guwahati@icai

E-Newsletter of the Guwahati Branch of EIRC of ICAI
Volume VIII, Issue 5, August 2014

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Editorial Board

Write to Editor

'Information is Power' and our ever-evolving profession needs more and more of that today than ever before. Do you have any relevant points to make, experiences to share, and views to spread among the CA fraternity? If yes, e-mail us at newsguwahati.icai@gmail.com.

Chairman's Message ...

Dear Colleagues and Student Friends,

hello!

"Coming together is a beginning, staying together is progress, and working together is success."

It has been six months in my new role and I am constantly getting your love, support & co-operation in each and every Branch activity. Last six months witnessed many new activities being organized with enthusiasm, established events of previous years scaling newer heights, and impressive achievements from students and members alike.

The journey, exciting & rocking at times, smooth and pleasant at others, has been a remarkable one for me. I have seen this branch acquiring its own unique identity, while remaining rooted to the old traditions of commitment to knowledge, excellence, discipline, integrity and freedom. With every single contribution we gained another insight into the people around us. We have realized that *we are united by our differences*.

The month of August may be considered as the best of all months for our students. Apart from regular training classes, the month was full of fun-filled and knowledge-based students' activities. It started with the two-day mega National Convention "Drishtikon" inaugurated by CA. K Raghu, Honourable President ICAI, which brought many laurels to the branch, followed by celebrations of Independence Day, Inter-school debate competition and ended with a very splendid youth festival on the last day of the month.

It is rightly said that, "*Every child has far more potential than comes to the surface under normal circumstances. The secret is to create conditions that enable the child to discover and express their full potential*", and it is equally true that such activities bring out those hidden talents of our students in front of the world.

The results of CA Final examinations conducted in May / June 2014 were declared recently. I heartily congratulate all those who passed. It is seen that from the last few terms CA results are showing gradual decline in pass percentage. I therefore appeal to all CA students to draw a balance between studies and extracurricular activities so as to remain in the race and put their focus mainly on the study material provided by our institute.

The members are in for a little bit of relaxation in the month of September this time after the notification issued by the government in regards to the extension of the due date for submission of audit reports consequent to revision of tax audit forms. However, along with the extension of time, our duties also get extended. It is a clear signal from the authorities that with the extension of the due date, there shall be no room for errors in compliance requirements.

Talent wins games, but teamwork and intelligence wins championships. The difference between success and failure is a great team. I feel privileged to share with you all that the Guwahati Branch is going to host a National Conference for our members on 13th & 14th November 2014 under the aegis of CPE Committee of ICAI. Let us take this opportunity to make our wish-list public: *Let our Branch grow to newer heights and spread its wings to all corners of the north-eastern region. Let our profession touch towering altitudes of success while helping our society and country, and fulfil all their expectations. Let the members of our profession reach and touch lives of common people and make their lives better while carrying out their social responsibility.*

Happy Reading!

– CA. K P Sarda

Editor's Desk...

Dear Professional Colleagues,

August is the month of independence, freedom and liberty for *We - The People of India*. This August however was a mixed bag of joy and sorrow: The launch of Jan Dhan Yojana by the government was a major breakthrough on the macro economic front, wherein a record 1.5 Crore accounts were opened in a single day, with an ambitious target of covering 7.5 crore households in the country. The unending border dispute with Nagaland flared up again and teamed with the other perennial woe – the untamed waters of the Luit and its tributaries - disrupting normal life and taking heavy toll of life and property in our region. Bye-elections in four states kept the political circles abuzz. And, while we performed reasonably well in the Commonwealth Games, our loss in the test series to England after the spectacular win at Lords left us aghast. But what concerned us most was that after about a month from the date when the tax audit requirements were suddenly changed w.e.f. 25th July, the new 3CD utility was introduced on e-filing portal of the Income-tax and the e-filing schema announced. In the meantime, we got a grip on the broad implications of the changes and of the fact that a small-sized audit was now going to take at least one more day's labour.

But as they say, *don't find fault, find a remedy.*

Our members having to deal with companies were also kept busy trying to grapple with the requirements of filing their DPT-4s, MGT-14s and MBP-1s.The extension of the due date of filing TAR till 30th November was a welcome relief but it also left us baffled because we found that the due dates of filing of returns had not simultaneously been extended. It leaves us with a lot of unanswered issues and calls for the Institute to step in and seek clarifications.

You may delay, but time will not." - Benjamin Franklin.

August is also the month of ICAI final examination results. This month was no different, bringing smiles for a few who were lucky (and definitely deserving) enough to qualify, but woes for the vast majority of CA aspirants who failed to cross the threshold. Congratulations to those who qualified and welcome to our fold. Better luck for those who could not make it this time. For them, I would quote Michael Jordan- *"I've failed over and over and over again in my life and that is why I succeed."*

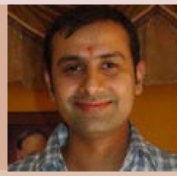
The National Students' convention at Guwahati *Dristikon – Quest for Excellence* was a resounding success. Congratulations to the Guwahati Branch and EICASA for this shining feather added to their cap.

Friends, your feedbacks are important and so are your thoughts. So just keep in touch.

– CA. Sharad Agarwalla

Charity Begins At Home!

By: CA. Uday Dhoot



As a CA you are the person totally glued to finance. You pretty much strategize, plan and execute financial workings for an individual, company or family. Given the closeness you have to finance, it would be rather easy for all of you to get insights into personal finance as well.

Over the course of many years of my own financial planning practice I have found evidence almost to the contrary to this. Professionals many a times forget to look at themselves with the same microscopic glare that they do when they look at the client's balance sheet. I show you account of a company and soon you will point out all the right things and wrong things. You will point out where the risks are, what is good, so on and so forth.

In the series of articles that would follow, I would cover some blind spots and some obvious follies that we make with our own money.

I have a secret for all of you, but before I tell you the secret I have a brief story (very filmy) to narrate:

There was a scientist who was working hard on an idea; he was experimenting day and night on this idea. This idea if it clicked, he would not have to work again. He had to crack this idea and he was almost there. This was an important innovation, and there were others also after his research, he had to protect this information from others at any cost. There was hard work & time involved; there was the process of actually making the break through and protecting your hard work against the people after this information.

The Secret: You are the greatest scientist of your life time and your advisory business is the break through idea you are working on!

As you will go through this article you will note that I have nothing new to say. I just have one thing to say, you are the most valuable resource of your business, you are as important to your business as Steve Jobs was for Apple.

They say charity begins at home, I say in case of a financial advisor - advising begins at home. Let's look at our life as a financial advisor. The risks we face:

a) Health & Critical Illness: Like most other human beings we are also suspect to the vagaries of fluctuating health. But considering that we are mostly entrepreneurs, if we are down our business can really slow down and add to that the ever fluctuating markets this could also mean that we lose important clients during such trying times. Covers available upto Rs. 1 crore

b) Permanent Disability & Accidental Death: I know many of our friends drive around using a two wheeler and possibly are really safe drivers. But frankly when you are driving you don't need to be unsafe to be hurt, someone else's mistake can also hurt you. I guess some of you can actually recollect such examples, now how about insuring against those? Covers available upto Rs. 1 crore+

c) Life Insurance: Let me tell you one real life example that my family experienced. My cousin was all of 29 years old, on Diwali day he was travelling back from his shop after conducting Laxmi Pooja. There were crackers bursting on the road, he was always safe wearing his helmet full covered stopped his two wheeler. Two kids came racing on their bikes and banged straight into him, he passed away the next day. He had a total sum assured of Rs. 5L, he was survived by a baby girl. I don't have to say you anything more. You have an opportunity to decide your value?

For myself I have a health insurance cover for the whole family, over and above the one provided by my employer. Ofcourse I have covered myself against temporary disablement and critical illness, finally I have enough life cover to make sure that I sleep well in night. Because I know even if I don't wake up tomorrow, financially my wife and daughter are taken care of!

Do you sleep well?

PS: The next article will focus calculating the right insurance amount and choosing the right product.

About the Author:

Uday Dhoot CFA, CFPCM is also India's first CIPM Certificate holder. He has been in the personal financial industry for a decade plus and has seen up close the growth of the industry in various markets of Bangalore, Delhi, Mumbai & Chennai.

Audits by Service Tax Departments Illegal

High Court strikes down Rule 5A(2) of the Service Tax Rules, 1994

By: CA. Manoj Nahata*

The audit exercise done by the Service Tax Department has gone through the judicial scanner a second time within a short time span. The author seeks attention to his article published in this very same Newsletter Volume VIII, Issue 1, February-March 2014 wherein the judgment rendered by the Hon'ble Allahabad High Court on the powers of the departmental officers to conduct Service Tax audit was discussed.

The Hon'ble Court in case of **M/s A.C.L. Education Centre (P) Ltd. & Others V/s. Union of India Thr. Secy. Deptt. of Revenue, New Delhi & Others [WP No. 11954/MB/2013]** held that the power to conduct the audit is vested with the Chartered/Cost Accountants under Section 72A of the Act and the officer may collect the material and documents required for this purpose, but cannot undertake the audit. Subject to these observations, the validity of Rule 5A (2) of the Service Tax Rules, 1994, was upheld. According to this ruling, the audit can be conducted by Chartered/Cost Accountants but not by tax officers.

That judgment was delivered in the month of December2013. Now after almost 8 months the issue has once again come up before the Hon'ble Delhi High Court in a separate case of **Travelite (India) vs Union of India and Others W.P.(C) 3774/2013 (Delhi High Court)** wherein the validity of Rule 5A of the Service Tax Rules, 1994, was again challenged. The author seeks a re-look at the subject matter in the light of the judgment of Delhi High Court in this case.

Facts of the case:

In the instant case the assessee petitioner is a registered service tax assessee. The Petitioner received a letter from the Commissioner of Service tax dated November 7, 2012 which sought its records for the years 2007-08 to 2011-12 for scrutiny by an audit party under Rule 5A(2) of the Service Tax Rules, 1994. The Petitioner being aggrieved by the Letter filed a writ petition before the Hon'ble High Court of Delhi challenging the validity of Rule 5A (2) of the Service Tax Rules brought into force vide Notification No. 45/2007-ST dated December 28, 2007 as well as the CBEC Instruction F. No. 137/26/2007-CX.4 dated January 1, 2008.

Position of Law:

We had discussed the statutory provisions in my earlier article referred to above. To re-capitulate, the relevant portions of the law are laid down in:

- Rule 5A of Service Tax Rules ,2004- Access to registered premises
- Section 14AA of Central Excise Act made applicable to Service-tax through Section 83 of Finance Act,1994 & CBEC Instruction F. No. 137/26/2007-CX.4 dated January 1, 2008.
- Section 72A of the Finance Act,1994- Provision of Special Audit by Commissioner
- Section 94 of the Finance Act,1994-Power of Central Govt. to make rules

For the sake of brevity we do not again discuss the provisions in detail. One can refer to the earlier article which can be found here.

Contention of the Petitioner:

The Petitioner contended that an assessing officer can call for records in respect of any period during which the Department seeks to intensively scrutinize receipts, etc., i.e. under a Special Audit under Section 72A of the Finance Act. It was further argued by the Petitioner that the Finance Act does not contain any substantive power to call for records for scrutiny as is permissible under Rule 5A(2) of the Service Tax Rules or for the purpose of scrutiny by any authority outside of those created under the Finance Act, such as the Comptroller and Auditor General's office.

Furthermore, the Petitioner submitted that the Rule 5A(2) of the Service Tax Rules is not within the rule making power conferred under Section 94 of the Finance Act and is squarely inconsistent with Section 72A of the Finance Act. Reliance was placed on **Municipal Corporation v. Birla Cotton, Spinning and Weaving Mills, AIR 1968 SC 1232 and General Officer, Commanding in Chief v. Subhash Chandra Yadav, (1988) 2 SCC 351**. Moreover, the handing over of records to an audit party cannot be governed by a non-statutory instrument like the Service Tax Audit Manual. The Petitioner also challenged the Instruction issued by CBEC on 01.01.2008.

The Petitioner also placed reliance on **Sahara India v. CIT (2008) 14 SCC 151**that in any event, an audit, since it carries civil consequences, cannot be ordered without a notice issued to the assessee, indicating reasons for the audit.

Contention of the Department:

The Revenue argued that Rule 5A of the Service Tax Rules was made pursuant to the power conferred under Section 94 of the Finance Act and not pursuant to Section 72A of the Finance Act. Further, the Revenue also contended that the Rule is also justified by invoking the provisions of Service Tax Audit Manual as the basis for ordering an audit.

Findings & Judgment:

Rule 5A(2) of the Service tax Rules is ultra vires the provisions of the Finance Act:

The Hon'ble Court held that Rules only give effect to statute's provisions and intent and cannot be used to create substantive rights, obligations or liabilities that are not within the contemplation of the statute. Further, the only audit within the Statute is as mentioned under Section 72A of the Finance Act, i.e. a Special Audit, when only certain circumstances are fulfilled. The Parliament thus had a clear intention to provide for only a special audit. Accordingly, Rule 5A(2) of the Service Tax Rules cannot provide for a general audit of the assessee and is ultra vires the rule making power conferred under Section 94(1) of the Finance Act.

The Court held: "This Court is thus of the opinion that any attempt to include provision for such a General audit through the back-door, such as through the impugned rule, is ultra-vires the rule making power conferred under Section 94(1). Rule 5A(2) must consequently be struck down."

Further, the Hon'ble Delhi High Court also held that the Service Tax Audit Manual is merely an instrument of instructions for the service tax authorities and do not have any statutory force. Therefore, Rule 5A(2) of the Service Tax Rules cannot be justified on the basis of the Service Tax Audit Manual.

The Instruction regarding Audit by Department is contrary to the Statue:

Further, it was held that the Instruction is also ultra vires the Finance Act since executive instructions without statutory force cannot override the law. Consequently, any notice, circular, guideline etc., contrary to statutory laws cannot be enforced since the parent statute in this regard, the Finance Act itself does not authorize a general audit of the type envisioned by the impugned Rule 5A(2) of the Service Tax Rules, and furthermore only stipulates that a Special Audit can be undertaken if the circumstances outlined in Section 72A of the Finance Act are fulfilled. The Hon'ble High Delhi Court finds that the Instruction is not only an attempt to widen the scope of the law impermissibly but also is patently contrary to the Statute. The Instruction, to the extent it provides clarifications on Rule 5A(2) of the Service Tax Rules, pertaining to Service Tax audit, is quashed.

The gist of the findings of Hon'ble Delhi High Court is as follows:

- Audit could be conducted only in specified circumstances such as if

there is reason to believe that tax has not been paid appropriately, wrong credit has been availed and utilized, there are chances of fraud, etc. as specified under Section 72A of the Finance Act.

- There is no provision extending the power for a general audit that every assessee may be subjected to on demand.
- Power stipulated under Rule 5A(2) of Service Tax Rules, 1994, along with the Central Board of Excise and Customs' (CBEC) instructions, to access the premises of the assessee and review documents cannot override the Act. Rules or instructions cannot be issued in contravention of the statutory provisions.
- Accordingly, as there is no power for conducting such an audit under the Service Tax Act, the High Court held that a service tax audit cannot be undertaken by the tax authorities.

Author's Comments:

The above judgment on the one hand has given a great relief to the assessee whereas on the other hand it has put CBEC into a serious thought process. The first and foremost concern of the revenue will be to decide whether to go for further appeal before the highest court of the land or to think of bringing retrospective legislation to validate rule 5A(2). Further this judgment is also a great set back on the part of the revenue especially when the CBEC is planning to establish a separate Service Tax Audit Commissionerate. In the cadre restructuring CBEC has proposed 45 Commissionerate exclusively for Audit. Now in absence of powers to do audit, what will happen to these Commissionerate and about 10,000 personnel who are to be appointed at these Commissionerate?

At the same time understandably, there is a confusion amongst the assessees about the applicability of this judgment particularly in places outside the jurisdiction of Delhi High Court. There are two reasons behind the same. The Allahabad High Court had not struck down the rule 5A(2) but rather had given a limited interpretation thereof. On the other hand the Delhi High Court has struck down the rule 5A (2) itself as ultra vires. Thus two different Courts have taken separate views on the validity of the matter. Thus for more clarity, the matter needs to be referred to larger Bench or Higher forum. Secondly, it is a settled position that the decision of a particular High Court is a valid judicial precedence for all subordinate courts and authorities within the territorial jurisdiction of that High Court. The authorities in another state are not bound to follow the view taken by a particular High Court in the absence of a decision by the jurisdictional High Court.

On the other hand, there is also a view among the learned circles that since rule 5A(2) has been considered ultra-vires and has been struck down by a High Court, this judgment should have force throughout country. Here, a statutory rule was under challenge & same has been struck down. Further the Finance Act, 2004 and the rules made there under are a piece of Central legislation. So if any of the provisions thereof are considered ultra-vires, such ruling should be applicable over the whole country.

For more clarity on the matter let us wait and watch what action CBEC is going to take on this issue.

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The Evil and Good or Pre Deposit

By: CA. Shivani Shah
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The Union Budget 2013, wef 06/08/2014, provided that no appeal will be entertained before the Commissioner (Appeal) and CESTAT unless a specified pre deposit of duty or penalty is made. This was by virtue of the amendment to section 35F of Central Excise Act, 1944 ('Act') (which is made applicable to service tax also)

The pre deposit is as follows

- 7.5% if appeal is filed before Commissioner (Appeals)
- 7.5% if appeal is filed before CESTAT against order of Commissioner as adjudicating authority
- 10% if appeal is filed before CESTAT against order of Commissioner (Appeals)

It may be noted that if both duty and penalty is confirmed, the percentage is only of duty or service tax. If penalty is imposed, percentage is of penalty. An upper ceiling of Rs. ten crores has been made beyond which deposits will not be made.

Whether the 10% is additional 10% or is to be calculated otherwise is still a question that needs clarity. It may be further noted that the duty demanded will include the erroneous credit taken if any, amount payable under Rule 6 of the Cenvat credit Rules, 2004.

A million dollar question that arises is whether the pre deposit can be made from the cenvat credit balance. In my view, yes, the pre deposit of duty or tax can be made from the cenvat credit balance. However, the pre deposit towards penalty cannot be made from the same.

Again, another controversy that may arise is that the pre deposit is to be made not at the time of filing appeal but at the time of hearing. Since the section is worded as 'entertain appeal', this may tantamount to hearing appeal and not accepting appeal. Hence this will be an area prone to litigation. Considering the huge time gap between filing an appeal and same coming up for hearing, no assessee would like to bear the brunt of interest for this time lag.

Considering the fact that if the assessee wins the case in its favour, a question that arises is what would happen to the pre deposit made. In this case, it has been made clear by way of amendment to section 35FF of the Act that the pre deposit will be refunded to the assessee with interest from the date of deposit to the date such payment is made. Rate of interest will be not less than 5% and not more than 36%.

Now the perception that prevailed on announcement of the condition of pre deposit was that now there will be no requirement of filing stay applications. However, even on receiving the pre deposit, there is no guarantee that recovery of balance amount will be stayed. Hence till a clarification is issued to this extent, the requirement of filing an appeal cannot be done away with. It may be noted that the provision of unjust enrichment do not apply to refund of pre deposit. Hence it is advisable to show the amount under the relevant head in the financial statements.

However, given the nature of litigations, it would not be an exaggeration to say that a huge chunk of such appeal cases are frivolous in nature. Ultimately the assessee gets relief at the higher forums. That is the silver lining that given the assessee an incentive to appeal his case to the higher ups. However, this pre condition of a deposit, will be a dampener of sorts. Huge sums of money will remain stuck in the gallows. In case of frivolous litigation, obviously it will be a blow to the assessee. The old age adage 'alls well that ends well' hence does not seem to be too relevant now!

Given the huge pendency of cases at the CESTAT, it was initially thought that this amendment will do away with the concept of stay applications and hence give some breather to the benches. Till before last month, a total of one lakh cases were said to be pending before the CESTAT. However, all in all this condition of pre deposit does not seem to serve the very purpose for which it was propagated.

The Companies Act, 2013-Related Party Transaction

By CS. Mamta Binani
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Section 188 of the Companies Act, 2013 (hereinafter referred to as "the Act") deals with "Related Party Transactions". It is applicable to all companies registered under the Act. The corresponding section is 297 in the Companies Act, 1956. The respective rules is given in Companies (Meeting of Board and its Powers) Rules, 2014 (hereinafter referred to as "the Rules").

Section 188 of the Act has been made applicable from 01.04.2014 and hence section 297 of the old Act ceases to exist.

(Observation: It may be noted that the requirements with respect to related party transactions under the Act, SEBI Laws & Accounting Standard issued by ICAI are not aligned. In case of deviation, as a thumb rule, the requirements of the stricter of the applicable law should be followed)

Related Parties with respect to a company

A related party with respect to a company in terms of **Sec 2(76)** of the Act, means any of the following persons/entities

a) the director

b) any relative of a director

c) the KMP

d) any relative of a KMP

e) a firm in which a director or his relative is a partner

f) a firm in which the manager or his relative is a partner

(Observation: for point e and f above, transactions between the company and any other partner of the firm in which the director/ manager/ relative is a partner is not attracted)

g) a private company in which a director is a member or director

h) a private company in which the manager is a member or director

i) a public company in which a director or manager is a director and holds **along with** his relatives, more than 2% of its paid up share capital

j) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions **(except those given in a professional capacity)** of a director or manager

k) any person on whose advice, directions or instructions **(except those given in a professional capacity)** a director or manager is accustomed to act

l) its holding, subsidiary or associate company

m) a subsidiary of a holding company to which it is also a subsidiary

n) any other person which the relevant Companies Rules may prescribe: as per Rule 2(1)(e) of the Companies (Meeting of Board and its Powers) Rules, 2014, the following persons shall also be deemed to be a related party with reference to a company

   i. director of the holding company or his relative

   ii. KMP of a holding company or his relative

o) In addition (i.e. the above plus the under mentioned points), for an equity listed entity (under revised clause 49), parties are considered to be related **if one party has the ability to control the other party or exercise significant influence over the other party, directly or indirectly, in making financial and/or operating decisions and includes the following:**

   i. has control or joint control or significant influence over the company; or

   ii. is a key management personnel of the company or of a parent of the company; or

   iii. the entity and the company are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others); or

   iv. one entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member); or

   v. both entities are joint ventures of the same third party; or

   vi. one entity is a joint venture of a third entity and the other entity is an associate of the third entity; or

   vii. the entity is a post-employment benefit plan for the benefit of employees of either the company or an entity related to the company. If the company is itself such a plan, the sponsoring employers are also related to the company; or

   viii. the entity is controlled or jointly controlled by a person identified as a] related party under section 2(76) of the Act or in clause (i) or (ii) above.

   ix. a person identified in (i) has significant influence over the entity (or of a parent of the entity);

Explanation: For the purpose of Clause 49(V) and Clause 49 (VII) B, the term "control" shall have the same meaning as defined in SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

(Observations:

i. a public company in which a director or manager do not hold any shares but only their relatives hold more than 2% of its paid up share capital should not be considered as a related party of the company.

ii. the aforesaid 2% paid up share capital means 2% of the aggregate paid up equity and preference share capital of the company in context.

iii. a joint venture company being included in the meaning of an associate company shall also be considered as a related party)

Meaning of Relative

Sec 2(77) of the Companies Act, 2013 read with Rule 4 of Companies (Specification of definitions details) Rules, 2014 defines **RELATIVE**.

The list is as follows:

1. Members of HUF
2. Husband & Wife
3. Father (includes step-father)
4. Mother (includes step-mother)
5. Son (includes step-son)
6. Son's wife
7. Daughter
8. Daughter's husband
9. Brother (includes step-brother)
10. Sister (includes step-sister)

Related Party Transaction

Section 188(1) read with Rule 15 of Companies (Meeting of Board and its Powers) Rules, 2014 specifies certain transactions i.e. contracts or arrangements.

Any such specified transactions entered by a company with its related party (hereinafter referred to as the "related party transactions") is regulated by the provisions and processes laid down in the aforesaid Section & related Rules of the Act.

Additionally, Clause 49 (VII) of the **equity listing agreement** lays down the requirements pertaining to related party transaction to be followed by a listed company whose equity shares are listed on recognized stock exchange.

Related Party Transactions requiring approval of the Audit Committee (wherever audit committee is applicable)

First let us check the applicability of Audit Committee

Rule 6: The following Companies will have to have a Audit Committee:

a. Listed company

b. All public companies with a paid up capital of Rs.10.00 crores or more

c. All public companies having turnover of Rs.100.00 crores or more

d. All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits of Rs.50.00 crores or more.

The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as **existing on the date of last audited financial statements** shall be taken into account for the purposes of Rule 6 (explanation to rule 6).

Role of Audit Committee (section 177(4)(iv))

a. first approval; or

b. approval for any subsequent modification of transactions of the Company with related parties

(Observation: It doesnot mention prior approval)

Related Party Transactions requiring consent of the Board of Directors

Any of the following transactions **(except those entered in the ordinary course of business of the company on an arm's length basis)** entered by a company with a **related party shall require consent of the Board of Directors given by a resolution at a meeting of the Board and shall also be subject to conditions mentioned below:**

List of transactions

a. sale, purchases or supply of any goods or materials;

b. selling or otherwise disposing of, or buying, property of any kind;

c. leasing of property of any kind;

d. availing or rendering of any services;

e. appointment of any agent for purchases or sale of goods, materials, services or property;

f. such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company;

g. underwriting the subscription of any securities or derivatives thereof, of the company.

(Observation: For point f above, such related party's appointment in holding company is not included)

Conditions

i. consent to be only obtained at a board meeting of the company.

(Observation: prior approval is not mentioned. No such consent can be obtained by passing a resolution by circulation)

ii. paid up share capital of the company which is entering into any of the above transaction(s) with a related party should be less than Rs.10.00 crores in order to be contained by the requirement of board resolution and audit committee resolution (wherever applicable) only.

iii. any interested director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.

(Observation: this requirement is as prescribed in the aforesaid Rules and not the Act. Would like to highlight here that the words used are 'not be present'. It leaves us with a thought that is it that he has to leave the board room or is the actual import-'not participate in that particular agenda item')

iv. the agenda of the Board meeting at which the resolution is proposed to be moved shall disclose:

- a. the name of the related party and nature of relationship;
- b. the nature, duration of the contract and particulars of the contract or arrangement; *(Observation: what particulars needs to be mentioned has not been specified)*
- c. the material terms of the contract or arrangement including the value, if any;

  (Observation: it mentions 'material terms')
- d. any advance paid or received for the contract or arrangement, if any;
- e. the **manner** of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;

  (Observation: valuations may be pertinent here)
- f. whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
- g. any other information relevant or important for the Board to take a decision on the proposed transaction.

Register of Contracts

It is important here to mention that the entry of this contract or arrangement will have to be done in the register and it will therefore be required for the Board to pass in its resolution, the name of the person who would be authorized to authenticate the entries being made in the register (Rule 16(2) of the Companies (Meetings of Board and its Powers) Rules, 2014 and that under whose custody the register will be kept (Rule 16(3)).

Rule 16 of the Companies (Meetings of Board and its Powers) Rules, 2014 (Chapter XII) carries the requirement of maintaining a register of such contracts or arrangements. The following points needs to be followed:

a. The register will have to be in the format prescribed vide Form MBP 4.

b. Whenever there is a cause to make entry, the said entry in this register shall have to be made at once.

c. The entries will have to be in chronological order.

d. The entries shall have to be authenticated by the company secretary of the Company or by any other person authorized by the Board for the purpose.

e. The register shall be kept at the registered office of the Company.

f. The register will have to be preserved permanently by the Company.

g. This register shall be kept in the custody of the Company Secretary of the Company or any other person authorized by the Board for the purpose.

h. A member may request the Company for extracts from such register, upon payment of such fee as may be specified in the Articles of the Company but not exceeding Rs.10.00 per page.

i. In such a case, the Company will have to provide such extracts within 7 days from the date on which such request is made.

Meaning of the expressions "office or place of profit", "arm's length transaction" and "ordinary course of business"

Explanation to Sec 188(1) of the Act defines the term "office or place of profit" and "arm's length transaction" as follows:

Office or place of profit means any office or place:

(i) where such office or place is **held by a director**, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(ii) where such office or place is held by an individual **other than a director** or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

Examples: In ABC Private Limited, there are 2 directors, Mr. X and the wife of Mr. X. They are drawing salary as Directors remuneration only and not anything else. In such a case, the provisions of 'office or place of profit' will not get hit.

In the above mentioned example, let us take another 3 situations:

a. The wife of Mr. X, who is a director is receiving commission which is not part of directors remuneration structure. In such a case, that portion of commission will be considered for the concept of 'office or place of profit'.

b. The wife of Mr. X, who is a director is receiving commission which is part of directors remuneration structure. In such a case, that portion of commission will not be considered for the concept of 'office or place of profit'.

c. The brother of Mr. X is the factory manager (any office) of ABC Private Limited and drawing a salary from the Company. In such a case, because the brother of Mr. X is not a director, any money that he draws will fall under the concept of 'office or place of profit'.

Arm's length transaction means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest (explanation (b) to section 188(1)).

Examples: Say ABC Private Limited enters into a contract with its Director for purchase of raw jute from the Director. If the concept of arm's length is to be understood then this transaction will demand that the Company buys the raw jute from the Director at a price and on such terms and conditions as would have been there for any outsider. It is pertinent here to understand that it is not the price alone which determines arm's length but also the other factors needs to be at par with other parties.

To elaborate this point of other factors-Say the payment period to other suppliers is 30 days and the Company has always made payment on the 30th day and if in this case, the payment to the Director is made on the 2nd day of the transaction, then it will not be on arm's length even if the pricing is as per market rates.

Ordinary course of business *has not been defined in the Act or rules made there under. It seems that the ordinary course of business will cover the usual transactions, customs and practices of a business and of a company.*

In its guidance to auditors, the Institute of Chartered Accountants of India has included following few examples of transactions that are considered outside the entity's normal (or ordinary) course of business:

1. *Complex equity transactions, such as corporate restructurings or acquisitions.*
2. *Transactions with offshore entities in jurisdictions with weak corporate laws. The leasing of premises or the rendering of management services by the entity to another party if no consideration is exchanged.*
3. *Sales transactions with unusually large discounts or returns.*
4. *Transactions with circular arrangements, for example, sales with a commitment to repurchase.*
5. *Transactions under contracts whose terms are changed before expiry.*

The assessment of whether a transaction is in ordinary course of business is very subjective, judgmental and can vary on case-to-case basis giving consideration to nature of business and objects of the entity. The purpose of making such assessment is to determine whether the transaction is usual or customary to the company and/ or its line of business. ***Companies should consider variety of factors like size and volume of transactions, arms-length, frequency, purpose, etc. to make this assessment.***

So this brings us to a vital point, i.e., if the contract or arrangement is entered into by an unlisted entity by way of being in an ordinary course of business and on an arm's length basis, then even a board resolution will not be required. This is aptly clear from the 3rd proviso to section 188(1) of the Companies Act, 2013 and therefore since no cause arises, hence no entry in register in Form MBP 4 is required to be made. So, it can be said that section 188 will not be applicable in such cases. It is important to mention here that for listed companies, the scenario will be different.

For a better understanding, let us produce the 3rd proviso to section 188(1) of the Act:

'Provided also that nothing in this sub-section shall apply to any transactions entered into by the Company in its ordinary course of business other than transactions which are not on an arm's length basis.'

Now, there could be 4 situations:

a. A transaction being entered into by say ABC Private Limited with its Director **in its** ordinary course of business but **not** on arm's length basis

b. A transaction being entered into by say ABC Private Limited with its Director **in its** ordinary course of business **and on** arm's length basis

c. A transaction being entered into by say ABC Private Limited with its Director **not** in its ordinary course of business but **on** arm's length basis

d. A transaction being entered into by say ABC Private Limited with its Director **not** in its ordinary course of business and also **not** on arm's length basis

Action points:

a. Board Resolution will be required along with other steps

b. Board Resolution will **not** be required; General body resolution will **not** be required

c. Board Resolution will be required along with other steps

d. Board Resolution will be required along with other steps

This leads us to the point that both the situations will have to co-exist for non applicability of section 188

a. ordinary course of business and

b. on arm's length basis

Related Party Transactions requiring prior approval of the company by a special resolution

In order to judge whether the Company for entering into related party transactions, will need to pass a prior special resolution at its members meeting or not, the Company has to check two factors:

a. Its paid up share capital: Does it have a paid up share capital of Rs.10.00 crores or more (Rule 15(3)(i)

b. The transactions: Whether it falls in the criteria mentioned herein under.

If any one of (a) or (b) gets hit, then the Company has to pass a prior special resolution. **For the transactions, except those entered in the ordinary course of business of the company and on an arm's length basis will have to be considered.**

List of Transactions:

This list has been provided in Rule 15(3)(ii). The list of transactions is the list as mentioned in section 188(1)(a) to (g). **For the requirement of prior special resolution**, criteria has been added to all the points, i.e. for all from (a) to (g) under section 188(1).

a. sale, purchase or supply of any goods or materials

b. appointment of any agent for purchase or sale of goods or materials

criteria:

Directly or through appointment of agents **exceeding 25%** of the annual turnover on the basis of the audited financial statement of the preceding financial year of the Company (hereinafter referred to as the turnover) (also refer explanation 1 under Rule 15(3))

c. selling or otherwise disposing of, or buying, property of any kind

d. appointment of any agent for purchase or sale of property

criteria:

Directly or through appointment of agents **exceeding 10%** of net worth of on the basis of the audited financial statement of the preceding financial year of the company (hereinafter referred to as the net worth) (also refer explanation 1 under Rule 15(3))

e. leasing of property of any kind

criteria:

Exceeding ten 10% of the net worth or exceeding ten percent of turnover

f. availing or rendering of any services

g. appointment of any agent for purchase or sale of services

criteria:

Directly or through appointment of agents **exceeding 10%** of the net worth

h. appointment of such related party to any office or place of profit in the company, its subsidiary company or associate company

criteria:

At a monthly remuneration **exceeding Rs.2.50 lakhs**

remuneration for underwriting the subscription of any securities or derivatives thereof, of the company

criteria:

Exceeding 1% of the net worth

Other conditions/ requirements

I. Holding-**wholly owned** Subsidiary (Rule 15)

In case of wholly owned subsidiary, **the special resolution passed by the holding company** shall be sufficient for the purpose of entering into related party transactions as mentioned above. *In other words, no separate special resolution is required to be passed by the subsidiary company*.

II. Related party, if member, **cannot vote** at the concerned general meeting (2nd proviso to section 188(1))

No member of the Company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the Company, **if such member is a related party**.

(Observation1: Should imply member who is a related party to the contract or arrangement being sought to be entered into… drafting of the relevant provisions could have been better)

(Observation2: this requirement is as prescribed in the Act as second proviso to Sec 188(1) and not in the related Rules unlike the clause for non-voting by interested director which is prescribed in the relevant Rules)

III. Contents of the **explanatory statement** (Rule 15)

The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 of the Act shall contain the following particulars namely:

(a) Name of the related party

(b) Name of the director or key managerial personnel who is related, if any

(c) Nature of relationship

(d) Nature, material terms, monetary value and particulars of the contract or arrangement

(e) Any other information relevant or important for the members to take a decision on the proposed resolution

Reporting in Board Report

As per Section 188(2) of the Act, every contract or arrangement entered into by the Company under Section 188(1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

(Observation: Please note that from the plain reading of the above, the relevant provisions requires reporting for every contract or arrangement entered into by the company whether approved by the Board or by special resolution)

Three-leg approval process (recap):

All unlisted companies, including private limited companies and the companies whose any security other than equity is listed:

Audit Committee meeting (prior not specified)

Board of Directors meeting (prior not specified)

General meeting **(prior approval specified)**

LISTED COMPANIES (companies whose equity is listed on any recognized stock exchange), i.e. norms for Listed Companies (equity listed) as per amended clause 49 of equity listing agreement

Clause 49(VII) A

Meaning of related party transactions

For the purposes of such companies, a related party transaction is a transfer of resources, services or obligations between a company and a related party, **regardless of whether a price is charged**.

(Observation: The above meaning is in addition to whatever has been mentioned in the Act/ Rules for non-listed companies)

Clause 49(VII) B

What is the meaning of 'related party'

For the purposes of such companies, a 'related party' is a person or entity that is related to the company.

Parties are considered to be related if one party has the ability to **control** the other party or **exercise significant influence** over the other party, directly or indirectly, in making financial and/ or operating decisions and **includes** the following*:

* the list is provided in the earlier part of this write-up.

Explanation: For the purpose of Clause 49(V) and Clause 49 (VII) B, the term "control" shall have the same meaning as defined in SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Clause 49(VII) D

Audit Committee approval-**Prior**

Provides that all such companies to take **prior approval** of audit committee for **all** related party transactions.

*(Observation: It does not mention material related party transactions. Therefore, for **all** related party transactions, be it material or non-material, audit committee's prior approval will be required)*

Clause 49(VII) E

Shareholders approval-**Does not mention prior**

a. All **material** Related Party Transactions shall require approval of the shareholders through special resolution and

b. The related parties shall abstain from voting on such resolutions.

(Observation1: It mentions material related party transactions. Therefore, for non-material related party transactions, shareholders approval will not be required)

(Observation2: It is to be noticed that the related parties shall have to abstain from voting on such resolutions)

(Observation3: Revised clause 49 requires shareholders approval even for transactions entered in ordinary course of business and on arm's length)

(Observation4: The requirement of prior approval will be governed by the Companies Act/ Rules and additionally the listing agreement will have to be followed)

The provisions of **board meeting** requirement will be as per the Companies Act, 2013 read with relevant rules.

Clause 49(VII) C

Formulation of policy

The Company shall have to formulate:

a. a **policy on materiality** of related party transactions; and

b. also on **dealing** with Related Party Transactions.

Clause 49(VII) C

Measurement of materiality

A transaction with a related party shall be considered material if the transaction/ transactions to be entered into individually or taken together with previous transactions during a financial year:

a. **exceeds 5%** of the annual turnover; or

b. **exceeds 20%** of the net worth of the Company; **whichever is higher**.

The turnover/ net worth figure to be taken as per the last audited financial statements of the Company.

(Observation: The measurement of materiality is different from that given for non-listed entities)

Clause 49(VIII)

Disclosure Requirements

Details of all material transactions with related parties shall be disclosed:

a. quarterly along with the compliance report on corporate governance and

b. the company shall have to disclose the policy on dealing with Related Party Transactions on its website and also in the Annual Report.

c. Reporting in Board's Report has been mentioned in the earlier part, i.e. as per Section 188(2) of the Act, every contract or arrangement entered into by the Company under Section 188(1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

From this part onwards, the provisions are applicable to all kinds of companies

Related Party Transaction which is Voidable

As per the provisions of section 188(1), any contact or arrangement entered into by the company with its related party must be approved by the Board or pre-approved/ approved by the company by special resolution as case may be.

Section 188(3) of the Act

However, where any contract or arrangement is entered into by a director or any other employee, **without obtaining the consent of the Board or approval by a special resolution in the general meeting** under sub-section (*1*) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting **within 3 months** from the date on which such contract or arrangement was entered into, such contract or arrangement shall be **voidable at the option** of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

(Observation: The provision of Sec 188 does not specify prior consent of Board for specified related party transactions. However, it expressly provides for prior approval of the company by special resolution for specified related party transactions. A ratification clause as aforesaid for an action which requires prior approval is quite unusual)

It should be noted that, even if a related party transaction, requiring prior approval of the shareholders, is entered by the company without obtaining any such approval and subsequently ratified as required within 3 months from the date of such transaction, it shall still not absolve the company and/or its officials concerned from the penal consequences of default prescribed below in terms of Section 188(5) of the Act)

Consequences for entering into unauthorised Contract or Arrangement

Voidable Contract- Section 188(4)

In addition to the penal consequences, mentioned below, as per the provisions of Sec 188(4), It shall be open to the company to **proceed against a director or any other employee** who had entered into voidable contract or arrangement in contravention of the provisions of section 188 for recovery of any loss sustained by it as a result of such contract or arrangement.

Penalty-Section 188(5)

Any director or any other employee of a company, **who had entered into or authorised** the contract or arrangement in violation of the provisions of section 188 shall:

a. **In case of listed company**, be punishable with:

i. **imprisonment** for a term which may extend to 1 year; or

ii. fine which shall not be less than Rs.25,000 but which may extend to Rs.5,00,000; or

iii. both;

b. **In case of any other company**, be punishable with:

i. fine which shall not be less than Rs.25,000 but which may extend to Rs.5,00,000;

(Observation1: Stricter & higher penalties including imprisonment is prescribed in case of listed companies. Clearly there is an increased role & responsibilities of the Board and the Auditors. The supervisory responsibility which was earlier with the Central Government has now been passed on to the shareholders under the new Act)

(Observation2: One needs to keep in mind the provisions of section 134 (Board's report), in case the company contravenes the provisions regarding disclosure in Board's Report. The company shall be punishable with fine which shall not be less than Rs.50,000 but which may extend to Rs.25,00,000 and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than Rs.50,000 but which may extend to Rs.5,00,000 or with both)

(Observation3: The penalties which are 'with both' are non-compoundable in nature. It can be made compoundable only with the permission of a special court)

Other sections in the Companies Act, 2013 relating to contracts – section 192 and section 193

Section 192 (this doesnot have a corresponding section in the Companies Act, 1956)

This section restricts the non-cash transactions involving directors.

Section 192(1)(a)

It mentions that, a company is restricted to enter into an arrangement by which:

a. its director

b. the director of its holding company

c. the director of its subsidiary company

d. the director of its associate company

e. a person connected with such director

(Observation: person connected has not been defined/ explained)

Is restricted towards:

a. acquiring assets from the company

b. is to acquire assets from the company

and the section specifically mentions:

a. for such arrangements entered into for consideration other than cash

Section 192(1)(b)

It is a commutative section, i.e. the opposite is also restricted. It mentions that, a company is restricted to enter into an arrangement by which:

a. the company itself acquires or is to acquire assets from such persons (as mentioned above-a,b,c,d and e)

b. for consideration other than cash

Section 192(1): Prior approval required in a general meeting by way of ordinary resolution

To go ahead with such arrangement/ transaction:

a. prior approval by a resolution of the company in a general meeting will be required and

b. if the director/ connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company

Section 192(2): Notice of such general meeting to include the mandated particulars

The notice for approval of the resolution in general meeting sent/ issued by the:

a. the company

b. its holding company (whereever applicable)

shall include in it:

a. the particulars of the arrangement along with

b. the value of the assets involved in such arrangement **duly calculated by a registered valuer**.

Section 192(3): If contravention of section 192, voidable at the instance of the company

Any arrangement entered into by:

a. a company or

b. its holding company (wherever applicable)

in **contravention** of the provisions of section 192 of the Act, **shall be voidable at the instance of the company**.

There are 2 situations given in section 192(3) which rescues such persons/ company from the arrangement being declared as void. They are:

a. the restitution of any money or other consideration which is the subject matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or

b. any rights acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

Section 193 (this does not have a corresponding section in the Companies Act, 1956)

This section talks about contracts by the sole member who is also a director of One Person Company (OPC) with the One Person Company.

Conditions for attracting this section (section 193(1))

a. where the OPC (be it limited by shares or by guarantee)

b. enters into a contract

c. **with its sole member who is also its director**

d. **not** in its ordinary course of its business

If the above conditions are getting hit, the steps to be taken by OPC (section 193(1) and (2))

a. the OPC shall

b. for all such contracts entered into which is not in writing

c. have to ensure that the terms of the contract or offer are contained in a memorandum; or

d. have to ensure that the terms of the contract or offer are recorded in the minutes of the first meeting of its Board held next after entering into the contract

ROC intimation (section 193(2))

The OPC shall have to inform the ROC about:

a. every contract entered into by the OPC and

b. recorded in the minutes of the meeting of its Board under section 193(1)

The time frame for such information to ROC is 15 days from the date of approval by its Board.

Please note that section 188 is applicable to OPC also. No exemption as such has been given in section 188.

NATIONAL CONVENTION FOR CA STUDENTS

DRISHTIKON – QUEST FOR EXCELLENCE

Guwahati Branch of ICAI & Guwahati Branch of EICASA jointly hosted a two day "National Convention for CA Students" on 3rd & 4th August 2014under the aegis of Board of Studies, ICAI at ITA Centre, Guwahati. The Convention was inaugurated with lighting of ceremonial lamp by CA.K Raghu, President of ICAI in the presence of CA. M Devaraja Reddy, Chairman, Board of Studies, CA. Sumantra Guha, Central Council Member, CA Subhash Chandra Saraf, Chairman EIRC, CA. Pramod Dayal Rungta, EICASA Chairman, CA Manish Goyal, Branch Co-ordinator, CA.K P Sarda, Chairman, Guwahati Branch & CA. Dhiraj Kumar Jain, Chairman, EICASA, Guwahati Branch.

Branch Chairman CA. K P Sarda felicitating CA. K Raghu, President, ICAI at Students Convention

A Theme Song was launched for the first time on such National Convention which was written, composed and sung by CA. Rajkumar Jain, Member Guwahati Branch. The Theme song was also tuned in the leading Radio FM Station 94.3. President CA. K Raghu highly praised the concept of introducing theme song and also expressed his opinion that this type of initiative will definitely motivate students to join such programmes.

L to R Ms. Kiran Khaitan, Vice-Chairperson, EICASA, Guwahati; CA. Sumantra Guha, Central Council Member, ICAI; CA. M Devaraja Reddy, Chairman, BOS, ICAI; CA. K Raghu, President, ICAI; CA. K P Sarda, Branch Chairman; CA. Subhash Saraf, Chairman, EIRC; CA. P D Rungta, Vice-Chairman, EIRC; CA. Dhiraj Jain, Chairman, EICASA, Guwahati

Former Central Council Member CA. Pawan Kr Sharma, Past EIRC Chairman CA. Debashis Mitra &a Galaxy of Past Chairmen of Guwahati Branch were present in the convention. Around 650 students attended the Convention.

L to R: CA. Sumantra Guha, Central Council Member, ICAI; CA. M Devaraja Reddy, Chairman, BOS, ICAI; CA. K Raghu, President, ICAI; CA. K P Sarda, Branch Chairman; CA. Subhash Saraf, Chairman, EIRC addressing Press at ITA Centre, Machkhowa, Guwahati

The program was started by Ms. Kiran Khaitan, Vice Chairperson of EICASA, Guwahati which was followed by a welcome address by CA. K P Sarda, Chairman, Guwahati Branch. CA. K Raghu, President, ICAI informed the House about various initiatives of the ICAI for all round growth of the CA Students. He told the students that CA Course is the best in the world. He also shared with the students the tips for success. Chairman, Board of Studies CA. M Devaraja Reddy also addressed the students and informed them about the CA Curriculum and benefits of the profession. Chairman EIRC CA. Subhash Chandra Saraf and EICASA Chairman CA. Pramod Dayal

Keynote Speaker CA. Vinod Gupta, Delhi chairing the knowledge session on Direct Taxes

Rungta also addressed the students and shared their views on the benefits of students from such type of programmes. The session then was made interactive wherein various queries were raised by the students before the President and Chairman, Board of Studies. A Souvenir "**Drishtikon**" edited by CA. Pankaj Jain was also released to commemorate the occasion. The Session was concluded with

Keynote Speaker CA. Vikash Jain, Kolkata distributing participation certificate in the knowledge session on Auditing

Branch Activities

Keynote Speaker CA. (Dr.) Debashis Mitra, Guwahati, chairing the knowledge session on Companies Act 2013

Vote of Thanks by EICASA, Guwahati Chairman CA. Dhiraj Kumar Jain.

1st Technical Session on Direct Taxes was initiated by EICASA Member Manabendra Bora. **CA. Vinod Gupta,** from New Delhi chaired the session. Ms. Niharika Saboo from Guwahati & Mr. Deep

Keynote Speaker CA. Arun Agarwal, Kolkata chairing the knowledge session on Indirect Taxes

Chakraborty from Noida presented their papers on "E-Filing & E Payment – Facilitating Effective Tax Compliance while Ms. Srinivasan Iswarya from Chennai presented paper on "TDS & TCS on Income Tax Act, 1961". The Session ended with Vote of Thanks by CA. Kaberi Bhuyan, Immediate Past Chairperson of Guwahati Branch of EIRC.

2nd Technical Session on Auditing was initiated by EICASA Treasurer Mr. Shubham Agarwal. This session was chaired by **Past EIRC**

Motivational Speaker CA. Amar Agarwal, Kolkata addressing the audience & CA. Indrani Hazarika, Dubai, speaker on the topic IFRS also gracing the dais

Chairman CA. Vikash Jain from Kolkata. Ms. Neha Navalakha of Guwahati presented her paper on "Auditor's Rotation: Raising Auditors Independence" while Mr. Naresh Chandrasekar from Chennai and Mr. Pratik H Mehta from Ahmedabad presented their papers on "Integrated Reporting: Towards Greater Accountability". The Session ended with vote of thanks by CA. Mahabir Agarwalla, Treasurer Guwahati Branch.

On the second day of the Convention **3rd Technical session** on Company Laws was initiated by EICASA Member Ms. Monica Jain. **CA. (Dr.) Debashis Mitra chaired the session**. Mr. Nikhil Chhabra from Ludhiana and Mr. Lohit Poddar of Guwahati presented their papers on "Significant Changes in the Companies Act,

All the student Paper Presenters with our Past Chairman CA. Ravi Patwa of Silchar

2013"whereas Mr. Priyank Banker from Ahmedabad presented his paper on "Auditor's role vis-a-vis the Companies Act, 2013". The Session ended with Vote of Thanks by CA. Rohit Agarwal, Managing Committee Member Guwahati Branch.

4th Technical Session on Indirect Tax was initiated by EICASA Member Mr. Lohit Poddar. This **session was chaired by CA. Arun Agarwal** from Kolkata. Ms. Manmeet Kaur Kalra from Jorhat presented her paper on "Impact of Introduction of Negative List of Services". On the other hand, Ms. Anchal Ratnalal Mundra from Aurangabad and Mr. Abhiyansh Kumar Dikshit from Balaghat presented their papers on "Service Tax Implication – Real estate & Construction Business". The session ended with vote of thanks by CA. Sharad Agarwala, Nominated member of EICASA, Guwahati.

Jubilant Students rocking the floor during Cultural Evening "Sargam"

After all the 4 technical Sessions, a special session on "**Self Motivation"** was organised, which was initiated by EICASA Secretary Mr. Vijay Sharma. In the session CA. Amar Agarwalla from Kolkata shared his views and ideas with the students for their successful future. He also provided various tips for the exams. CA. Amar Agarwalla spoke on the CA curriculum as well as the opportunities for CA's in various fields for the development of the economy. A special Address was also given by CA. Indrani Hazarika from Dubai Chapter of ICAI. She spoke on the Accounting policies in Dubai and opportunities for the CA's there. This session was ended with vote

of thanks by CA. Rakesh Agarwalla, Secretary, Guwahati Branch.

In the valedictory session, EICASA, Guwahati Chairman CA. Dhiraj Kumar Jain in the presence of EIRC Secretary CA. Anirban Dutta acknowledged the support of Board of Studies, the Institute, EIRC, all the paper Checkers, Judges, Managing Committee Members, EICASA Committee Members, other Working Committee Members, Paper Presenters, Members and Students for success of the convention.

Paper presenters were given a memento and a participation certificate. As per the decision of panel of Judges consisting of CA. Devajit Sharma, CA. Anil Kumar Agarwala & Technical Session Chairmen, following were declared as best paper presenters:-

a) **Ms. Neha Navalakha, Guwahati and Mr. Naresh Chandrasekar, Chennai : Best Paper Presenters (Auditing)**

b) **Mr. Pratik H Mehta, Ahmedabad: 2^{nd} Best Paper Presenter (Auditing)**

c) **Mr. Lohit Poddar, Guwahati: 3^{rd} Best Paper Presenter (Corporate Laws)**

The Convention ended with a cultural programme "Sargam" where the Students got a chance to showcase their talents in other curricular activities.

The event was covered by almost all the local print & electronic media including Doordarshan Kendra, Guwahati.

Submission of Pre Budget Memorandum to the State Government

CA. K P Sarda, Branch Chairman along with CA. Bikash Agarwala, Past Chairman of the Branch attended a pre- budget meeting on 4^{th} August 2014 convened by the Hon'ble Chief Minister of Assam Shri Tarun Gogoi at his office. A memorandum was presented before the Hon'ble Chief Minister on behalf of our branch which included various suggestions on the present state tax regime. The memorandum was prepared keeping in mind the interests of larger section of the society and the professionals of the state of Assam.

Independence Day Celebration

The members of the branch celebrated 68^{th} Independence Day of the country with Great Spirit and Joy by hoisting the National Flag in presence of the renowned freedom fighter Padmashree Hema Bharali. A special patriotic celebration was also held at the auditorium to pay tribute to the nation on this grand occasion.

Members & dignitaries at Flag Hoisting at Branch Premises

Branch Chairman CA. K P Sarda with Nonagenarian Freedom Fighter Padmashree Hema Bharali, Chief Guest of the occasion !!

CPE Meet on "Recent Changes in Tax Audit & State Taxes"

A3 hour CPE meet was organised on "Recent Changes in Tax Audit & State Laws" at the Auditorium, ICAI Bhawan, Maniknagar, Guwahati on Saturday, the 16^{th}August, 2014. The event began with the introductory remarks by CPE Committee Chairman CA. Rohit Agarwal whereas the Branch Chairman CA. K P Sarda in his welcome address updated the members about the various activities of the Branch in the recent past & also apprised the members about the forthcoming events.

L to R: CA. Rohit Agarwal, Chairman, CPE Committee; CA. K K Chhaparia, Kolkata, Speaker; Advocate G K Joshi, Session Chairman, CA. K P Sarda, Branch Chairman; CA. O P Agarwalla, Past Chairman & Speaker; CA. Rakesh Agarwala, Branchh Secretary

The Seminar was aimed at in-depth discussion on Recent Changes in Tax Audit Reporting under Income Tax Act, 1961, where learned Speaker CA. K K Chhaparia from Kolkata updated the members with the changes. CA. O P Agarwalla, past chairman of the branch discussed the recent Amendments in Assam VAT Act, 2003 and

Branch Activities

Assam Entry Tax Act, 2008 including the State budget proposals tabled in State Assembly. The Session was chaired by the Senior Advocate Sri G K Joshi. The Branch Secretary CA. Rakesh Agarwalla offered the formal vote of thanks.

INTER SCHOOL DEBATE COMPETITION

Prof. Deven Dutta, Speaker of the Debate along with debaters

Group Photographs with Speaker, Judges, Winners & Organisers

An inter school debate competition was organized on 23rd August 2014 at Auditorium, ICAI Bhawan, Manik Nagar, Guwahati. A total number of 8 schools participated in the event. Prof. Deven Dutta acted as the Speaker of the debate where as CA. Rajkamal Bhuyan, Dr. Chandana Choudhury Barua & Mr. Swapan Jyoti Sarma were the judges. CA. Mahabir Agarwala, Treasurer, Guwahati Branch initiated the program followed by the welcome address by the Branch Chairman CA. K P Sarda. Marias Public School was awarded as the Best School Participant. Ms. Chadrawali Goswami of South Point School was awarded as the winner of the competition followed by Ms. Akansha Nandi of Faculty HS School as the 1st Runner Up. The 2ndRunnersUp were Ms. Darshana Devi of Guwahati Commerce Collage and Mr. Anuranan Kumar Kazi of Maharishi Vidya Mandir, Silpukhuri. The program ended with the vote of thanks by Branch Secretary, CA. Rakesh Agarwala. Many students participated as audience and cheered those taking part in the competition.

YOUTH FESTIVAL OF CA STUDENTS

A Youth Festival was organised for the CA Students on 31st August, 2014 at Auditorium, ICAI Bhawan, Guwahati by the Guwahati Branch of Eastern India Chartered Accountants Students

Lighting of the Ceremonial Lamp

Group Photograph of the occasion

Association (EICASA). The program started with the lighting of the lamp by CA. K P Sarda, Branch Chairman& CA. Dhiraj Kumar Jain, EICASA, Guwahati Chairman. The Youth Festival encompassed various fun-filled activities for the students. The program was organised under the leadership of a group of young & dynamic Chartered Accountants - CA. Kamal Mour, CA. Anjana Mour, CA. Nikita Agarwal, CA. Ronak Agarwal, CA. Vasundhara Kejriwal, CA. Ankit Jalan, CA. Prarthana Sharma & CA. Preeti Surana. All the managing committee members of EICASA, Guwahati attended the event. A large number of students participated in the fest from various parts of the north eastern region. The program ended with the prize distribution to the winners.

Members' Update

1. In respect of Notification no. 26/2014 of the Central Excise (N.T.) dated 27-Aug-2014, Rule 9 of the Cenvat Credit rules has been amended and certificate issued by Indian Railways is now an eligible document for cenvat credit.

   For details please: Click Here

2. In terms of Notification No.18/2014 of the Service Tax, the tax base of the act has been widened and few amendments are made in the Negative List of Services as under :

   a) **Sale of space or time slot for advertisement:** Selling of space for advertisements in print media (only) would remain in the Negative List. Advertisement in any other form will be taxable. Print media has been defined as book (excluding business directory, yellow pages and trade catalogues) and newspaper.

   b) **Transport of passengers by radio taxi/radio cab:** Service provided by radio-taxis has been excluded from the scope of metered cab, which is a part of the negative list and hence become taxable. However, abatement of 60% would also be made available to radio taxi service, subject to non-availment of cenvat credit on capital goods, input and input services.

   For details please: Click Here

3. **NIL TDS Return: File Declaration for Non Filing of TDS Statement on TRACES**: If an assessee is not required to submit TDS statement for FY 2013-14 and has not filed any TDS Statements in FY 2013-14 , than the assessee is required to submit a declaration by taking appropriate action at the TRACES. See more at: Click Here

4. In exercise of power conferred by section 119 of the Income-tax Act ('the Act'), the Central Board of Direct Taxes (CBDT) hereby extends the due date for obtaining and furnishing of the report of audit under section 44AB of the Act for Assessment Year 2014-15 in case of assessees who are not required to furnish report under section 92E of the Act from 30th day of September, 2014 to 30th November, 2014.

   For more details, please: Click Here

Take a Break !!

THE ICE BUCKET CHALLENGE FUN OR A NOBLE CAUSE??

The thought of writing an article on "Ice Bucket challenge" fascinated me after I noticed the videos of people doing the Ice Bucket Challenge going viral over the social media without people even aware of what actually is this Ice Bucket Challenge all about. It has become more a thing for entertainment in social media without even people pondering and interested to know about the origin of this noble challenge.

So let's start this up marketed topic with what is Ice Bucket Challenge??

The Ice Bucket Challenge, sometimes called the ALS Ice Bucket Challenge, is an activity involving dumping a bucket of ice water on someone's head to promote awareness of the disease amyotrophic lateral sclerosis (ALS) and encourage donations to research. It went viral throughout social media during July-August 2014. In the US, people participate for the ALS Association, and in the UK, people participate for the Motor Neurone Disease Association. The challenge dares nominated participants to be filmed having a bucket of ice water poured on their heads and challenging others to do the same. A common stipulation is that nominated people have 24 hours to comply or forfeit by way of a charitable financial donation.

Next Moving to the Origin of Ice Bucket Challenge:

The origins of the idea of dumping cold water on one's head to raise money for charity are unclear and have been attributed to multiple sources. From mid-2013 to early 2014, a challenge of unknown origin often called the "Cold Water Challenge" became popular on social media in areas of the northern United States. The task usually involved the option of either donating money to cancer research or having to jump into cold water.

Rules of Ice Bucket Challenge:

Within 24 hours of being challenged, participants have to record a video of themselves in continuous footage. First, they are to announce their acceptance of the challenge followed by pouring ice into a bucket of water. Then, the bucket is to be lifted and poured over the participant's head. Then the participant can call out a challenge to other people.

Whether people choose to donate, perform the challenge, or do both varies. In one version of the challenge, the participant is expected to donate $10 if they have poured the ice water over their head or donate $100 if they have not. In another version, dumping the ice water over the participant's head is done in lieu of any donation, which has led to some criticisms of the challenge being a form of "slacktivism". Individual videos have included the participant saying that they will be making a donation along with performing the challenge.

Effects of Ice Bucket Challenge:

Prior to the challenge, public awareness of the disease amyotrophic lateral sclerosis (ALS) was relatively limited; the ALS Association state that prior to the challenge going viral only half of Americans had heard of the disease .

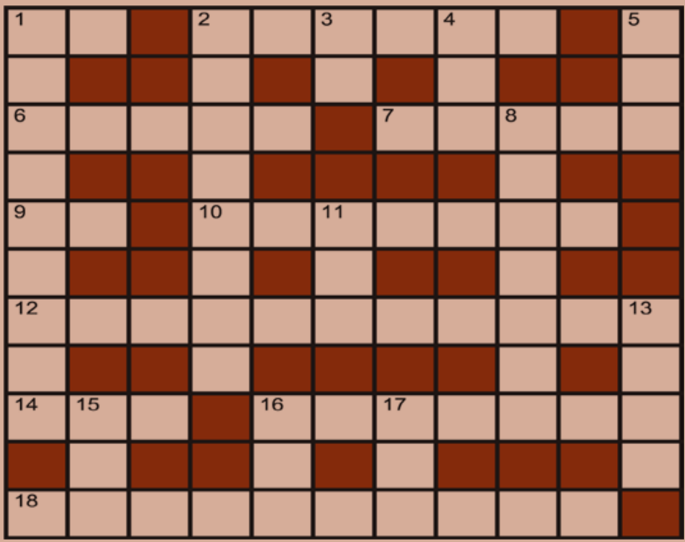
The ALS Association, which had raised $64 million in all of 2013, raised more than $10 million on Thursday, August 21, 2014 alone.

Criticism of Ice Bucket Challenge:

A number of criticisms have arisen relating to the campaign, accusing it of being self-congratulatory, focusing primarily on fun rather than donating money to charity, and as an example of substituting a trivial activity for more genuine involvement in charitable activities. Criticism has also targeted the waste of water, especially in California, due to that region's ongoing drought.

- Compiled by Priyanka Maheshwari
Assistant Manager Finance, ITC Limited
Source: Wikipedia

CROSSWORD # 16



Down:

1 See 10 across (9)
2 Indian ambassadors of Interpol's 'turn back crime' campaign (8)
3 Southernmost Indian State (2)
4 Armed force of a Royal Neighbour (3)
5 Mineral Source (3)
8 Microsoft CEO (7)
11 Assets - Liabilities (3)
13 Orbital Period of the Earth (4)
15 Measure of Profitability of Investment (3)
16 A leading Tax Publisher (3)
17 Osborne Smith was its first Governor (3)

QUICK CLUES

Across:

1 Not the Previous Year (2)
2 Planet first observed through telescope by Galileo in 1610 (6)
6 Independent Directors' Repository is a joint initiative of ICAI, ICSI and .... (5)
7 Author of The Divine Comedy (5)
9 Loan repayable over a fixed term (2)
10 UEFA best player of the year (also CR7) (with 1 down) (7, 9)
12 The first Glass-domed train in India will take you to this tourist destination (11)
14 Monalisa is ...... on poplar (3)
16 Windows Phone personal assistant (7)
18 National Convention for Students at Guwahati (10)

SOLUTION CROSSWORD # 15

Congratulations to **CA. Mohammed Mandlaywala** for submitting correct solution to crossword # 15

Guwahati Branch Managing Committee for the Session 2013-16 and Office Bearers for the year 2013-14

Designation	Name	Contact No.	E-mail
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Secretary	CA. Rakesh Agarwala	9864020068	rakeshagrl_ca@yahoo.com
Treasurer	CA. Mahabir Agarwala	9435198133	mahabir_agarwala@rediffmail.com
Member	CA. Rohit Agarwal	9435058514	aknc@rediffmail.com
Member	CA. Dhiraj Kumar Jain	9435013867	dhiraj@icai.org
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चलते चलते.....

कुछ मंजिलों के मुकाम नहीं होते
कुछ रिश्तों के नाम नहीं होते

पता होते कुछ सवालों के जबाब
तो सब इतने परेशान नहीं होते