Section 41(1) would not be applicable at all.

3. The High Court of Kerala in the case of *CIT vs. Cochin Co. Ltd.– 81 CTR 115* has specially held that payments of loan taken to purchase machinery cannot be reduced from the cost of machinery as remission or loss will not amount to remission of depreciation within the meaning of Section 41(1). It means remission of capital liability cannot be brought under the purview of Section 41(1).

4. In the case of *Mahindra and Mahindra vs. CIT (261 ITR 501)*, it was held by the Bombay High Court that the loan which was originally taken for capital expenditure, if waived, will not give rise to taxable income. The relevant extract of the said decision read as under:
"The income which can be taxed under Section 28(iv) must not only be ***referable to a benefit or perquisite, but*** *it must be arising from business. Secondly, Section 28(iv) does not apply to benefits in cash or money. Secondly, in this case we are concerned with the purchase* ***consideration relating to capital asset.*** *The toolings were in the nature of dies. The assessee was a manufacturer of heavy vehicles and jeeps. It required these dies for expansion. Therefore, the import was that of plant and machinery. The consideration paid was for such import. In the circumstances, Section 28(iv) is not attracted. In our case, the most fundamental fact which is required to be borne in mind is that there was no deduction given to the assessee in earlier years and, therefore, ₹57,74,064 could not be included as income under Section 41(1) of the Act. Lastly, it is important to bear in mind that the toolings constituted capital asset and not stock-in-trade. Therefore, taking into account all the above facts, Section 41(1) of the Act is not applicable".*
Further, the above issue as regards non-taxability of waiver of a loan used for capital purpose was carried by the tax department to Supreme Court in the case of *Tosha International vs. CIT* and the apex court had dismissed the department S.L.P reported in 319 ITR(ST)7.
5. In the case of *Accelerated Freeze & Drying Co. Ltd vs. DCIT (2009) 31 SOT 442 (Cochin)* where waiver of loan under a scheme was formulated by the Reserve Bank of India known as "One time Settlement Scheme", assessee credited the waiver amount in the general reserve account, the Tribunal held that loan amount waived could not be treated as its income either under Section 28(iv) or under Section 41(1). Loans availed by assessee from Banks were not in the nature of trading liability but were in the nature of capital liability and, therefore waiver of loan liability was not waiver of any trading liability. Hence the provision of Section 41(1) was not applicable.
6. In an appeal filed by Revenue, the Hon'ble MP High Court in the matter of *CIT vs. Dholgiri Industries (P) Ltd. (2014) 99 DTR 359/266 CTR 111/125 (MP)(HC)* has categorically held that as the assessee never claimed the principal amount as deduction, the AO was not justified in assessing the said amount as income. The Court affirmed the view of the Tribunal.
7. In cases where the loan had been utilised for trading purpose, the said loan would be regarded as a trading liability of the assessee and therefore, the cessation of such trading liability by any waiver would attract the provision of Section 41(1), discussed above, to the effect that, the entire part of the principal liability so waived, would become chargeable to tax, as income. The precedents on this issue are:
   - *Solid Containers Limited (308 ITR 407) (Bom HC)*
   - *Logitronics (P.)(Ltd)(333 ITR 386)(Del HC)*
   - *Hindustan Fibres Ltd vs. DCIT (ITA NO 5263/Del/2011)*
8. However, in the case of APR Ltd. vs. *DCIT (87 ITD 618) (HYD)*, it is held, after considering the decision of *CIT vs. TV Sundaram Iyengar and Sons Limited (222 ITR 344)(SC)*, that the loan does not lose its capital nature even when it is renounced by the lender and becomes money of the assessee, and therefore, the mere fact of its transfer to profit and loss account does not invest it with revenue character.
9. Therefore, while dealing with the waiver of principal liability, one needs to further decipher the utilisation pattern of the loan so waived. In other words, the implications of the waiver of the principal loan liability would depend on whether the loan had been utilised for capital purpose or for trading purpose, by the assessee. In case of general purpose loan, only thefinal use of the loan amount would show whether it was for capital or trading purpose.

Therefore while dealing with the waiver of principal liability, one needs to further decipher the utilization pattern of the loan so waived. In other words, the implications of the waiver of the principal loan liability would depend on whether the loan had been utilized for capital purpose or for trading purpose by the assessee.

II. Rigours of Section 28(iv)

Now we come to the question of the taxability of the principal amount waived under Section 28(iv) which reads:

> *The value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;*
>
> The moot question which arises from reading the above is whether the waiver of loan would amount to a perquisite so as to be taxable under Section 28 of the Act. The Bombay High Court in the case of Mahindra and *Mahindra Limited vs. CIT-261 ITR 501* has considered this very issue. While rejecting the Revenue's stand, the court explained that Section 28(iv) seeks to charge the value of any benefit or perquisite, meaning thereby that the benefit must be in kind whereas the waiver of loan was in cash. Hence, clause (iv) of Section 28 was not applicable at all. While arriving at that conclusion, the Bombay High Court in fact referred to the decision of the Gujarat High Court in the case of *CIT vs. Alchemic Pvt. Ltd. 130 ITR 168.* The Gujarat High Court in the said case has held that the benefit or perquisite arising from business as construed in Section 28(iv) will not include cash receipt.
>
> The Hon'ble Delhi Bench of the Tribunal, in the case of *Velocient Technologies Ltd. vs. ITO (120 TTJ 659),* has held that the primary requirement for treating an amount as business income of an assessee is that the same should have arisen out of ordinary trading transactions, and that the loan availed for capital purposes, cannot be equated to transactions in the nature of normal trade, and therefore, the waiver of such loans cannot be treated as an item taxable under Section 28(iv) of the Act.

If the assessee is engaged in manufacturing or trading of any product or commodity and thereby not engaged in the business of finance, waiver of loan amount in such cases, would not be a benefit or perquisite arising from its business and cannot be taxed under Section 28(iv).

III. One-Time Settlement Inability in Bifurcation of Waived Amount

In the case of one time settlement, it is required to first bifurcate the amount of principal loan waived off and the amount of interest outstanding on the principal liability waived. Interest waived would be regarded as income under Section 41(1) provided the same was allowed as a deduction in any of the earlier years. As regards the waiver of principal liability, if the loan was availed to be used for capital purpose, the waiver would not be taxable in the hands of the assessee. However, if the loan was acquired to be used for the purpose of business of the assessee, the same, being regarded as a trading liability, its waiver would be taxable as business income in the hands of the assessee.

Interest waived would be regarded as income under Section 41(1) provided the same was allowed as a deduction in any of the earlier years. As regards the waiver of principal liability, if the loan was availed to be used for capital purpose, the waiver would not be taxable in the hands of the assessee.

However, in the case of lump sum settlement of a loan account, a possibility may arise that the total amount waived cannot be bifurcated between the waiver of principal liability and interest due. Taxability of the waiver, in such a case, has been dealt with by the Bombay High Court in the case of *Akay Organics Limited vs. ITO (IT appeal No5481 of 2010)* wherein the High Court, while dismissing the appeal filed by the assessee, has held that in a case where the assessee is not able to produce any rational basis for the apportionment of the one-time settlement amount between the principal liability and the interest outstanding, one cannot assume that the principal liability and interest are waived on a proportionate basis. The High Court observed:

> *"The assessee has <u>not produced any evidence to indicate the apportionment</u> of the OTS amount of ₹91 lacs towards principal and interest. It is obvious that a part of above amount was towards interest for the OTS amount was admittedly more than ₹72 lacs (principal amount). The working of the proportionate amount by the assessee is not based on what infact transpired between SICOM and itself. The basis is merely hypothetical. <u>It is not inconceivable that the interest was waived and/or reduced.</u> The reliance upon the rule that any amount received by creditors must first be adjusted towards interest and then towards principal cannot come to the assistance of the assessee."*

Thus, the Bombay High Court has laid down the principle that when the amount paid as "one-time settlement" cannot be separated as that paid towards the principal loan liability and that towards the interest, in such a case, it is to be assumed that the whole of such sum is first paid in settlement of principal loan amount outstanding and the balance towards the interest.

IV. Taxability of Interest Waived

1. In case of waiver of the loan by way of "one-time settlement", in so far as it relates to the waiver of the interest liability being in the nature of trading liability, it would be regarded as income, provided that earlier such interest was allowed to be claimed as expenditure under Section 36(1)(iii) of the Act. *Solid Containers Ltd vs. DCIT (2009)178 Taxman 192(Bombay HC).*

2. Conversely, if such interest was not claimed by the assessee or allowed to him during anytime during any of the previous years as expenditure in the profit and loss account, or the same was disallowed to the assessee by virtue of Section 43B of the Act, no income can be said to be chargeable in the hands of the assessee upon its waiver. *ACIT vs. Spel Semiconductor Ltd. (2013) 59 SOT 114 (Chennai Tribunal).*

3. In a particular case, the assessee had originally availed the loan and had incurred interest liability thereon, had never claimed interest as expenditure, but the same was debited to the Capital Work in Progress account in the books. Since no expenditure was claimed by the assessee in its income, in respect of the interest liability, waiver of such liability cannot be made taxable, in this case.

V. Time of Taxability

1. A question would arise as to the point of time when the taxability of such waiver needs to be examined in case of 'one time settlement', more precisely, whether at the time when the settlement is done or when the conditions required to be satisfied for eligibility to such 'one time settlement' are complied satisfactorily. In this regard, our view based on legal decisions is that the question of determining the taxability of the waiver of the loan shall arise only when all the conditions of 'one-time settlement' are satisfactorily complied with. This view is on the basis that, if the conditions are not fulfilled, the loan liability remains and the one-time settlement gets abated. <u>Prior to fulfillment of the eligibility criteria put forth by the creditors, it is a mere contingency that the loan liability shall stand waived off.</u>

2. This view has been upheld by the Mumbai Tribunal in the case of *Lalit Profiles and Steel Industries Limited vs. ACIT (ITA no. 4487/Mum/08)* wherein the Tribunal held:
"In the present case, the waiver by the bank of principal sum was subject to certain conditions and only upon fulfillment of those conditions the assessee would become entitled to the benefits of waiver. Admittedly the time for fulfillment of the conditions for waiver is beyond the previous year relevant to A.Y. 2005-06. There was therefore no occasion to either apply section 41(1) or section 28(iv) or Sec 56. of the act in the case of the assessee in A.Y. 2005-06."

3. Thus, taxability or waiver of the loan or interest should be determined only in the year in which the conditions stipulated in the one-time settlement agreement are fulfilled and not in the year in which a conditional one time settlement agreement is merely executed signed.

VI. Early Waiver Of Unsecured Loans

If the waiver of an unsecured loan is within three years from the date when it was obtained for capital purpose, then it may create a suspicion in the mind of the Department about the genuineness of the loan, and may trigger the provision of Section 68 of the Act, where, under the amended law, even the source of the creditors needs to be established.

Normally before a waiver takes place, the creditor would have to be convinced that there is no chance of recovering the amount. One would therefore observe in such cases, extensive correspondence, negotiation, settlement or arbitration (if so provided in the loan agreement) or legal action, *etc.* before a loan is waived. This would establish the genuineness

A question would arise as to the point of time when the taxability of such waiver needs to be examined in case of 'one time settlement', more precisely, whether at the time when the settlement is done or when the conditions required to be satisfied for eligibility to such 'one time settlement' are complied satisfactorily. In this regard, our view based on legal decisions, is that the question of determining the taxability of the waiver of the loan shall arise only when all the conditions of one-time settlement are satisfactorily complied with.

of the loan, as well as the action of waiver of loan by the creditor.

It would therefore be proper, if the debtors start corresponding with the party, firstly, for its inability to pay interest, and then later on the principal amount. There could also be a settlement or some negotiation before the loan is partly or fully waived.

VII. Case Studies

1. ***Waiver Of Share Application Money***
   Where an amount is invested by way of share application money and the recipient company uses such amount for procurement of capital items and purposes. On a write-back of such share application money, in our view, it would remain capital receipt and not take the character of revenue income and would remain in the nature of capital.
   On this issue, the Delhi Tribunal in *Impsat (P) Ltd. vs. ITO (91 ITD 354)* has held that by waiving their right to get back capital contribution made by them or any part of it, the collaborator was only giving up its right over capital contribution. That, by any stretch of imagination, could not result in the assessee retaining the share application monies as its income. The original receipt was undoubtedly capital and its waiver did not have quality of charging same into revenue receipt.
2. ***Waiver/Forefeiture of Security Deposit vis-à-vis Trading Deposit***
   If deposits received by a businessman in substance partake more of the nature of trading receipts than of security deposits, such deposits, if unreturned, would be taxable as income. But a receipt which is not, in the first instance, a trading receipt, cannot become a trading receipt by any subsequent process. In *Morley vs. Tattersall,* a firm of auctioneers had large unclaimed balances of their clients in their hands. Several years' accumulations of those balances were divided by the firm among the partners. It was held on such facts, that they were not trading receipts and could not be taxed as income. The quality and nature of a receipt for income-tax purposes is fixed once and for all when it is received. The unclaimed balances, when first received from the auction-purchasers, were obviously liabilities, and no subsequent operation or alteration in the accounts could turn them into trading receipts."
3. ***Unclaimed Trade Creditors***
   In the case of *CIT vs. Aries Advertising Pvt. Ltd.– (255 ITR 510)* before the Madras High Court, the assessee had transferred unclaimed credits to the general reserve. The credit balances considered by the court in that case were not in the nature of term loans availed for capital purposes. It is in such circumstances that the court has relied on the judgment of the Supreme Court in the case of *T.V. Sundaram Iyengar and Sons Ltd.– 222 ITR 344* and held that the credit balances written off and transferred to general reserve could be chargeable as profit under Section 41(1).

VIII. Accounting Entries in Books Not Decisive for Tax Purposes

In this regard, attention is invited to the decision of the Hon'ble Supreme Court in the case of *CIT vs. Shoorji Vallabhdas & Co., (1962) 46 ITR 144 (SC)* where it was held that a mere bookkeeping entry did not give rise to income increase unless it could be shown that income had actually resulted from it. It is a trite law that the nomenclature given by an assessee to a particular account in its books of accounts is not the sole test to decide the real character of that account. The Hon'ble Supreme Court in the case of *Punjab Distilling Ltd. vs. CIT (35 ITR 519)(SC)* has held that an assessee may credit an amount to capital account what should have otherwise been credited to revenue account but that does not make it taxable. Again, the Supreme Court in case of *Kedarnath Jute Mfg. Co. Ltd vs. CIT (82 ITR 363)* has observed that bad accounting affects neither in favour of the assessee nor against the revenue.

IX. Conclusion

The taxability of the waiver of loan and interest amount in individual cases will depend on the facts of the case and will be finally decided in terms of the provision of Sections 41(1) and 28(iv), to be interpreted in the light of the judgments of various courts. The courts have followed uniform logic and principles while deciding the issue of waiver/settlement of loan and hence, there remains very little controversy regarding tax treatment of these transactions. However, the complex nature of the present finance arrangements and the use of tailor made debt instruments, may raise certain debatable issues which will be finally addressed on the basis of basic principles laid down by the Indian courts. ■

Sustainable Development and CSR—An Emerging Issue

The Indian economy is one of the largest economies in the world. A large number of the people of India are living in absolute poverty, which shows a picture of uneven distribution of the benefits of growth, which is the root cause of social unrest in the country. Economic development deters the environment and natural resources. The protection of environment and social security were considered as the responsibility of the government. Government and different statutory bodies, in order to respond to this unrest, issued voluntary guidelines on Corporate Social Responsibility (CSR) for social and environmental protection. Now there is a need for an effective participation of business and corporate world to spend some of their profit on CSR. Philanthropy and CSR is not a new concept for the Indian companies. This article attempts to highlight the relationship between CSR and sustainable development, and also elucidates the theoretical and practical contribution of CSR towards achieving the goal of sustainable development in India. It also seeks to discuss the evolution of CSR in India, the legal framework of CSR and the benefits and shortcomings of the CSR provisions under the new Companies Act, 2013. Read on…

Dr. Sanjeev Gupta

(The author is a Company Secretary who may be contacted at sga709a@gmail.com.)

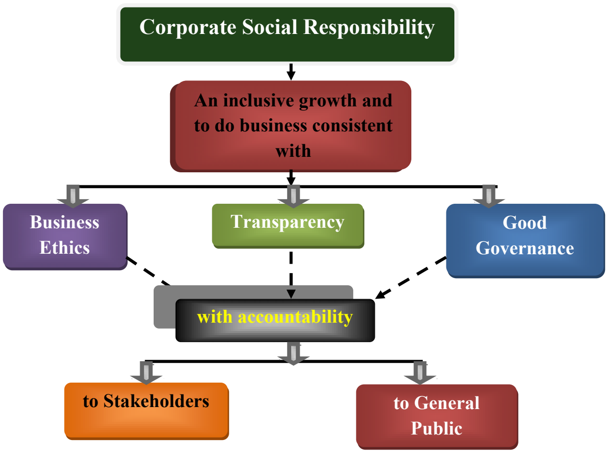
Concept of CSR

Corporate Social Responsibility (CSR) refers to running the affairs of a company in conformity with business ethics, transparency, good governance, and being accountable to both the shareholders and the society at large. Business ethics involves fair and honest treatment to all the stakeholders, including the shareholders.

CSR can increase the businesses revenue, by enhancing market access, increasing productivity, including cost-saving, augmenting capital access, reducing risk, obtaining operative licences, retaining and attracting good quality human capital and boosting the brand equity. CSR integrates governance, management, and investment of corporation with social, ethical and environmental concerns, in its business practices.

The concept of CSR can be diagrammatically depicted as shown in Figure 1.

Figure 1
Concept of CSR



CSR—is it philanthropy?

No, the activities with the business contributions to the society by socially beneficial projects, like opening free hospitals, old age home, institutions for physically and mentally challenged children, instituting scholarships for students, are charitable in nature and unconnected with the business of the corporate. CSR is no longer restricted to philanthropy, as the companies are focusing on CSR, as an integral part of their long-term business strategy.

CSR is not a new phenomenon. Rather its roots exist in the Indian culture. India has one of the richest traditions of CSR, as charity and philanthropy existed in Indian culture, from time immemorial. The activities of CSR in India, and even in the world, were not mandatory for the corporate sector. But, for the first time, CSR has been imposed on certain business houses, through the new Companies Act.

Evolution of CSR in India

CSR is not a new phenomenon. Rather its roots exist in the Indian culture. India has one of the richest traditions of CSR, as charity and philanthropy existed in Indian culture from time immemorial. The activities of CSR in India, and even in the world, were not mandatory for the corporate sector. But, for the first time, CSR has been imposed on certain business houses, through the new Companies Act. The history of CSR in India is parallel to the historical development in India. Therefore, CSR can be divided into five phases, namely:-

1. Pre Independence Struggle Era (Before 1850)
2. Independence Struggle Era (1857- 1947)
3. Post Independence Era (1947- 1990)
4. Economy Liberalisation Era (1990- 2013)
5. Current Scenario (2014 onwards)

The above phases of the evolution of Corporate Social Responsibility are briefly described below:

1. Pre-Independence struggle era

In the pre-Independence struggle period, CSR was influenced by family values, tradition, culture and religion, along with industrialisation. Till 1850, the richer businessmen shared their wealth with the society by either setting up temples or religious institutions. In this era, construction of temples or religious institutions were considered as the contribution of industrialists or wealthy persons towards society.

2. Independence struggle era

The approach towards CSR changed with the arrival of colonial rule in 1850, in the pre-independence era. The second phase related to the struggle period of independence, when Mahatma Gandhi urged the powerful industrialists to share their wealth for the benefit of the underprivileged section of our society. He gave the concept of trusteeship, which helped in the socio-economic growth of India. He influenced the building of trusts for colleges, research and training institutes, to enhance social **reforms, like rural development, women empowerment and education**. In this phase, the concept of CSR was changed from setting up of religious institutions to setting up of educational institutions also.

3. Post-independence era

The third phase was the Post–Independence, *i.e.* from 1947-1990, during which CSR was influenced by the emergence of public-sector undertakings (PSUs) to ensure proper distribution of wealth. In 1965, great stress on social accountability and transparency in private sector was given by the academicians, politicians, and businessmen. The policy of industrial licensing, high taxes and restrictions on the private sector resulted in corporate malpractices, which led to enactment of legislation for corporate governance, labour and environmental issues. As PSUs were not very successful, there was a natural shift of expectations towards private sector for their active involvement in socio-economic growth.

4. Economic liberalisation era

The fourth phase was Liberalised India when the Indian economy started to liberalise its economic policies. The Indian companies integrated CSR into a sustainable strategy. The period of 1990, when globalisation and economic liberalisation took place in respect of partial withdrawal of control and licensing system; there was a substantial growth in the Indian economy, which led to increased momentum in industrial growth, making it possible for the companies to contribute towards their **social responsibility**. In this phase, the state of mind of the corporate sector changed and charity was accepted as a responsibility.

In this period, companies started CSR activities and the government also introduced voluntary CSR Guidelines, 2009. CSR was not philanthropy and CSR activities were purely voluntary *i.e.* what companies would like to do beyond any statutory requirement or obligation. To provide companies with guidelines in dealing with the above mentioned expectations, while working closely within the framework of national aspirations and policies, Voluntary Guidelines for CSR were developed. These guidelines mark an important first step towards a movement for greater corporate contribution towards the welfare of society.

Section 135 of the Companies Act, 2013, which is effective from 1st April, 2014, requires a qualifying company to spend on CSR activities at least 2% of its average net profits made in the preceding three financial years.

5. Current scenario

Companies are often involved in irresponsible practices and their failure in corporate governance has led to the emergence of a law on CSR. There are examples of failures in corporate governance in India, such as the Union Carbide gas leak case in Bhopal; pesticides in colas with depletion of water by PepsiCo; child labour in supply chains of the clothing group GAP and in carpet, garments and sports goods industries; controversial use of ultrasound machines in female foeticide; use of beef tallow by McDonald's in its products and violation of environmental laws by Vedanta.

Activities of business houses which were considered as CSR in different phases are depicted in Table 1 below:

Table 1: CSR Activities in Different Phases

Phase	Period	Emphasis	Major Activities
Pre-Independence Struggle Era	Before 1850	Charity and religious activities	1. Setting up of temples and religious institutions.
Independence Struggle Era	1857-1947	Economic and social well-being aspects	1. Activities of Ist Phase. 2. Setting up of institutions for rural development, women empowerment and education.
Post- Independence Era	1947-1990	Emergence of PSUs and social accountability and transparency	1. Activities of Ist Phase. 2. Emergence of PSU's for proper distribution of wealth. 3. Social Accountability and Transparency among Private sector.

Phase	Period	Emphasis	Major Activities
Economic Liberalisation Era	1990-2013	Traditional CSR merged into a substantial business strategy	1. Activities of Ist Phase. 2. Establishment of societies for social upliftment of poor community, conservation of water, setting up of health camps & tribal villages & health awareness programmes. 3. Government introduced voluntary Corporate Social Responsibility guidelines for contributions of corporate in the welfare of society.
Current Scenario	2014 onwards	CSR mandatory and Inclusive development with sustainable business strategy	1. Activities of Ist Phase. 2. CSR activities as per Schedule VII of the Companies Act, 2013 which are explained in further paras.

A list of major CSR activities engaged in by some of the corporate houses is given in Table 2.

Table 2: CSR Activities of Selected Companies in Recent Years

S. No	Company/ Corporate House	Industry/ Product Line	CSR Activity undertaken	Year/ Period	Turnover (₹ in crore)	Expenditure Incurred on CSR (₹ in crore)	Perceived Environment/Socio-economic Impact
1	2	3	4	5	6	7	8
1	Britannia Industries Limited	Supply of superior quality food products	Food- based solutions to increase nutrition and energy conservation, including waste management	2011-2012	5,005.66	Not available	Organising programmes for children's optimal growth and development, and creating awareness about the right amount of nutrition to be taken.
2	Bajaj Auto Limited	Manufacturing of scooters, motorbikes and three-wheeler vehicles and supply of spare parts	Education, Health, Women-Empowerment, Self-Reliance, Rural Development, Environment and Natural Resources	2012-2013	20,618	51.73	Developing confidence among poor people, providing primary health care services at the door-steps of the poor.
3	ONGC Limited	Production of Petrofied Oil and natural Gas	Education, health care, entrepreneurship schemes, Infrastructure support including roads, bridges, schools, hospitals, and environmental protection	2012-2013	83,309	261.58	Provision of healthcare facilities to elderly people and employment-related computer training.
4	Aditya Birla Chemicals (India) Limited	Manufacturer of bulk and specialty chemicals	Education, Healthcare, Women Empowerment, and Agricultural improvement plans, recycled water	2012-13	840.85	Not available	Creates more jobs, provide education in rural areas, opened hospitals.
5	Havells India	Manufacturing of Domestic Appliances	Provides mid day meal to about 50,000 students in about 350 schools, Runs a mobile medical vans, set-up medical check-up champs, Contributing to the societies during natural calamities.	2012-13	4,506.37	Not available	Increased the number of children to attend school.

1	2	3	4	5	6	7	8
6	Tata Group along with group companies	Salt to Software Group	Spend their money on a wide range of programmes such as skills development livelihoods, education, health and nutrition, bio-diversity and disaster relief.	2013-14	6,17,212	660	Improves the health of the poor, Supporting Primary Education and Skill development programmes.
7	Wipro	Information Technology	Water Recycling, Health care projects, education programs to 500 migrant workers' children in Bangalore with magic bus, 25,000 saplings planted by about 25,000 farmers in Villupuram district of Tamil Nadu.	2013-14	387,651	16	Provide education to migrant workers' children, green and clean environment, reduces pollution. Retains and promotes women in science.
8	Infosys	Information Technology	Set up organisations devoted to the cause of the destitute, the rural poor, the mentally challenged, and the economically disadvantaged sections of the society.	2013-14	46,917	240	To train the Trainer and help to uphold many sections of the society.

Recent trends of corporate sector in CSR activities

A number of companies have taken the initiative to spend its profit on CSR activities and the brief of some of the companies are explained below:

Non-banking companies

- Ford launches its community program in Sanand to provide safe drinking water to 1,500 children.
- ITC Initiatives for e-Choupal network, Social and Farm Forestry Programme, Watershed Development Programme, and Women's Empowerment Programme.
- Oil India Limited (OIL) explores new CSR initiative to start a co-operative dairy business along the lines of Gujarat's successful 'Amul' model.
- Tata Motors launches CSR initiative in Indonesia focusing on community-based solutions.

Banking companies

- ICICI Foundation launches skill development academy for economically weaker sections to help them earn a sustainable livelihood.
- Canara Bank set-up 64 self employment training institutes, established UDAAN for Skill Development & Recruitment of Graduate Unemployed youth of Jammu & Kashmir, constructed toilets for girls, provided safe drinking water facility to Flouride affected villages.

Relevant provisions of new Companies Act

Section 135 of the Companies Act, 2013, which is effective from 1st April, 2014, requires a qualifying company to spend on CSR activities at least 2% of its average Net profits made in the preceding three financial years. The average Net profits shall be calculated in accordance with the provisions of Section 197 of the Companies Act, 2013 and the recognised CSR activities are listed in Schedules VII of the Act, and if a company falling in the criteria, fails to spend the required amount, it shall have to explain such failure in the Board of Directors report.

The Board of Directors of the company shall form the CSR Committee to assist the Board with its oversight of the company's policies and practices involving the environment, vendor workplace conditions, employment practices, community affairs, sustainable product sourcing, corporate charitable activities, governmental relations, political activities and diversity in employment. The CSR Committee shall operate under the charter adopted by the Board.

Companies covered in CSR provisions

The statutory provisions for CSR apply to companies which meet atleast one of the three criteria:

1. Its net worth is ₹500 crore or more.
2. Its annual turnover is ₹1,000 crore or more.
3. Its net profit for any one of the previous three financial years is ₹5 crore or more.

Prescribed CSR activities

CSR activities are required to be undertaken by a company in accordance with its CSR policy and decisions of its statutory CSR Committee. The CSR activities shall have to be undertaken within India. The provisions equally apply to foreign companies registered in India.

The funds given to political parties and the money spent for the benefit of the company's employees and their families shall not count as CSR activities. The company shall not have the freedom to pick and choose any new activity other than those specified in Schedule VII of the Act.

The Union Ministry of Corporate Affairs has also set up, through the Indian Institute of Corporate Affairs, the National Foundation for CSR, in partnership with the World Bank. The World Bank is supporting the Government of India in developing and co-ordinating the CSR activities across the country through workshops, knowledge missions, international seminars, and training programmes.

Major CSR activities

Schedule VII of the new Act requires that a company's CSR Policy, formulated by its CSR committee, involves at least one of the following areas:

1. Eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation "including contribution to the Swach Bharat Kosh;
2. Promoting education, including special education and employment-enhancing vocation skills, especially among children, women, elderly, and the differently-abled and livelihood-enhancement projects;
3. Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old-age homes, and day-care centres;
4. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources, and maintaining quality of soil, air and water "including contribution to the Clean Ganga Project";
5. Protection of national heritage, art and culture, setting up public libraries; promotion and development of traditional arts and handicrafts;
6. Measures for the benefit of armed forces veterans, war widows, and their dependants;
7. Training to promote rural sports, nationally-recognised sports, paralympic sports, and Olympic sports;
8. Contribution to the Prime Minister's National Relief Fund, or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
9. Contributions or funds provided to technology-incubators located within academic institutions which are approved by the Central Government; and
10. Rural development projects.
11. Slum area development.

Steps for CSR activities

1. To set up a CSR committee;
2. The committee should formulate and monitor the company's CSR policy and recommend the expenditure to be incurred on such activities;
3. The Board of Directors' report must disclose the CSR committee and the contents of the CSR policy;
4. The Board is required to ensure that the activities provided under the CSR policy are undertaken and that the company spends at least 2% of the average net profits made by the company in the preceding three financial years in accordance with the policy; and
5. If the Board fails to spend such an amount, it is required to state the reasons for such failure in the report of the Board of Directors.

CSR committee

The Board of Directors of the company shall form the CSR Committee to assist the Board with its oversight of the company's policies and practices involving the environment, vendor workplace conditions, employment practices, community affairs, sustainable product sourcing, corporate charitable activities, governmental relations, political activities and diversity in employment. The CSR Committee shall operate under the charter adopted by the Board.

The purpose of the Committee is to review and evaluate management's goals, initiatives and practices for Social Responsibility; and recommend goals, initiatives and practices for Social Responsibility to the Board of Directors.

CSR policy

The CSR Policy should be formulated to cover the following elements:

1. Stakeholders' Respect and Care
2. Transparent and Ethical Governance System
3. Welfare of Workers
4. Regard for Human Rights
5. Protection of Environment
6. Social and Inclusive Development.

Composition of the committee

The minimum number of members in the committee shall be three, of which one director shall be an Independent Director. A private company that does not have Independent Directors can form CSR committees without such directors.

Meetings of committee

The Committee is required to meet as often as necessary to fulfill its functions but not less than twice a year.

Duties and responsibilities

The duties and responsibilities of the CSR Committee shall be:

1. To identify, key social responsibility issues that may affect the business operations, brand image or reputation of the company;
2. To re-evaluate social responsibility, in light of changes in public perception, industry's best practices, and evolving priorities and needs in the communities where the Company does business;
3. To review the company's engagement of social responsibility auditors; and
4. To provide oversight of social responsibility reporting to customers, the non-profit sector, industry-peers and partners, and shareholders.

Fines and/or imprisonment for failure to comply and report

The law does not stipulate any penalties for non-compliance of CSR provisions. Mere disclosure in the Board of Directors' report about reasons for not spending the amount on CSR is sufficient.

Benefits of CSR for corporate sector

The corporate sector, by spending the requisite amount on CSR, may be benefitted in different forms which include improvement in financial performance, low operating costs, brand image and reputation enhancement, increase in sales and customer loyalty, more productivity and higher quality, attracts and retain employees, reduced regulatory oversight, more capital access, and safety of products.

Shortcomings of CSR

The CSR concept is an optimistic view but certain shortcomings still exist. The Act says that the amount will be spent in the local area where business is located. Whereby, most of the companies, in which CSR applies, are working or having affairs of business in major cities only. It denotes that all companies shall spend the CSR amount on a particular area, while rest of the area will be debarred from development through CSR provisions. Tax treatment is also unclear as to whether to treat it as non-deductable income or allowable expenditure.

Suggestions for better results of CSR

It is suggested that the rules must be further amended to specify that 50 % of the CSR amount shall be spent in the area where business affairs of the company are located, while 50 % must be spent in remote areas which will develop the society in a balanced way.

Conclusion

The basic objective of incorporating the CSR provisions is to maximise the company's overall impact on the society, as CSR activities would help the company to increase its revenue, enhance market share, increase productivity, attract and retain superior human capital and significantly boost the brand value and reputation. India is the first country in the world to include the concept of CSR in its company law. However, no penalty has been provided in the Act in case a company does not spend the specified amount on CSR activities. ■

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals received during April-May 2015 for the reference of Faculty/ Students & Members of the Institute.

1 Accountancy

Accounting Standards: Gaps in Gaap-Previous Gaap on First-Time Adoption of Ind AS by Dolphy D'Souza. *Bombay Chartered Accountant Journal*, April 2015, pp.83-84.

2 Auditing

Auditing Standards: Audit Documentation-A Relevant Defense or Mere Record Keeping by Bhavesh Dhupelia and Shabbir Readymadewala. *Bombay Chartered Accountant Journal*, April 2015, pp.85-87.

Digital Signatures Deciphered: Internal Auditors should Assess the Business Processes and Risks Associated with Signing Documents Digitally by Shiva Hullavarad and Russell O'Hare. *Internal Auditor*, April 2015, pp.35-38.

New and Revised Auditor Reporting Standards: Enhancing Communicative Value by Shariq Barmaky and Kaizad J. Medora. *IS Chartered Accountant*, April 2015, pp.12-21.

New "Small company" Concept for Audit Exemption: Practical Application(Part 1) by Kang Wai Geat and Zoey Xie. *IS Chartered Accountant*, April 2015, pp.26-31.

Reinventing Internal Audit: Recent Governance-Related Developments Require the Profession to Revisit some of its Long-Held Paradigms by Tim J. Leech. *Internal Auditor*, April 2015, pp. 47-50.

3 Economics

China's Motor Industry: The Coming Crash by Shenyang and Shanghai. *The Economist*, April 25th 2015, pp.56-58.

Financial Regulation in America: Fed Up-A Former Central Banker Turns on His Own Kind. *The Economist*, April 25th 2015, pp.60.

Net Neutrality in India: Not Quite What We Said. *The Economist*, April 25th 2015, pp.58.

4 Investment

Disinvestment Drive: Bonanza for Retail Investors by Amit Bhanot. *Dalal Street Investment Journal*, May 2015, Vol. 30/11, pp.17-18.

New Insider Trading Norms by Suriti Chowdhary and Shivani Vij. *Company Law Journal*, April 2015, pp.25-32.

Overseas Listing by Indian Unlisted Companies by S. Sandeep. *Chartered Secretary*, April 2015, pp.33-40.

Securities Laws: SEBI to Govern Commodity Contracts Too-Implications of this Finance Bill Proposal by Jayant M. Thakur. *Bombay Chartered Accountant Journal*, April 2015, pp.69-71.

5 Law

Analysis of Managerial Remuneration Provisions in the Companies Act 2013 with Specific Reference to Companies with "Inadequate Profits" by Vijay Krishnamurthy. *Chartered Secretary*, April 2015, pp.17-23.

Breach of Contract and its Consequences Under Indian Contract Act, 1872: A Brief Overview by Rajendra Sawant. *Chartered Secretary*, April 2015, pp.41-46.

Interpretational Issues in Section 1166(2), Companies Act 2013: Director's Duty Towards 'Members as a Whole' and Protection of the Environment by Prakhar Bhardwaj and Abhinav Kumar. *Company Law Journal*, April 2015, pp.10-24.

Lawyer vs. Lawyers: When Lawyers do Good by Bapoo Malcolm. *Moneylife*, 14th May 2015, pp.58.

6 Management

How and Whys of CEO Salaries in Asia: Economic Determinants and Corporate Governance Play a Big Part by Lee Kin Wai. *IS Chartered Accountant*, April 2015, pp.40-43.

Joint Venture/Joint Exposure: An Effective Governance Strategy can Ensure an Appropriate Level of Owner Oversight and Minimize Shared Risks by Ben Arnold. *Internal Auditor*, April 2015, pp.57-61.

Related Party Transactions and Corporate Governance in India: New Problems and Challenges by Sagnik Das and Ayan Sinha. *Company Law Journal*, April 2015, pp.1-9.

Full Texts of the above articles are available with the Central Council Library, ICAI, which can be referred on all working days. For further inquiries please contact on 011-30110419 and 011-30110420 or by e-mail at library@icai.in; kmray@icai.in.

Auditor's Report on Consolidated Financial Statements under The Companies Act, 2013

The Auditing and Assurance Standards Board, under the authority of the Council, has already issued the illustrative formats of the auditor's report on standalone financial statements of a company under the Companies Act 2013 in December 2014. While reporting on the consolidated financial statements (CFS) of a company under the Companies Act 2013, the auditors may draw guidance from the aforementioned formats and suitably reword the same, as required, to meet the circumstances of audit of CFS. The auditors of CFS, while reporting in respect of the provisions of, *inter alia*, Section 143(3) and Section 143(11) of the Companies Act, 2013 in their report on CFS, are also advised to:

- consider the observations and comments as given in this regard in the auditors' reports of the component auditors.
- include in their report or draw suitable reference to, negative/adverse comments, if any, in respect of Section 143(3) and Section 143(11) of the Act relating to a component, as appearing in the component auditors' report.

The auditors of CFS are also advised to apply concept of materiality and professional judgment as provided in the Standards on Audit while reporting on the Consolidated Financial Statements.

The following illustrative formats of an auditors' report on CFS, covering some of the clauses of Section 143(3) of the Companies Act, 2013 (and where the auditor does not have the responsibility for reporting on internal financial controls over financial reporting under Section 143(3)(i) of the Companies Act, 2013), are being issued herewith just to provide a broad guidance on how such a report may be prepared. These formats may be applied for the FY 2014-15 and until further announcement. It is reiterated that the auditors of CFS may suitably reword/redraft these formats to suit the circumstances of their audit engagement.

Type of Format	
Unmodified opinion on the consolidated financial statements	This format will be added in the Appendix to SA 700
Modified opinion on the consolidated financial statements	This format will be added in the Appendix to SA 705

These formats can be downloaded from following URL on ICAI's website: http://icai.org/new_post.html?post_id=11569&c_id=219

Chairman,
Auditing & Assurance Standards Board

CONVOCATION -2015 (Ist Round)

As you are aware, for promoting a sense of bonhomie among members, and also for bringing them closer to the Institute, the Institute of Chartered Accountants of India organise Convocations for distribution of Certificates. This is an occasion to mark the entry of new members into the fraternity.

ICAI invites members enrolled during the period of December 2014 to March, 2015 to participate in the Convocation wherein Certificates of Membership will be awarded amidst the august gathering of the President and other dignitaries. The schedule of the proposed Convocation is as under:

PLACE	**DATE & DAY**
AHMEDABAD	**22ND MAY, 2015 (FRIDAY)** Already Held
MUMBAI	**23RD MAY, 2015 (SATURDAY)** Already held
CHENNAI	**19TH JUNE, 2015 (FRIDAY)**
PUNE	**20TH JUNE, 2015 (SATURDAY)**
JAIPUR	**22ND JUNE,215 (MONDAY)**
HYDERABAD	**10TH JULY, 2015 (FRIDAY)**
KOLKATA	**12TH JULY, 2015 (SUNDAY)**
NEW DELHI	**16TH JULY, 2015 (THURSDAY)**
KANPUR	**19TH JULY, 2015 (SATURDAY)**

This schedule has been released for the advance information of the participants. Further, details about Venue and Timing of the Convocation Programme schedule will be intimated to the participants by the concerned Regional offices of ICAI.

Members who, due to any reason, could not attend the last convocation held in January-February 2015 at various centers may also participate in the proposed Convocation. They are advised to be in touch with concerned Regional Office of ICAI.

14th May, 2015 **-Secretary, MC & MSS Section, ICAI**

ICAI Enters into Arrangement with BNA Bloomberg

With the ever increasing globalisation of world economies, international taxation is getting more and more important and complicated. Being fully alive to this urgent need, Committee on International Taxation of ICAI has been making continuous efforts to build capacities for our members in international taxation. Taking this drive forward, ICAI has entered into **an arrangement** with highly reputed and accessed **BNA Bloomberg software**, for providing **on line access** to the **data base** of **Global Tax Guide** to **all members** of ICAI **WITHOUT ANY COST** *vis-a-vis* its market price 4000 US $ per annum.

The Global Tax Guides provide an in-depth analysis of tax profiles of over 100 key jurisdictions and regular updates to tax rate information.

Countries/Jurisdictions covered

Europe:
Albania, Austria, Belarus, Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, Ireland, Isle of Man, Italy, Jersey, Kazakhstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, The Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom

Asia-Pacific:
Australia, Azerbaijan, Cambodia, China (excluding Hong Kong and Macau), Fiji, Hong Kong, India, Indonesia, Japan, Malaysia, Mauritius, New Zealand, Pakistan, Philippines, Singapore, South Korea, Taiwan, Thailand, Uzbekistan, Vietnam.

America:
Argentina, Bermuda, Brazil, British Virgin Islands, Canada, Cayman Islands, Chile, Colombia, Costa Rica, Curaçao, Ecuador, Mexico, Peru, Puerto Rico, Sint Maarten, United States of America, Uruguay, Venezuela.

Middle East and Africa:
Angola, Algeria, Bahrain, Cape Verde, Ghana, Israel, Kenya, Kuwait, Morocco, Nigeria, Oman, Qatar, Saudi Arabia, Tanzania, South Africa, Tunisia, United Arab Emirates including Dubai and Abu Dhabi

To avail this facility the members of ICAI have to login in **Global Tax Guides**—http://ssp.icai.org/?redirecturl=citax

Chairman,
Committee on International Taxation, ICAI

Guidance Note on Reporting under Section 143(3)(f) and (h) of the Companies Act, 2013

The Council of the Institute of Chartered Accountants of India (ICAI), at its 342nd meeting considered and approved the Guidance Note on Reporting Under Section 143(3)(f) and (h) of the Companies Act, 2013, developed by the Auditing and Assurance Standards Board (AASB) of ICAI.

The aforesaid Guidance Note is, accordingly, being issued by AASB under the authority of the Council of ICAI and can be downloaded from the following URL on ICAI's Website: http://220.227.161.86/37392aasb26881.pdf

Chairman,
Auditing and Assurance Standards Board

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[Set up by an Act of Parliament]

5th May, 2015

TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA
NOTIFICATION

No.13-CA(EXAM)/ISA/J/2015:- In pursuance of Regulation 204 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify that the Information Systems Audit (ISA) Course Assessment Test (which is open to the members of the Institute) will be held on **27th June, 2015 (Saturday) from 10.30 AM to 2.30 PM** at the following cities provided that sufficient number of candidates offer themselves to appear therefrom.

Sl. No.	Name of the Cities	Sl. No.	Name of the Cities	Sl. No.	Name of the Cities
1	AGRA	25	GOA	49	NAGPUR
2	AHMEDABAD	26	GUNTUR	50	NASIK
3	ALIGARH	27	GUWAHATI	51	PATNA
4	ALLAHABAD	28	GWALIOR	52	PUNE
5	AURANGABAD	29	HISAR	53	RAIPUR
6	BELGAUM	30	HYDERABAD	54	RAJAMAHENDRAVARAM
7	BENGALURU	31	INDORE	55	RAJKOT
8	BHOPAL	32	JABALPUR	56	RANCHI
9	BHUBANESWAR	33	JAIPUR	57	SALEM
10	BIKANER	34	JALANDHAR	58	SHIMLA
11	BILASPUR	35	JALGAON	59	SILIGURI
12	CHANDIGARH	36	JAMMU	60	SIRSA
13	CHENNAI	37	JAMNAGAR	61	SOLAPUR
14	COIMBATORE	38	JODHPUR	62	SURAT
15	CUTTACK	39	KANPUR	63	THANE
16	DELHI / NEW DELHI	40	KARNAL	64	TIRUPUR
17	DHANBAD	41	KOLKATA	65	UDAIPUR
18	DHULE	42	KOTA	66	VADODRA
19	DURG	43	LUCKNOW	67	VARANASI
20	DURGAPUR	44	LUDHIANA	68	VIJAYAWADA
21	ERNAKULAM	45	MANGALORE	69	VISAKHAPATNAM
22	FARIDABAD	46	MEERUT	70	YAMUNA NAGAR
23	GANDHIDHAM	47	MORADABAD		
24	GHAZIABAD	48	MUMBAI		

The Council reserves the right to withdraw any centre at any stage without assigning any reason. The above Test is open only to the Members of the Institute who are already registered with the Institute for the ISA course and passed the related eligibility test. The fee payable for the above Assessment Test is ₹1,000/-.

An application for admission to the Assessment Test is required to be submitted online by visiting http://isaat.icaiexam.icai.org and the sum of ₹1,100/- (₹1,000/- as examination fees and ₹100/- towards the examination form) has to be paid online using Master/Visa/Maestro Credit or Debit Card on or from 21st May, 2015. Alternatively, the

"ICAI Bhawan", Post Box No.7112
Indraprastha Marg, New Delhi-110 002, India

Telephones: 3054829, 3054823, 3054846
Fax: 0120-3054843/3054841 E-Mail: examcoob@icai.in

format of application form can be downloaded from the website of the Institute *viz.* www.icai.org and the cost of the application form of ₹100/- can be added to the Assessment Test fee of ₹1,000/- and the Demand Draft for ₹1100/- of any Scheduled Bank drawn in favour of "The Secretary, The Institute of Chartered Accountants of India", payable at New Delhi only has to be sent to the Deputy Secretary (Exams), The Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi–110002 so as to reach him on or before 4th June, 2015. The applications received after **4th June, 2015** will not be entertained under any circumstances.

(V. Sagar)
Acting Secretary

Announcement for GN(A) 33 (Issued 2015) Guidance Note on Accounting for Derivative Contracts

The ICAI has issued a **Guidance Note on Accounting for Derivative Contracts** which becomes applicable for accounting periods beginning on or after April 1, 2016; its earlier application is encouraged. From the date this Guidance Note comes into effect the following Announcements issued by the Council of the ICAI stand withdrawn:

(i) Applicability of Accounting Standard (AS) 11 (revised 2003), *The Effects of Changes in Foreign Exchange Rates*, in respect of exchange differences arising on a forward exchange contract entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction issued on the basis of the decision of the Council at its meeting held on June 24-26, 2004

(ii) Disclosures regarding Derivative Instruments published in 'The Chartered Accountant', December 2005 (pp 927)

(iii) Accounting for Derivatives published in 'The Chartered Accountant', May 2008 (pp.1945)

(iv) Application of AS 30, *Financial Instruments: Recognition and Measurement* published in 'The Chartered Accountant', April 2011 (pp. 1575) to the extent of the guidance covered for accounting for derivatives within the scope of this Guidance Note.

The text of the Guidance Note can be accessed at the following link: http://220.227.161.86/37597research27174.pdf

Announcement for GN(A) 34 Guidance Note on Accounting for Expenditure on Corporate Social Responsibility Activities(Issued May 15, 2015)

The Council of the Institute of Chartered Accountants of India (ICAI) has issued ***Guidance Note on Accounting for Expenditure on Corporate Social Responsibility*** Activities which comes into effect from the date of its issuance. Pending finalisation of the Guidance Note, as it was under discussion with the relevant authorities, the Corporate Laws & Corporate Governance Committee had issued 'Frequently Asked Questions on the provisions of Corporate Social Responsibility under Section 135 of the Companies Act 2013 and Rules thereon' which, *inter alia,* provided an interim guidance with regard to certain accounting issues. On issuance of this Guidance Note on Accounting for Expenditure on Corporate Social Responsibility Activities, the FAQs related to areas covered by the Guidance Note stand withdrawn.

The text of the Guidance Note can be accessed at the following link: http://220.227.161.86/37627gn-csr150515.pdf

ICAI News

Invitation for Expression of Interest from Branches & Regional Councils to host the Women Empowerment Programmes in the year 2015-16

The Women Members Empowerment Committee (WMEC) has been specifically formed to address issues pertinent to the profession of Women Chartered Accountants. The Committee helps in empowering Women Members by providing guidance and support to them by conducting various Seminars/Conferences and Webinars on Technical as well as Women centric issues.

During the first year of its functioning, the Committee had successfully organised 20 programs all across the country. Apart from this, an International Conference was held at Dubai in the month of January 2015. Around 2500 participants took part in the above said programmes. Further, webcasts on various topics were also conducted during the same period.

WMEC will continue to empower women members by conducting more such kind of Programs, Seminars, Workshops, Residential Refresher Course, Faculty Development Program, *etc.* during this year as well.

WMEC requests you to host Women Empowerment Programmes to be organised by the Committee within the jurisdiction of your branch/ Regional Council.

Please Contact: Secretary, Women Members Empowerment Committee, The Institute of Chartered Accountants of India (ICAI), ICAI Bhawan, 2nd Floor, Administrative Block, A-29, Sector-62, Noida-201309 (U.P.), E-mail: wmec@icai.in, Telephone: 0120-3876873, for hosting the aforesaid Women Empowerment Programmes within the jurisdiction of your branch/Regional Council.

Chairman,
Women Members Empowerment Committee, ICAI
Email Id: chairman.wmec@icai.in
Contact No.: 09821090612

Invitation for Articles

The Institute of Chartered Accountants of India (ICAI) in the direction of empowering women members has constituted Women Members Empowerment Committee (WMEC), which focuses on empowering them with the contemporary knowledge and expertise in the field of practice and service. Women Members Empowerment Committee invites articles (technical/non-technical) and success stories of women members which can be hosted on the women portal and circulated for the benefit of women members at large.

The articles submitted for consideration should be of 4000-6000 words typed double space on A4 size paper with 1 inch margin all around. Soft copy (MS Word) of the article may be send to info.wmec@icai.in. A hardcopy of the same may be sent at the following address:

Secretary,
Women Members Empowerment Committee,
2nd Floor, Administrative Block,
A-29, Sector-62, Noida-201309 (U.P)
Phone No: 0120-3876873
E-mail id: info.wmec@icai.in

Authors may note that their articles will be hosted on the "Portal for Women Members". However, ICAI reserves the right for final selection of any article/ success story.

The WMEC hopes that professionals and other experts will come forward to share their expertise and practical experience with our readers by preparing the papers/articles in view of the specific requirements of the accounting profession/current socio-economic environment.

Chairman,
Women Members Empowerment Committee (WMEC), ICAI
E mail Id: chairman.wmec@icai.in
Contact No.: 09821090612

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[Set up by an Act of Parliament]

May 15, 2015

IMPORTANT ANNOUNCEMENT

POSTPONEMENT OF CHARTERED ACCOUNTANTS EXAMINATIONS SCHEDULED TO BE HELD FROM 25TH May – 9TH JUNE, 2015 AT KATHMANDU (NEPAL).

In view of further fresh tremors on 12th May, 2015 in Nepal and consequent disruption of normalcy in Nepal, the Intermediate (IPC) and Final Examinations scheduled to be held from 25th May, 2015 to 9th June, 2015 at Kathmandu Centres stand postponed.

The new date(s) of said examinations at the above Centres will be announced in due course.

The candidates are advised to stay in touch with the website of the Institute, www.icai.org.

ICAI EXAMS

Portal for Women Members http://womenportal.icai.org

Women Members Empowerment Committee (WMEC)
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

The Women Members Empowerment Committee, established by the Council in the year 2014-15, is formed to conceive, formulate and implement plans, policies and programmes for the development of Women CAs and to further strengthen their position in the profession in a comprehensive manner.

To provide working flexibility to Women Members, a 'Portal for Women Members' has also been launched by this Committee so that they can contribute towards the growth of the profession and economy while simultaneously taking care of their commitments at domestic front. The portal is aimed at providing Women Members a medium through which they can post their job requirements and can explore flexi working opportunities available for them.

Welcome to the Portal for Women Members

The portal for women members provides updates into the working of the committee. The portal provides a platform to women members to articulate their views, needs and concerns by sharing articles & success stories on the portal.

The prominent features of this portal are as follows:

For Members:

- Quiz
- Quote of the Day
- WMEC events photo gallery
- Program Videos
- Articles & Success Stories
- Health Tips

For Employers:

- A platform to CA Firms / Corporates to post various jobs
- A platform to get suitable candidates for the job openings.

For Jobseekers:

- A platform to search for Part-time/Full-time Jobs/Work-from-Home Jobs/Flexi Working Hours Jobs.
- A platform through which they can post their requirements/resumes.

We sincerely hope that this Portal for Women Members will be extremely helpful to all the stakeholders concerned.

Chairman, WMEC
Email Id: chairman.wmec@icai.in

For more details please contact:
WMEC Secretariat at 0120-3876873 or
E-mail at info.wmec@icai.in

Classifieds

5259 Jamshedpur (Jharkhand) based CA firm, is looking for CA's pan India for expansion of their firm "Jaluka & Associates" as partner on mutually agreeable terms. Contact-9709138711, jalukanandan@gmail.com

5260 Delhi based 13 years old firm having branches across North India with 6 partners seeks proposals from veteran CA firms across India for merger of existing firms with our firm. Contact: responses@spjca.in

5261 Medium sized Mumbai-based firm requires retired Chartered Accountant/fresh Chartered Accountant/experienced Chartered Accountants having experience in Taxation and Audits/IPCC cleared (but not pursuing CA) & articles assistants (Cleared IPCC) for various job profiles. Apply at nisark@vsnl.net or contact: 022 23515414/23512784.

5262 FCA seeks partnership/networking for CIT/ITAT/DRP, appeals, AAR representation and International taxation/DTAA Consultancy/Advice for NRI clients. Contact: Khaja642@hotmail.com

5263 Delhi based FCA having industrial experience of 30 years with various manufacturing companies as CFO/board member is looking for a partner/join existing firm/shared CFO/retainer in NCR. Contact: dineshagarwal101@gmail.com, Mobile: 9818094272.

5264 27 years established firm with Rtd Chief of MCA, interested to merge firms of decent standing at Chennai, Mumbai, New Delhi and Hyderabad on attractive terms.Contact: cafirmmerger@gmail.com

5265 Kochi/Mangalore based CA firms seeking qualified Chartered Accountants at their Mangalore Office. Contact No. 9447070400. Office No.: 0484 2398398. E-mail: mail@kvco.in

5266 CA with atleast 3/5 years experience of statutory/internal audit of manufacturing/listed company. Candidate having experience as articles/post qualification in large CA firm with exposure of audit in SAP shall be preferred. Apply/contact: O. P. Singhania & Co., 6, Central Avenue, Choube Colony, Raipur– 492 001 (C.G.). E-mail: opsinghania.co@gmail.com. Mobile: 9893022552

5267 Wanted qualified/semi-qualified CA, CMA, CS professionals to represent and work for our CA firm in different districts all over India, CISA/DISA qualified would be more preferable. Contact: 9837064956, 7830379783

5268 A Delhi based CA firm with membership of global network of accounting firms invites expression of interest (EOI) for merger from professionals at Delhi, Mumbai and Bangalore. CAs in practice of profession for a period upto 5 years may contact +919873485885 or send their EOI at "partnership.eoi@gmail.com" with subject "Merger"

5269 A Delhi Based 35 Years Old CA Firm is looking for CA in practice on pan India basis in all major cities for expansion of firm " RCCHADDA & CO.LLP" as partner/networking or associates on mutual agreement basis. We also required CA with DISA qualification. Interested firms/candidate may send their detail profile at: RCCANDCO@GMAIL.COM

5270 Kolkata based 7 partner firm looking for professional tie-up with independent practicing CAs in Delhi, Mumbai, Bengaluru, Chennai and Hyderabad. Mail at: ghoshfca@yahoo.in

5271 Raipur based CA firm invites proposals for merger into our firm on attractive terms as well as fresh CA on Job. Contact: gacompanyraipur@gmail.com; 9826722200

5272 Kerala based FCA aged below 40 having overall 15 years of industrial and practice experience and qualified as ACS and ACMA looking for all type of professional opportunities as retainer or consultant or practicing sharing or partnership basis in Kerala and UAE. Contact: casunil@hotmail.com

5273 A Chennai based CA Firm established 2 years ago with young partners is seeking Professional Work on Assignment/Sharing Basis in areas like Internal Audits, Income Tax, Indirect Taxes and other related areas. Email: mrskassociates@gmail.com. Phone: 044 43539833, 9884511085, 9840857540.

5274 FCA with CISA, having 30+ years (including international) experience based at Kochi, is looking for assignments on subcontract/partnership basis in risk-based internal audits, operational audits, contractors claims reviews, investigations, mega projects audits and other consultancies all over India. Contact: 09846832728; E-mail: abuajmal@hotmail.com.

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

Initiatives of the Committee for Capacity Building of Members in Practice

The Committee has initiated various measures for the benefits of the members of ICAI through arrangements with leading service providers which the members may avail at their choice:

A. Arrangement for Software

- Cloud Based SVT, TDS software & PDF Signer at Special price through KDK Software (India) Pvt Ltd.
- Tax suite software at special price through KDK Software (India) Pvt Ltd.
- XBRL software at special price through KDK Software (India) Pvt Ltd.
- IT Auditor Software at Special price through KDK software Pvt. ltd.
- Single DVD of CTR Library of Tax Cases (comprehensive coverage on Direct Taxes) at special price through Wolters Kluwer (India) Pvt Ltd.
- India Financial Reporting Manager (IFRM) at discounted Price through Wolters Kluwer (India) Pvt Ltd.
- Accounting Software at Discounted Price through Busy Infotech Pvt. Ltd.
- Accounting software at free of cost for 2 years through Reylon Softech Pvt Ltd.

B. Antivirus Protection Facility

- Quick Heal Total Security antivirus software for PC at Special price.
- Quick Heal Total Security antivirus software for Android enabled Mobile phones at special price.

C. Loan Scheme

- Specialized Loan for members and Concessional Loan for lady members through Bharatiya Mahila Bank Ltd.
- Special Loan Scheme through Corporation Bank.

D. Insurance Scheme

- Personal Accident Insurance scheme through Oriental Insurance Company Limited.
- Householder's Insurance scheme through Oriental Insurance Company Limited.
- Motor Insurance at discounted OD premium through Oriental Insurance Company Limited.
- Online Health Insurance scheme with New India Assurance Co Ltd, available on http//:icai.newindia.co.in.
- Online Professional Indemnity Insurance at discounted premium New India Assurance Co. Ltd available on http//:icai.newindia.co.in
- Online Office Protection Shield Insurance scheme at special premium through New India Assurance Co. Ltd available on http//:icai.newindia.co.in.

For the details please visit Committee Website: www.icai.org.in or Contact Secretary, Committee for Capacity Building for Members in Practice (CCBMP), The Institute of Chartered Accountants of India (ICAI), ICAI Bhawan, First Floor, Administrative Block, A-29, Sector-62, Noida, Distt.-Gautam Budh Nagar(U.P.), Pin Code-201309; E-mail: ccbcaf.query@icai.in, Telephone: 0120-3045994

Forthcoming Events[1]

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
1.	Certificate Course on Forex and Treasury Management	23rd May, 2015 to 18th July, 2015 Alternative weekends: Sat & Sun	Mumbai	48 hours
Topics	The Certificate Course covers the following topics: • Treasury – An Overview • The Mathematics and Arithmetic of Treasury Management • Classification of Treasury Market • Money Market Operations & Foreign Exchange (Forex) Markets • Treasury Products& Regulatory Provisions • Futures, Options, Forward & Swaps • The Treasury Accounting • Internal Audit • Taxation of Treasury Transactions and Instruments • Risk Management & Risk Framework – Treasury and Forex • Regulatory Environment • Treasury - Special Entity Regulations			
Fees	₹17,500 /-			
Contact Person	**Course Chairman:** CA. Anuj Goyal, Chairman, Committee on Financial Markets and Investors' Protection, Mobile: 09810041371, Email Id: anujgoyal@icai.org, president@reliableinstitute.edu.in **For Information contact:** Committee Secretariat, Committee on Financial Markets and Investors' Protection, Ph: 01203045945, 8130567979, 8130527979, Email id: fxtm@icai.in **For Registration, Course curriculum and online payment visit:** http://www.icai.org/post.html?post_id=3552&c_id=266			
2.	Certificate Course on Forex and Treasury Management	30th May, 2015 to 25th July, 2015 Alternative weekends: Sat & Sun	Delhi	48 hours
Topics	The Certificate Course covers the following topics: • Treasury – An Overview • The Mathematics and Arithmetic of Treasury Management • Classification of Treasury Market • Money Market Operations & Foreign Exchange (Forex) Markets • Treasury Products& Regulatory Provisions • Futures, Options, Forward & Swaps • The Treasury Accounting • Internal Audit • Taxation of Treasury Transactions and Instruments • Risk Management & Risk Framework – Treasury and Forex • Regulatory Environment • Treasury - Special Entity Regulations			
Fees	₹17,500 /-			
Contact Person	**Course Chairman:** CA. Anuj Goyal, Chairman, Committee on Financial Markets and Investors' Protection, Mobile: 09810041371, Email Id: anujgoyal@icai.org, president@reliableinstitute.edu.in **For Information contact:** Committee Secretariat, Committee on Financial Markets and Investors' Protection, Ph: 01203045945, 8130567979, 8130527979, Email id: fxtm@icai.in **For Registration, Course curriculum and online payment visit:** http://www.icai.org/post.html?post_id=3552&c_id=266			
3.	Certificate Course on Forex and Treasury Management	08th Aug, 2015 to 03rd Oct, 2015 Alternative weekends: Sat & Sun	Pune	48 hours
Topics	The Certificate Course covers the following topics: • Treasury – An Overview • The Mathematics and Arithmetic of Treasury Management • Classification of Treasury Market • Money Market Operations & Foreign Exchange (Forex) Markets • Treasury Products& Regulatory Provisions • Futures, Options, Forward & Swaps • The Treasury Accounting • Internal Audit • Taxation of Treasury Transactions and Instruments • Risk Management & Risk Framework – Treasury and Forex			
Fees	₹17,500/-			

[1] For more details about the forthcoming events, please refer the detailed announcements hosted on the ICAI website www.icai.org

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Contact Person	**Course Chairman:** CA. Anuj Goyal, Chairman, Committee on Financial Markets and Investors' Protection, Mobile: 09810041371, Email Id: anujgoyal@icai.org, president@reliableinstitute.edu.in **For Information contact:** Committee Secretariat, Committee on Financial Markets and Investors' Protection, Ph: 01203045945, 8130567979, 8130527979, Email id: fxtm@icai.in **For Registration, Course curriculum and online payment visit:** http://www.icai.org/post.html?post_id=3552&c_id=266			
4.	Certificate Course on Derivatives (Residential)	24th Aug, 2015 to 30th Aug, 2015	Centre of Excellence, Hyderabad	30 hours
Topics	The Certificate Course covers the following topics: • Financial derivatives • Forwards, Future & Option markets and products • Hedging • Swaps • Accounting and Taxation of Derivative instruments • Derivative risk management			
Fees	₹15,000/-			
Contact Person	**Course Chairman:** CA. Anuj Goyal, Chairman, Committee on Financial Markets and Investors' Protection, Mobile: 09810041371, Email Id: anujgoyal@icai.org, president@reliableinstitute.edu.in **For Information contact:** Committee Secretariat, Committee on Financial Markets and Investors' Protection, Ph: 01203045945, 8130567979, 8130527979, Email id: fxtm@icai.in **For Registration, Course curriculum and online payment visit:** http://www.icai.org/post.html?post_id=3552&c_id=266			
5.	Two Days Certification Programme for Directors and Aspiring Directors	5th and 6th June, 2015 - 10 am to 5 pm	Hotel Taj Lands End, Bandra West, Mumbai	12 hours
Topics	1. Corporate Governance–Importance for Better Performance and IT and Corporate Governance–How much importance the Board should give 2. Roles and Responsibilities-The Dos and Don'ts and Fiduciary relationship, Independence and Governance–How ethical you should be 3. How do you measure the Board Performance? 4. Effective communication to stakeholders- the Media management 5. Board Reports-The What and How aspects and Use of External and Internal Auditors and role of Audit Committee 6. Risks–Awareness, Measurements and Management–What the Board needs to do and Red flags–Detection, Action and Prevention 7. Boards Role in Strategic planning, Mergers and Acquisitions 8. Panel Discussion			
Fees	₹7,500/- (for members), ₹8,500/- (for non members)			
Contact Person	**Programme Chairman:** CA. S. Santhanakrishnan, Chairman, Corporate Laws & Corporate Governance Committee of ICAI. Mobile: 09841073008; E-mail: sk@pkfindia.in **Programme Director:** CA. Tarun Ghia, Vice-Chairman, Corporate Laws & Corporate Governance Committee of ICAI. Mobile: 09821345687, E-Mail: tarunghiaca@yahoo.com **For Registration and Information, Contact:** Secretariat, Corporate Laws & Corporate Governance Committee of ICAI. Ph: 0120-3045971; E-Mail: clcgc@icai.in			
6.	Certificate Course on Indirect Taxes	13th June, 2015 to 19th July, 2015 Time: 9.30 am to 5.30 pm	Kolkata	70 Hours (50 Structured and 20 Unstructured)
Topics	The Certificate Course covers the following topics: • Service Tax • Overview of Central Excise Law • Overview of Customs Law • CST/VAT Laws • Foreign Trade Policy/GST • Case Law • Practical case Studies			
Fees	₹20,000/-			

Events

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Contact Person	**Course Chairman:** CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 9810103611, E-mail : atulservicetax@gmail.com **Course Director:** CA. Sumantra Guha, CCM, Email: ca.sumantraguha@gmail.com **For Information contact:** Secretariat, Indirect Taxes Committee, Ph:0120-3045954, E-mail: ccidt@icai.in **For Registration visit:** http://idtc.icai.org/cc/student/			
7.	Certificate Course on Indirect Taxes	27th June, 2015 to 2nd August, 2015 Time: 9.30 am to 5.30 pm	Pune	70 Hours (50 Structured and 20 Unstructured)
Topics	The Certificate Course covers the following topics: • Service Tax • Overview of Central Excise Law • Overview of Customs Law • CST/VAT Laws • Foreign Trade Policy/GST • Case Law • Practical Case Studies			
Fees	₹15,000/-			
Contact Person	**Course Chairman:** CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 9810103611, E-mail : atulservicetax@gmail.com **Course Director:** CA. Shiwaji Bhikaji Zaware, CCM, Email: sbzaware@icai.org **For Information contact:** Secretariat, Indirect Taxes Committee, Ph:0120-3045954, E-mail: ccidt@icai.in **For Registration visit:** http://idtc.icai.org/cc/student/			
8.	Certificate Course on Indirect Taxes	27th June, 2015 to 2nd August, 2015 Time: 9.30 am to 5.30 pm	Baroda	70 Hours (50 Structured and 20 Unstructured)
Topics	The Certificate Course covers the following topics: • Service Tax • Overview of Central Excise Law • Overview of Customs Law • CST/VAT Laws • Foreign Trade Policy/GST • Case Law • Practical case Studies			
Fees	₹15,000/-			
Contact Person	**Course Chairman:** CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 9810103611, E-mail : atulservicetax@gmail.com **Course Director:** CA. Jay Ajit Chhaira, CCM, Email: jaychhaira@yahoo.com **For Information contact:** Secretariat, Indirect Taxes Committee, Ph:0120-3045954, E-mail: ccidt@icai.in **For Registration visit:** http://idtc.icai.org/cc/student/			
9.	Two Day National Conference on Indirect Taxes	5th & 6th June, 2015	Ernakulam	12 Hours
Contact Person	**Programme Chairman:** CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 9810103611, E-mail: atulservicetax@gmail.com **Programme Director:** CA. Babu Abraham Kallivayalil, CCM, E-mail: bakco@vsnl.net **For Information contact:** CA. R. Balagopal, 9895051224, ernakulam@icai.org			
10.	Two Day National Conference on Indirect Taxes	5th & 6th June, 2015	New Delhi	12 Hours
Contact Person	**Programme Chairman:** CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 9810103611, E-mail: atulservicetax@gmail.com **For Information contact:** NIRC of ICAI – 011-30100500, 30100532, 30100507 or Email at nirc_seminar@icai.in **For Registration visit:** http://idtc.icai.org/cc/apps/registration			
11.	Programme on Service Tax and GST	7th June, 2015	Kurnool Branch of SIRC of ICAI	3 Hours
Contact Person	**Programme Chairman:** CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 9810103611, E-mail: atulservicetax@gmail.com **Programme Director:** CA. J. Venkateswarlu, CCM, E-mail: jv@icai.org **For Information contact:** CA. B. Daivadheenam Reddy, 9849363921, kurnool@icai.org			
12.	One Day Programme on GST	13th June, 2015	Jalgaon	3 Hours
Contact Person	**Programme Chairman:** CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile 9810103611, E-mail: atulservicetax@gmail.com **Programme Director:** CA. Nihar Niranjan Jambusaria, CCM, E-mail: nihar.jambusaria@ril.com; jnihar@rediffmail.com **For Information contact:** CA Kaushal K Mundada, 9823116005, jalgaon@icai.org			

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
13.	Live webcast on Works Contract and Job work.	19th June, 2015 Time: 6.00 pm to 8.00 pm	Online	2 Hours
Contact Person	**For Information contact:** Secretariat, Indirect Taxes Committee, Ph:0120-3045954, E-mail: idtc@icai.in website: www.idtc.icai.org			
14.	Two Day National Conference on Indirect Taxes	3rd & 4th July, 2015	Chandigarh	12 Hours
Contact Person	**Programme Chairman:** CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 9810103611, E-mail: atulservicetax@gmail.com **Programme Director:** CA. Jaswant Dhawan, 9814108900, chandigarh@icai.org **For Information contact:** Secretariat, Indirect Taxes Committee, Ph:0120-3045954, E-mail: idtc@icai.in website: www.idtc.icai.org			
15.	Conclave on Emerging Global Professional Opportunities for CAs	Saturday, 13th June 2015	Hotel Crowne Plaza, Rohini, New Delhi. (Adjacent to Rithala Metro Station)	6 Hours
Topics	**Technical Session– I:** Interactive Session with ICAI Overseas Chapter Chairmen/Leaders on Investment & Professional Opportunities abroad–through Google Hangout–on the below thematic issues: Australia, Canada & Abu Dhabi ➢ Cross Border Trade/Investment Globally ➢ Employment Opportunities for CAs ➢ Areas of Professional Consultancy Overseas ➢ Working in Multi- Ethnic/Cultural Conditions ➢ Addressing Skill Expectation Gap ➢ Consultancy Services/ Practice Areas and Important Laws ➢ Immigration/Visas/Work Permit **Technical Session– II:** GST: Waves of Change, Oceans of Opportunity **Technical Session– III:** Formation of LLP & Conversion of Pvt. Ltd. Company into LLP and Taxation Aspects **Technical Session– IV:** Formation and Maintenance of Entities at Free Trade Zones at UAE: Issues & Compliances			
Fees	₹800/-			
Contact Person	**Conference Chairman:** CA. Naveen N. D. Gupta, Central Council Member & Chairman, Committee on Economic, Commercial Laws & WTO of ICAI, Mb: 09810689998, Email: naveen@dassgupta.com; **For registration and further details, please contact:** ➢ Secretariat of Committee on Economic, Commercial Laws & WTO, Ph: 011–30110499, 09312085029 Email: ctlwto@icai.in; **Payment may be made online at the link** http://www.icai.org/ccm.html?progid=924 or by Cheque/Demand Draft in favour of "The Secretary, ICAI payable at New Delhi")			
16.	Two days' National Conference on Emerging Professional Opportunities	Day 1 – 05/07/2015 (Sunday) Day 2 – 06/07/2015 (Monday)	Samanvay Bhawan, Apex Bank, T T Nagar, Bhopal	12
Topics	• An overview of Emerging Professional Opportunities • IFRS converged Indian Accounting Standards- Opening National/International markets for Indian Chartered Accountants. • Corporate Social Responsibility- Professional Opportunities for Chartered Accountants • Goods & Service Tax- Professional Opportunities for Chartered Accountants • Companies Act 2013- Emerging Professional Opportunities for Chartered Accountants • Professional Opportunities in Non-Profit Organisations' Sector • Professional Opportunities in Management Consultancy & Internal Audit • Professional Opportunities in Development Schemes Sponsored by Government & Funding Agencies			
Fees	• Upto 15th June :- 1,250/- • After 15th June :- 1,500/-			
Contact Person	**Program Chairman**- CA. Anuj Goyal, Central Council Member & Chairman, PDC & CFMIP (Mob. No. : 98 100 41371, 93122 58364) **Program Co-ordinator**- CA. Abhay Chhajed, Treasurer, CIRC of ICAI (Mob. No.: 90090 44477) & CA. Deepak Jain, Chairman, Bhopal Branch of CIRC of ICAI(Mob. No.: 9893442900) PD Secretariat- 30110444			

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
17.	Master in Business Finance Certificate Course	Tentatively from July 2015	Various places	100 hrs
Topics	Registration open for 9th batch of Master in Business Finance Certificate course at various locations tentatively from July, 2015. http://www.icai.org/post.html?post_id=4092			
Fees	Registration fees ₹30,000			
Contact Person	**For Information Contact:** • CA. Jay Ajit Chhaira, CCM, ICAI • Secretariat, CMA, ICAI, Contact Details: 0120-3876879, 0120-3045905			
18.	Master in Business Finance Certificate Course for HPCL Executives	22nd June- 28th June 2015	Pune	
Topics	Master in Business Finance Certificate course for HPCL Executives at Pune			
Fees	-			
Contact Person	**For Information Contact:** • CA. Jay Ajit Chhaira, CCM, ICAI • Secretariat, CMA, ICAI, Contact Details: 0120-3876879, 0120-3045905			
19.	One Day Brain Trust Programme for Young CAs	6th June, 2015 Time: 10:00 am to 5:00 pm	Jaipur	6
Topics	• Capital Gains– An Overview • Real Estate & Sec 195– An Overview			
Fees	₹300/- for Young Members (Up to the age of 30 years) ₹400/- for Other Senior Members			
Contact Person	**Programme Chairman** • CA. Vijay Kumar Gupta, Chairman, Young Members Empowerment Committee M. No. 98100 50029 or Email: chairmanymec@icai.in & vkgupta2004@yahoo.co.in **Programme Co-ordinator** • CA. Vijay Garg, Member, Young Members Empowerment Committee M. No. 94140 41872 or Email: vijaymgarg@gmail.com • CA. Shyam Lal Agarwal, Member, Young Members Empowerment Committee M. No. 94140 53163 or Email: shyamjpr@gmail.com **For Registration & Further Information Contact:** • Asstt Education Officer Jaipur Branch of CIRC of ICAI: Ph. No.: (0141) 3044214 or E mail: jaipur@icai.in			
20.	One Day Seminar on Business Analysis Tool for Young CAs	6th June, 2015 Time: 3:00 pm to 9:00 pm	Amritsar	5
Topics	• Advanced Excel • Income Tax Accounting Standards			
Fees	₹400/- for Young Members (Up to the age of 30 years) ₹500/- for Other Senior Members			
Contact Person	**Programme Chairman** • CA. Vijay Kumar Gupta, Chairman, Young Members Empowerment Committee M. No. 98100 50029 or Email: chairmanymec@icai.in & vkgupta2004@yahoo.o.in **Programme Co-ordinator** • CA. Gaurav Gupta, Chairman, Amritsar Branch of NIRC of ICAI M. No. 92169 90010 or Email: cagauravgupta2007@gmail.com **For Registration & Further Information Contact:** • Secretary, Amritsar Branch of NIRC of ICAI M. No. 97806 49824 or Tel. No. (0183) 2506361 or E mail: amritsar@icai.in			
21.	Seminar on Excel as Business Analysis Tool for Young CAs	7th June, 2015 Time: 3:00 pm to 7:30 pm	Karnal	4
Topics	• Advanced Excel • Excel as Business Analysis Tool • Miscellaneous Features, Q & A			
Fees	₹250/- for Young Members (Up to the age of 30 years) ₹400/- for Other Senior Members			

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Contact Person	**Programme Chairman** 1. CA. Vijay Kumar Gupta, Chairman, Young Members Empowerment Committee M. No. 98100 50029 or Email: chairmanymec@icai.in & vkgupta2004@yahoo.o.in **Programme Co-ordinator** 1. CA. Sharvan Kumar Kaushik , Chairman, Karnal Branch of NIRC of ICAI M. No. 98963 35781 or Email: kaushiksharvanca@gmail.com **For Registration & Further Information Contact:** 1. Karnal Branch of NIRC of ICAI Tel. No. (184) 4045 666 or E mail: karnal@icai.org			
22.	Full Day Seminar on Companies Act for Young CAs	12th June, 2015 Time: 9:30 am to 5:30 pm	Kolkata	6
Topics	• Status of Companies Act 2013–Section notified/yet to be notified • Continued applicability of Companies Act 1956–Key definitions, Financial Statement, Foreign Company • Incorporation/Formation of companies & MOA/AOA, Commencement of business • Schedule I & Schedule IV of Companies Act, 2013 • Types of Directors & Appointment & qualifications of Directors • Board meetings/powers–frequency & quorum • Audit committee/Nomination & Remuneration committee • Powers of Board/Restrictions on powers of Board • Acceptance of Deposits & Restrictions on acceptance of deposits • Loans to directors/Investments by Cos. • Related party transactions/Managerial remuneration/Appointment of KMP			
Fees	₹700/- for Young Members (Up to the age of 30 years) ₹900/- for Other Senior Members			
Contact Person	**Programme Chairman** 1. CA. Vijay Kumar Gupta, Chairman, Young Members Empowerment Committee M. No. 98100 50029 or Email: chairmanymec@icai.in & vkgupta2004@yahoo.o.in **Programme Director** 1. CA. Sumantra Guha, Member, Young Members Empowerment Committee M. No. 98310 15331 or Email: ca.sumantraguha@gmail.com **For Registration & Further Information Contact:** 1. Chairman, EIRC of ICAI M. No. 98310 07253 or E mail: jaipur@icai.in			
23.	Seminar on Excel as Business Analysis Tool for Young CAs	14th June, 2015 Time: 9:45 am to 4:00 pm	Hotel Piccadily, Janakpuri, New Delhi	5
Topics	• Advanced Excel • Excel as Business Analysis Tool • Miscellaneous Features, Q & A			
Fees	₹600/- for Young Members (Up to the age of 30 years) ₹1,250/- for Other Senior Members			
Contact Person	**Programme Chairman** • CA. Vijay Kumar Gupta, Chairman, Young Members Empowerment Committee M. No. 98100 50029 or Email: chairmanymec@icai.in & vkgupta2004@yahoo.o.in **For Registration & Further Information Contact:** • Executive Officer Young Members Empowerment Committee, ICAI Tel. No. + 91-11-30110557 or E mail: ymec@icai.in			
24.	Empowering Young Members for Young CAs	15th June, 2015 Time: 5:00 am to 8:00 pm	Trivandrum	3
Topics	• Emerging opportunities for young members • Companies Act 2013-New Challenges			
Fees	No fee ARS Members of Trivendrum ₹300/- for Other Members			

Events

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Contact Person	**Programme Chairman** 1. CA. Vijay Kumar Gupta, Chairman, Young Members Empowerment Committee M. No. 98100 50029 or Email: chairmanymec@icai.in & vkgupta2004@yahoo.o.in **Programme Co-ordinator** 1. CA. Jose Zachariah, Chairman, Trivandrum Branch of SIRC of ICAI M. No. 94471 23625 or Email: joseandco@rediffmail.com **For Registration & Further Information Contact:** 1. Secretariat, Trivandrum Branch of SIRC of ICAI Tel. No. (0471) 2323 789, M. No. 85890 23789 & Email: icaitvm@gmail.com			
25.	Seminar for Young Members for Young CAs	27th June, 2015 Time: 4:00 am to 8:30 pm	Jalandhar	4
Topics	• Excel techniques • Income Tax Accounting Standards			
Fees	₹300/- for Young Members (Up to the age of 30 years) ₹500/- for other Senior Members			
Contact Person	**Programme Chairman** • CA. Vijay Kumar Gupta, Chairman, Young Members Empowerment Committee M. No. 98100 50029 or Email: chairmanymec@icai.in & vkgupta2004@yahoo.o.in **Programme Co-ordinator** • CA. Puneet Duggal , Chairman, Jalandhar Branch of NIRC of ICAI M. No. 98145 32400 or Email: duggalpuneet@yahoo.com **For Registration & Further Information Contact:** • Jalandhar Branch of NIRC of ICAI Tel. No. (0181) 4600 711 or Email: jalandhar@icai.org			
26.	CPE National Live Webcast jointly with Indirect Taxes Committee, ICAI	10-06-2015	ICAI Bhawan, New Delhi	2 Hours
Topics	GST			
Fees	Nil			
Contact Person	CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mob: 9810103611, E-mail: atulservicetax@gmail.com **For Information Visit:** http//icaitv.com/ Secretariat, Continuing Professional Education Committee, ICAI Phone : 0120-3045957/981; e-mail: cpeadmin@icai.in			
27.	National Seminar on Direct Taxes hosted by the Calicut Branch of SIRC	13-06-2015	Hotel Gateway, Calicut	6 Hours
Topics	• NRI Taxation • Taxation of Real Estate Transactions (Special Reference to Joint Venture and Joint Developments) • Income Computing and Disclosure Standard (ICDS)			
Fees	For ARS covered Members: ₹750 /- For Non ARS and others: ₹1,500 /-			
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information/Registration contact:** CA. Vinod Kumar A. P., Chairman, Calicut Branch of SIRC–Mob: 09349113735 CA. Sathish Kumar M., Secretary, Calicut Branch of SIRC–Mob: 09447022400 Calicut Branch of SIRC- Ph: 0495-2770124, 2771008, calicut@icai.org			

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
28.	CPE National Live Webcast	23-06-2015	ICAI Bhawan, New Delhi	2 Hours
Topics	Survey, Search and Seizure			
Fees	Nil			
Contact Person	CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information Visit:** http//icaitv.com/ Secretariat, Continuing Professional Education Committee, ICAI Phone : 0120-3045957/981; e-mail: cpeadmin@icai.in			
29.	Two Days National Conference hosted by the Mangalore Branch of SIRC	26-06-2015 & 27-06-2015	Mangalore	12 Hours
Topics	• Income Tax • Service Tax, • Companies Act 2013 • FEMA, • Cloud Computing			
Fees	₹2,000/-			
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **Programme Director:** CA. Cotha S Srinivas, SIRC Member and Ex-Officio Member, Mobile: 9845063387, email id: cothas@yukthi.co.in **For Information/Registration contact:** CA. Shivakumar. K, Chairman, Mangalore Branch of SIRC, Mobile: 9845167940 CA. Bhargava Tantri, Secretary, Mangalore Branch of SIRC, Mobile: 9448383225 Mangalore Branch of SIRC, Ph : 824-2495722/4279104; mangalore@icai.org			
30.	National Seminar hosted by the Hubli Branch of SIRC	3rd & 4th July 2015	HUBLI, Karnataka	12
Topics	• Direct Tax • Cooperative Audits and Accounting Standards for Local Bodies (ASLB) • Indirect Tax (GST) • Service Tax • IFRS & Ind AS • Companies Act -2014			
Fees	Members: ₹2,500/- Non Members: ₹3,000/-			
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information/Registration contact:** CA. Kadur Prakash Rudrappa, Chairman, Hubli Branch of SIRC, Mob: 9449644393 CA. Khatavkar Nandraj, Secretary, Hubli Branch of SIRC, Mob.: 9448837388 Hubli Branch of SIRC, Ph : 0836- 2288337, 2283081, icaihubli@gmail.com			
31.	One Day Conference: "Marching towards Excellence" hosted by Madurai Branch of SIRC	14th July 2015	Madurai	6
Topics	Relating to Direct Taxes and Indirect Taxes			
Fees	₹500/-			

Events

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information/Registration contact:** CA Dungar Chand U Jain, Chairman, Madurai Branch of SIRC; Mob: 9894505007 Madurai Branch of SIRC, Ph : 452-2640968; madurai@icai.org			
32.	Two Days National Conference hosted by Ranchi Branch of CIRC	24-07-2015, 25-07-2015	Ranchi	12 Hours
Topics	• Income Tax • GST • Service Tax • Companies Act 2013 • Personality Development • Cloud Computing			
Fees	₹2,000/-			
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information/Registration contact:** CA. J. P. Sharma, Programme Convener, Mobile: 9334460555, Email id: jpsharmaca@gmail.com CA. Dharmendra Kr. Sinha, Chairman, Ranchi Branch of CIRC, Mobile: 9431581421, E-mail ID: cadks23@gmail.com CA. Manish Jain, Secretary, Ranchi Branch of CIRC, Mobile: 9431192776, E-mail ID: manishkrjain@yahoo.com Ranchi Branch of CIRC, Ph.: 0651-2206471; ranchi@icai.org			
33.	One Day National Conference hosted by Coimbatore Branch of SIRC	25-07-2015	Coimbatore	6 Hours
Topics	• Income Tax • Service Tax • Companies Act 2013 • FEMA			
Fees	₹1,000/-			
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information/Registration contact:** CA. Robert Kennedy M, Chairman, Mob: 9944334400; robert4cas@gmail. com Coimbatore Branch of SIRC, 0422–4270056/4270058; coimbatore@icai.org			
34.	Two Day National Conference hosted by the Ernakulam Branch of SIRC	31st July & 1st August, 2015	Kochi Marriott Hotel, Lulu International Shopping Mall, Edappally, Kochi	12 Hours
Topics	• Financial Statements & Audit Under the Companies Act, 2013 • Auditors' Report, Fraud Reporting & CARO 2015 • Standards on Auditing–Mandatory under the Companies Act, 2013 • Nitty–Gritty of Depreciation provisions under Companies Act, 2013–Case studies & Use of MS-EXCEL for Computation • TDS • Income computation & Disclosure Standards (ICDS)–Implications • Accounting Standards–Applicability & Update • GST–The Emerging Picture			

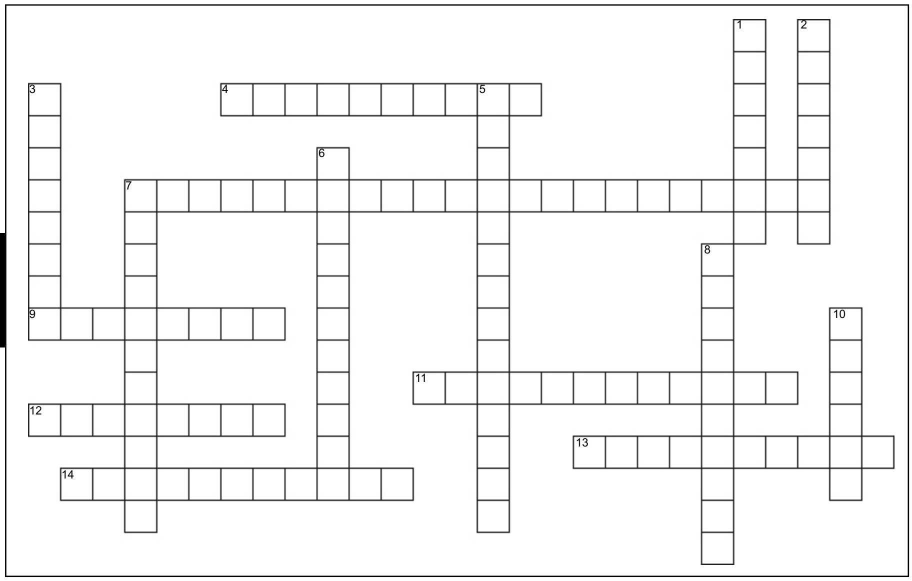
Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Fees	Ernakulam ARS Members: Nil Other CA Members: ₹1,800/-			
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information/Registration contact:** CA. R. Balagopal, Chairman, Ernakulam Branch of SIRC, Mob: 9895051224, E-mail: balagopal.r@icai.org Ernakulam Branch of SIRC, Ph: 0484-2369238/2369258 /2372953 ernakulam@icai.org			
35.	Three Days National Residential Seminar hosted by the Quilon Branch of SIRC	19th, 20th & 21st August 2015	SABARIMALA Quilon, Kerala	18 Hrs
Topics	• GST • Service Tax • Companies Act 2013 • Tax Audit & Assessment of Charitable Organisations			
Fees	₹7,500/-			
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information/Registration contact:** CA. R Muralee Mohanan, Chairman, Quilon Branch of SIRC, Mob: 09447042077, E-mail: muraliadr@yahoo.com Quilon Branch of SIRC, Ph: 474-2750583/2763506; 09446916854; quilon@icai.org			
36.	National Residential Refresher Course hosted by the Trivandrum and Quilon Branches of SIRC of ICAI	28, 29 & 30 August 2015	Poovar Island Resorts, Poovar , Trivandrum (Near to Kovalam Beach)	12 Hrs
Topics	• Ind AS • Companies Act-Relevant to Auditors Report • Companies Act with emphasis to Accounting for Depreciation • Overview of GST • Service Tax – Latest Amendments • Taxation of Non-Resident Indians in the new scenario • Taxation of Real Estate Transaction			
Fees	For Residential Members– ₹8,000/- (On twin sharing basis) For spouses (Non Members)– ₹7,000/- (Extra charges for extra bed and children above 12 years) For Non Residential Members– ₹3,000/- (The fees include Food, Accommodation, Boating in Poovar lake and Program Kit)			
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information/Registration contact:** CA. Jose Zachariah, Chairman, Trivandrum Branch of SIRC– 9447123625 CA. Revathy Raja, Secretary, Trivandrum Branch of SIRC- 9846344446 CA. Murali Mohan, Chairman, Quilon Branch of SIRC– 9447042077 CA. Renjith S, Secretary, Quilon Branch of SIRC- 9447222833 Trivandrum Branch of SIRC, Ph:0471-23232789, 8281848909; trivandrum@icai.org Quilon Branch of SIRC, Ph: 474-2750583/2763506; 09446916854; quilon@icai.org			

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
37.	Two-Day CPE National Seminar hosted jointly by Satara, Sangli and Kolhapur Branches of WIRC	27th & 28th June, 2015	Koyananagar Dist, Satara	12 Hours
Topics	Direct & Indirect Taxes and under amended Companies Act, 2013			
Fees	₹2,500/-			
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information/Registration contact:** CA. Suhas Patwardhan, Chairman, Satara Branch of WIRC, Mob.: 9423866458; suhas.patwardhan@gmail.com Satara Branch of WIRC, Phone: 9922680000; satara@icai.org CA Anil Haribhau Joshi, Chairman, Sangli Branch of WIRC, Mob : 9890303480; ca.ahjoshi@gmail.com Sangli Branch of WIRC, Ph: (233) 2328230; sangli@icai.org CA. Imran Mulla , Chairman, Kolhapur Branch of WIRC, Mob: 9921116699; caimranmulla@gmail. com Kolhapur Branch of WIRC, Ph: Ph: (231) 2665856; kolhapur@icai.org			
38.	Two-Day National Seminar hosted by the Hyderabad Branch of SIRC	10th &11th July, 2015	Brahmakumaris, Gachibowli, Hyderabad	12
Topics	Companies Act 2013, Understanding of ICDS & GST – Way forward			
Fees	Members: 2,000/- up to 09th July 2015 Spot Registration: 2,200/-			
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information/Registration contact:** CA Raghunadan V, Chairman, Hyderabad Branch of SIRC, 09848020128; veldurthy_raghunandan@yahoo.co.uk CA Chengal Reddy R, Secretary, Hyderabad Branch of SIRC, 09000181104; chengalreddyca@gmail.com Hyderabad Branch of SIRC, Ph: 40-23317026-28/23393182; hyderabad@icai.org			
39.	National Seminar on Taxation hosted by the Noida Branch of CIRC	13-06-2015	ICAI Bhawan Auditorium, A-29, Sector 62, Noida	6 Hours
Topics	Taxation			
Fees	₹500/-			
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information/Registration contact:** CA. K. C. Gupta, Chairman,Noida Branch 9811838651; kailashyogeshca@yahoo.com Noida Branch of CIRC, Ph-0120-4280419; noida@icai.org			
40.	One Day CPE National Conference	26-06-2015	ICAI Bhawan Lakhanpur, Kanpur	6 Hours
Topics	Under Finalisation			
Fees	₹300/-			

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman and Director:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information/Registration contact:** CA. Piyush Agrawal, Vice Chairman, CIRC Mob: 9415040221; E-mail: piyush760@yahoo.co.in			
41.	One Day CPE Seminar	20-06-2015	Palm Resort, Near Harni Mahadev, Bhilwara	6 Hours
Topics	Under Finalisation			
Fees	₹300/-			
Contact Person	**Programme Chairman:** CA. Babu Abraham Kallivayalil, Chairman, CPE Committee, Mob: 9846035333/9446066600 E-mail: babucentralcouncil@gmail.com/babu.kallivayalil@gmail.com **Programme Co-Chairman:** CA. Mukesh Singh Kushwah, Vice-Chairman, CPE Committee, Mob: 9810470274; E-mail: kushwah@rediffmail.com **For Information/Registration contact:** CA. Rajendra Singh Pokharna, Chairman, Bhilwara Branch, Mob: 9414019413, 01482-226313,236963 E-mail: pokharnasomani@yahoo.co.in Bhilwara Branch of CIRC, ICAI Ph: 01482-253424, E-mail: icaibhl@gmail.com, bhilwara@icai.org			
42.	Gujarat State level Women Seminar	13th June 2015 from 9:30AM to 5:30PM	Ahmedabad	6
Topics	The Seminar covers the following topics: • Income Computation & Disclosure Standard(ICDS) • Provisions as per Schedule II of Companies Act 2014 • Panel Discussion • Networking Session			
Fees	₹400/-			
Contact Person	**Programme Chairman:** CA. Prafulla Premsukh Chhajed, Central Council Member & Chairman, Women Members Empowerment Committee, Phone No: 9821090612, CA. Dhinal Ashvinbhai Shah, Central Council Member, Phone No: 9825029950 **Programme Co-ordinator:** CA. Amrish Patel, Chairman, Ahmedabad Branch **For Information Contact:** Committee Secretariat, Women Members Empowerment Committee, Ph: 0120-3876873, Email id: wmec@icai.in, info.wmec@icai.in			
43.	Training Programme on Service Tax	27th June & 04th July, 2015 (2 Saturdays from 9:30AM to 5:30PM)	Mumbai	12
Topics	The Certificate Course covers the following topics: • GST • Service Tax • MVAT & CST			
Fees	₹1,500/-			
Contact Person	**Conference Chairman:** CA. Prafulla Premsukh Chhajed, Central Council Member & Chairman, Women Members Empowerment Committee, Phone No: 9821090612 CA. Atul Kumar Gupta, Central Council Member & Chairman, Indirect Taxes Committee, Phone No: 9810103611 **For Information Contact:** Committee Secretariat, Women Members Empowerment Committee, Ph: 0120-3876873, Email id: wmec@icai.in, info.wmec@icai.in			

Backpage

CROSS WORD 108



ACROSS

4. Business transactions that are digitally enabled are called___________.
7. The scheme launched by the Prime Minister of India on January 22, 2015 aiming at improving the welfare of female children in India.
9. Securities premium cannot be applied for paying _________to members.
11. Amount received by a company over and above the face value of its shares.
12. The equilibrium firm concept was given by___________.
13. Issue of equity shares is a legally accepted method for redemption of ___________shares.
14. Increase in long term ___________is an example of sources of funds.

DOWN

1. According to Garner versus Murray rule, any loss that arises due to being insolvent of any partner should be divided among other partners in their ______ratio.
2. If debentures of ₹3,50,000 are issued for the consideration of net assets of ₹3,75,000, balance of ₹25,000 will be credited to______ reserve account.
3. ____________, once declared, becomes a debt and should not be revoked.
5. Equity shareholder's fund and long term borrowed funds denotes the relationship between _________ ___________ ratio.
6. ________ __________ to act as Chief Financial Officer of Indian operations of Japanese car maker Nissan.
7. Difference between the observed value and the true value are_______ errors.
8. The new ______ ____of 14 per cent is applicable from June 1, 2015.
10. The Justice Shah Committee, constituted to go into levy of Minimum Alternate Tax on FIIs, to go into all _______ tax issues.

NOTE: Members can claim one hour – CPE Credit – Unstructured Learning for attempting this crossword by filling the details in the self-declaration form to be submitted to your regional office annually to avail CPE hours credit for Unstructured Learning activities under the activity 'Providing Solutions to Questionnaires/puzzles available on Web/Professional Journals'. There is no need to individually send this crossword in hard copy or email.

Patient to Doctor: When I stand on my head the blood rushes to my head, but when I stand on my feet the blood does not rush to my feet. Why is this?

Doctor: It is because your feet aren't empty!

SOLUTION CROSSWORD 107