CPE CREDIT: 6 HOURS

NATIONAL SEMINAR

Theme

" RETAILING GIANTS ENTRY : EFFECT ON INDIAN ECONOMY"

on

Friday, 7TH SEPTEMBER 2007

at

Hotel GOKULAM CONVENTION CENTER

Kaloor, Ernakulam

Organised by:

CORPORATE & ALLIED LAWS COMMITTEE OF

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF

Host:

ERNAKULAM BRANCH OF SIRC OF ICAI

PROGRAMME

09.00 a.m. : Registration

9.30 a.m. to 11.15 a.m. : First Technical Session

"AUDIT U/S 44 AB OF THE INCOME TAX ACT, 1961 AND RELATED ISSUES WITH SPECIFIC REFERENCE TO CORPORATES"

Chairman : **CA. UTTAM P. AGARWAL,** Chairman, Committee for Members in Industry, ICAI, New Delhi

Speaker : **CA. VIMAL PUNMIYA** , LL.B (Gen), FCA, MUMBAI.

11.15 a.m. to 12.00 noon : Inaugural Session

About the Conference : **CA. V. C. JAMES,** Member, Central Council, ICAI

Special Address : **CA. VED KUMAR JAIN,** Vice President, ICAI, New Delhi, **"Corporate Taxation - Special Issues"**

: **CA. UTTAM P. AGARWAL**
Chairman, Committee for Members in Industry, ICAI, New Delhi
"Role of CAs in Industry in Corporate Growth as CFOs, Upcoming CFOs and as Entrepreneurs"

Felicitation : **CA. YOGESH GUPTA, IPS**
Chairman & Managing Director, Kerala State Civil Supplies Corporation Ltd.

12.00 noon to 1.15 p.m. : Special Session

"ENTRY OF RETAILING GIANTS IN INDIA AND EFFECT ON INDIAN ECONOMY"

Chairman : **CA. M. C. Joseph**, FCA, Past Central Council Member, ICAI

Speaker : **SRI. PHILIP JOSE**, MBA, KPMG, New Delhi.

1.15 p.m. to 2.00 p.m. : LUNCH

2.00 p.m. to 3.00 p.m. : Third Technical Session

"EMERGING OPPORTUNITIES FOR CAs IN CORPORATE SECTORS - The initiatives of CALC"

Chairman : **CA. JOSE POTTOKARAN**, FCA, Past Central Council Member, ICAI

Speaker : **Dr. ALOK RAY**, Secretary, Corporate & Allied Laws Committee, ICAI, New Delhi

3.00 p.m. to 4.30 p.m. : Fourth Technical Session

"CORPORATE TAX PLANNING & TDS"

Chairman : **CA. VENUGOPAL C. GOVIND**, FCA

Speaker : **CA. K. C. DEVDAS**, FCA, Seconderabad

4.30 p.m. to 5.00 p.m. : Valedictory Session

Special Address : **Sri. C. DIVAKARAN,** Hon'ble Minister for Food and Civil Supplies, Government of Kerala

PRESIDENT

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[Set up under an Act of Parliament]
ICAI Bhawan,
PB. No. 7100, Indraprastha Marg,
New Delhi - 110 002, India

August 31, 2007

Message

A proactive and fair framework of corporate law is essential to enable sustainable economic reform. The Ministry of Corporate Affairs, Government of India have undertaken a series of exercises to reform the corporate law, substantial as well as procedural. The Institute has all along endeavoured to integrate the Accountancy Profession with the process of economic development of the country.

In the new world order, it is a challenging task of the profession to update its skill and to widen the horizon of its knowledge management. The Chartered Accountants because of their training, excellence and professionalism are the best professionals to provide service to the national and trans-national corporate world. At the same time, there is no scope of complacency in sharpening the competitive edge of the expertise. The members have to identify the challenges and to address the same pro-actively.

It is a pleasure to note that the Corporate and Allied Laws Committee of the ICAI in association with the Ernakulam Branch of SIRC of the ICAI is organizing a National Seminar on 7th September at Ernakulam with the theme "Retailing Giants Entry : Effect on Indian Economy". As we are aware that the retailing is now becoming a major ingredient of Indian economy and our members have to play a crucial role in this regard. I believe it will be an excellent opportunity for our members to update their excellence and knowledge on various facets of the profession.

My compliment to the organisers and the Ernakulam Branch and the best wishes for a grand success of the Seminar.

CA. SUNIL H. TALATI
PRESIDENT, ICAI

VICE-PRESIDENT

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
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ICAI Bhawan,
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New Delhi - 110 002, India

August 31, 2007

Message

Gradually, the role of Chartered Accountants is becoming more crucial to accelerate the prosperity of the nation. The world is changing very fast and a professional has to take into account this dynamism of the growth. The new Company Law should provide an appropriate framework of governance that should be complied with by all companies without sacrificing the basic requirements of exercise of discretion and business judgment in the interest of company and its stakeholders. Dr. J.J. Irani Committee on new Company Law very rightly observed, "Laws should enable self regulation but impose greater accountability through disclosures and speedy administration of reasonable legal sanctions." To facilitate capacity as well as confidence building of the profession, the Council of the Institute has taken a lot of exercises though its various Committees.

I am happy to note that the Corporate and Allied Laws Committee in association with the Ernakulam Branch of SIRC of the ICAI is organizing a Seminar on Corporate Laws to be held on September 7, 2007 at Ernakulam. I am sure this Seminar will be a forum of interaction between the profession and Corporate World itself. I am confident that the distinguished speakers from Industry and profession will scan and identify the issues/problems of the Corporate World as well as the concern of the profession for addressing the same in the desired spirit.

I extend my heartiest congratulations to the organizers and wish the Seminar a grand success.

CA. VED KUMAR JAIN
VICE - PRESIDENT, ICAI

CHAIRMAN,
CORPORATE & ALLIED LAWS COMMITTEE

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[Set up under an Act of Parliament]
ICAI Bhawan,
PB. No. 7100, Indraprastha Marg,
New Delhi - 110 002, India

30th August, 2007

Message

Dear Professional Colleagues,

The Institute has the vision that the Indian accountancy profession will be the valued trustees of world class financial competence, good governance and competitiveness. The globalization of economy and IT revolution has changed the world irrevocably. Excellent opportunities are coming up for our members in the national as well as international taxation, finance and corporate laws. Merger, Demergers, acquisition and business restructuring across the globe are becoming the need of the hour. The accountancy profession of this country because of their world class education, training, skill and competency has the potency to be a major contributor in the world development process as well as in cross-border service sectors. Legal compliance audit & legal compliance outsourcing services could be another major thrust area in I.P.O, corporate management and governance.

I am a visionary. I am of the view that our members have the potency to create wealth and bring prosperity to the Nation as entrepreneurs. I can visualize what tremendous growth can be unleashed if our members utilize their professional acumen in business as visionary entrepreneurs. To encourage individual entrepreneurship skill, our law should encourage one person company concept.

The Corporate and Allied Laws Committee has undertaken various initiatives to sharpen the competitive edge of our members in the area of valuation, arbitration, business restructuring, competition law and other emerging areas in the corporate sector.

I compliment CA. V.C. James, Programme Director, CA. Reji A. George, Programme Coordinator, Chairman, Ernakulam Branch and members of Ernakulam Branch for their initiatives and dedication in hosting this National Seminar. Indeed this Seminar will be a platform for our members to enrich and update themselves in the new trends in the corporate sectors and to appreciate its effect on Indian economy.

I wish the Seminar a grand success.

CA. VINOD JAIN
Chairman
Corporate and Allied Laws Committee

CHAIRMAN

SOUTHERN INDIA REGIONAL COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
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Message

September 5, 2007

I am happy to learn that the Corporate and Allied Laws Committee of the Institute of Chartered Accountants of India is organizing a National Seminar on 7th September 2007 hosted by Ernakulam Branch of SIRC.

The theme of the Seminar "Retailing Giants Entry: Effect of Indian Economy" is a unique one chosen for the Seminar.

I am also extremely happy to note that the Seminar will be presided by CA. Ved Kumar Jain, Hon'ble Vice-President, ICAI, who will also deliver a Special Address at the Seminar. The topics chosen are of current importance and Resource Persons drawn from all over the country will provide, no doubt, value addition to the Members.

I congratulate CA. Vinod Jain, Chairman, Corporate & Allied Laws Committee, CA. V.C. James, Central Council Member, Conveners CA. Babu Abraham, CA V.X. Jose, Regional Council Members and CA. Reji A. Goerge, Chairman, Ernakulam branch and the members of the Organising Committee for organizing this Seminar.

I convey my heartiest greetings and good wishes for the successful conduct of the Seminar.

CA. K.S. MADHAVA MURTHY
CHAIRMAN

CHAIRMAN

ERNAKULAM BRANCH OF SIRC OF
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
"ICAI Bhawan", Diwan's Road, Kochi-682 016

3th September, 2007

Welcome Message

Dear Professional Colleagues,

On Behalf of the Ernakulam Branch of the institute of Chartered Accountants of India and on behalf of the Corporate and Allied Laws Committee of the institute of Chartered Accountants of India, I deem it a pleasure to welcome the CA fraternity to the National Seminar being held on 7th September 2007 under the theme **"Retailing giants entry – effect on Indian Economy".**

India the second fastest growing economy in the world with one of the youngest countries having a median age of 24 will be the best market in the world. Moreover our younger generation is more adventurous since they are brought up in the post liberalization era with rising disposable incomes and is the main strength of our country and also the main consumption base for the retailers. The present seminar will help to point out a very important message to the government and the people at large regarding the entry of Retails giants in India.

It is a matter of great pride that the conference is to play host to our beloved Vice President **CA. Ved Kumar Jain** on his maiden visit to our Branch. He has also agreed to launch our website which is redesigned in line with the mission 2007 of ICAI. I am very happy to welcome our Vice President, **Sri. C. Divakaran**, Honorable Minister for Food & Civil Supplies, Government of Kerala, guests, and other dignitaries and resource persons to this National Seminar.

As a pro-active profession we need to ensure at our individual level that we do acquire requisite knowledge and skills to remain on the forefront of the knowledge era. The topics chosen for the technical sessions will be of great relevance in the current context and will lead the members to further improve their core competencies paving the way for enhancing the quality of service to the stakeholders of our economy. I am sure that the eminent faculty will give excellent value addition to the proceedings of the seminar.

I am grateful to the patrons, co-conveners, members of the organizing committee and staff of the Ernakulam Branch of ICAI for their unstinted support and co-operation in making the conference a memorable one.

With warm regards.

CA. REJI A. GEORGE, FCA, DISA (ICA)
Chairman, Ernakulam Branch of SIRC of ICAI.

Special Address

Sri. C. Divakaran
Hon'ble Minister for
Food and Civil Supplies,
Government of Kerala

Presided by

CA. Ved Kumar Jain
VICE - PRESIDENT, ICAI

Felicitation

CA. Yogesh Gupta, IPS
Chairman & Managing Director,
Kerala State Civil Supplies
Corporation Ltd.

ORGANISING COMMITTEE

CA. Vinod Jain
Chairman,
Corporate & Allied Laws
Committee, ICAI

CA. V.C. James
Member, Central Council - ICAI

Dr. Alok Ray
Secretary,
Corporate & Allied Laws
Committee, ICAI

CONVENERS

CA. Babu Abraham Kallivayalil
Member, SIRC of ICAI

CA. V.X. Jose
Member, SIRC of ICAI

CA. Reji A. George
Chairman, Ernakulam Branch
SIRC of ICAI

MEMBERS

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Vice Chairman,
Ekm Branch, SIRC of ICAI

CA. **P.G. Sajeev**
Secretary,
Ekm Branch, SIRC of ICAI

CA. **S. Venugopal**
Treasurer,
Ekm Branch, SIRC of ICAI

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Ekm Branch, SIRC of ICAI

CA. **Saji Mathew**
Member, Mg. Committee,
Ekm Branch, SIRC of ICAI

CA. **K. K. Babu**
Member, Mg. Committee,
Ekm Branch, SIRC of ICAI

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Member, Mg. Committee,
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Chairman,
Quilon Br., SIRC of ICAI

CA. **K. A. Joseph**
Chairman,
Trichur Br., SIRC of ICAI

CA. **Sudhakar V**
Chairman,
Trivandrum Br., SIRC of ICAI

CA. VED KUMAR JAIN

Vice - President, ICAI

CA. Ved Jain, FCA, New Delhi, aged 53 years has been elected as the Vice-President of the Institute of Chartered Accountants of India (ICAI), the Apex Body of the profession of Chartered Accountants in India, for the year 2007-08 w.e.f 5th February 2007. He was a rank holder in the Intermediate and Final Examinations of Chartered Accountancy. He is a graduate in Science and also graduate in Economics from Punjab University. He is also a Law graduate from Delhi University. A fellow member of ICAI with more than 30 years of standing, CA. Ved Jain was elected to the Council of ICAI for the first time in 2004 and thereafter in 2007. He has held the position of Chairman and Vice-Chairman of Fiscal Laws Committee, and Chairman of Audit Committee. Besides the above, he has also served as a Member on several committees namely the Executive Committee, Disciplinary Committee, Accounting Standards Board, Auditing & Assurance Standards Board, Committee for Members in Industry, Committee on Financial Market and Investor's Protection, Professional Development Committee, Board of Studies, Committee on Ethical Standards, Editorial Board, Continuing Professional Education Committee, International Affairs Committee, and Committee on Accounting Standards for Local Bodies. Currently, he is a member of the National Advisory Committee on Accounting Standards constituted by the Ministry of Company Affairs, Govt. of India and also Co-Chairman of the Committee on Direct Taxes of ASSOCHAM. He was also a member of Committee on Accounting Standards constituted by Central Board of Direct Taxes (CBDT), Ministry of Finance, Government. of India. He regularly interacts with CBDT on various issues relating to Finance Bill, circulars, notifications, clarifications, extensions etc. He has been involved in the drafting of Form 3 CD, Guidance Note on Tax Audit, issues on Tax Audit, Fringe Benefit Tax, Guidance Note on MAT, Transfer Pricing Rules, Audit Report and Guidance Note thereon, Study on Value Added Tax, Pre-budget and Post-budget Memoranda being submitted by the ICAI every year. He has been a member of Income Tax Appellate Tribunal, Ministry of Law, Justice & Company Affairs, Govt. of India, in the rank of Additional Secretary, Govt. of India. He is also on the Editorial Board of Selected Orders of ITAT (SOT). He has authored many books on Direct Taxes and regularly contributes articles on tax matters in various journals, newspapers and regularly appears on various television channels.

First Technical Session

"AUDIT U/S 44 AB OF THE INCOME TAX ACT, 1961 AND RELATED ISSUES WITH SPECIFIC REFERENCE TO CORPORATES"

CHAIRMAN

CA. UTTAM P. AGARWAL
Chairman, Committee for Members in Industry, ICAI, New Delhi

Qualification & Career

- Qualified as a Chartered Accountant in 1987
- Practicing as a Chartered Accountant for the last 19 Years.
- Specialized in Taxation & Management Consultancy
- Dealing with Company audit, Internal audit, Bank audit, Trust audit, Insurance audit etc.

Professional Achievements: -

- Member of expert group Constituted by C.B.D.T. (2000)
- Appointed as Arbitrator by National Internet Exchange of India (NIXI), Ministry of Information Technology, Government of India.
- Appointed as Arbitrator by the Stock Exchange, Mumbai.
- Authored books on (Published by WIRC): -
  - Taxation of H.U.F
  - Guidelines on Co-operative Housing Society
- Faculty for various Conferences, Seminars, Workshops organized by ICAI, WIRC, its branches and Study Circles.
- Directors in various companies.

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

Positions held

REGIONAL : WESTERN

Year 1994 – 2000	Regional Council Member
1996	Treasurer

Central Council: ICAI

2007-2008

1. Committee for members in industry, : Chairman
2. Research committee, : Vice- chairman
3. Professional development committee
4. Committee on information technology
5. Editorial board
6. Committee on insurance & pension
7. Committee on corporate governance

SPEAKER

CA. VIMAL PUNMIYA , L.L.B.(Gen.) FCA,
Mumbai

- C.A.(1974) [Secured 22nd Rank in Inter C.A. & 35th Rank in Final C.A.]
- Practicing C.A. for last 30 years. Attending to nearly 500 Resident and Non-Resident Clients.
- Attached to nearly 50 Companies, Trust, Firms as Advisor, Director, Auditor or Trustee.

(I) PRESENT :

1. Chairman – All India Business Council.
2. Written Number of books on Transfer of Flat, Stamp Duty, Registration, Capital Gain etc.
3. Various Articles of Public interest published in News Papers & Magazines i.e.
4. Speaker at various Seminars in India and Abroad on topics of public interest i.e.
   - Union Budget
   - Income –Tax
   - Stamp Duty & Registration
5. Life Member of Cricket Club of India and various other Club, Association etc.
6. Hon. Patron : Estate Agents Association.

(ii) PAST :

1. President of Lions Club of Chowpatty.
2. President of Bombay Metropolitan Junior Chamber.
3. President of Rajasthani "National Service Association".
4. Chairman - Trust & Taxation Committee of Lions Club District 323 A.
5. Co-Chairman – Company law & Taxation Committee of All India Manufacturing Organisation.
6. Guest faculty for vocational course in Taxation for H.R. College of Commerce & Economics, Mumbai.

REPORTING REQUIREMENT IN RESPECT OF CLAUSES IN FORM 3 CD

Objective:

Tax Audit is basically an audit with reference to the provisions of the Income Tax Act, 1961.

Objective of tax audit as laid down in the Memorandum to Finance Bill, 1984 explaining the purpose of its introduction is inter alia to facilitate the income tax administration to properly assess the income of the concerned assessees.

Only chartered accountants entitled to conduct tax audits.

Assessee's obligation.

Applicability :

1. Business: Total sales/turnover/gross receipts exceed Rs. 40 lacs
2. Profession: Gross receipts exceed Rs. 10 lacs
3. If income claimed is lower than the presumed income under section 44AD (Civil construction), 44AE (Transport), 44AF (Retail business), 44BB (Oil exploration by non-residents) or 44BBB (Project execution by foreign companies).

Turnover of the business (es) referred to u/s. 44B and 44BBA to be excluded.

Business vs. profession.

Turnover: total sales fewer goods returned, price adjustments and trade discount. To consider ancillary charges, trade discount, cash discount, turnover discount etc. Sales by a commission agent. Turnover in case of transactions in shares and securities, derivatives. Inclusions in and exclusions from Gross Receipts.

Sale of goods vs. sales of fixed assets, investments.

Person may be carrying on business as well as profession.

Person earning income not chargeable to tax.

Applicability to NRs.

Penalty for failure :

U/s. 271B – does not obviate the need for tax audit.

Appointment by board or under delegated powers of board.

Communication with previous tax auditor is necessary.

Prohibitions on accepting tax audit assignment like ceiling on no. of tax audits per member, CA/ his firm/ partner/ relative having substantial int. in business or enterprise of assessee, reasonable amount of fees etc. to be kept in mind while accepting an appointment.

Two types of reports: 1. When accounts of assessee are audited under any other law and 2. When accounts are not so audited.

In Form 3CA tax auditor has to annex statutory audit report whereas in Form 3CB he has also to report whether accounts give true and fair view.

Compliance with AS and AAS.

Tax audit is a special purpose audit.

Responsibility of assessee to furnish true and correct particulars in form 3CD.

Management representations.

Revision of tax audit report.

Issues when statutory audit report by another auditor.

Difference between the figures given in the audited financial statements and those in Form 3CD

Views of tax auditor are neither binding on assessee nor on department.

Difference in view points between the tax auditor and the assessee.

Deviations from accounting standards prescribed u/s 145.

FBT ISSUES AND REPORTING IN 3 CD

The Finance Minister in his speech while introducing the provisions of Finance Bill, 2005 had stated at para 160 as under:

> " I have looked into the present system of taxing perquisites and I have found that many perquisites are disguised as fringe benefits, and escape tax. Neither the employer nor the employee pays any tax on these benefits which are certainly of considerable material value. At present, where the benefits are fully attributable to the employee they are taxed in the hands of the employee; that position will continue. In addition, I now propose that where the benefits are usually enjoyed collectively by the employees and can not be attributed to individual employees, they shall be taxed in the hands of the employer. However, transport services for workers and staff and canteen services in an office or factory will be outside the tax net. The tax is not a new tax, although I am obliged to call it by a new name, namely. Fringe Benefits Tax. The rate will be 30 per cent on an appropriately defined base"

Explanatory memorandum explaining the provisions of the Finance Bill reads as under:

> "The taxation of perquisites or fringe benefits provided by an employer to his employees, in addition to the cash salary or wages paid, is subject to varying treatment in different countries. These benefits are either taxed in the hands of the employees themselves or the value of such benefits is subject to a 'fringe benefit tax' in the hands of the employer. The rationale for levying a fringe benefit tax on the employer lies in the inherent difficulty in isolating the 'personal element' where there is collective enjoyment of such benefits and attributing the same directly to the employee. This is so especially where the expenditure incurred by the employer is ostensibly for purposes of the business but includes, in partial measure, a benefit of a personal nature. Moreover, in cases where the employer directly reimburses the employee for expenses incurred, it becomes difficult to effectively capture the true extent of the perquisite provided because of the problem of cash flow in the hands of the employer.
>
> Therefore, it is proposed to adopt a two pronged approach for the taxation of fringe benefits under the Income tax Act. Perquisites which can be directly attributed to the employees will continue to be taxed in their hands in accordance with the existing provisions of section 17(2) of the Income tax Act and subject to the method of valuation outlined in rule 3 of the income tax Rules,. In cases, where attribution of the personal benefit poses problems, or for some reasons, it is not feasible to tax the benefits in the hands of the employees. It is proposed to levy a separate tax known as the **fringe benefit tax** on the employer on the value of such benefits provided or deemed to have been provided to the employees"
>
> In pursuance to above Chapter XII-H has been inserted in the Income-tax Act, 1961, consisting of 14 sections viz. from 115W to 115WL

I. <u>Definition (S.115 W)</u>

a) Employer means

i. Company

ii. Firm

iii. An AOP or BOI excluding any fund or trust eligible for exemption u/s 10(23C) or registered u/s 12AA or any political party registered under section 29A of the Representation of the People Act.

iv. Local authority and

v. Every artificial juridical person not falling within any of the proceeding sub- clauses

Issues for consideration

- Means – Exhaustive definition
- Individuals and HUF's are excluded.
- Excludes all charitable institutions eligible for exemption u/s 10(23C).
- Excludes all trusts registered u/s. 12AA
- Excludes political parties
- Central / State Govt. are also not covered e.g. railways.
- PEs of foreign Cos. would be covered.
- Indian Resident paying F. B. to its non-resident employees would be covered.
- Agriculturalists are also covered – if it is firm or Co.

b) Fringe benefit tax of tax means chargeable u/s.115 WA

- No threshold limit.

II. ***S.115 WA – charging section***

- Effective from Assessment year 2006/07
- In addition to tax, additional income – tax in respect of the fringe benefits provided or deemed to have been provided by an employer to his employees @ 30% on the value of such benefit.
- Fringe Benefits tax is payable, irrespective of Income- tax is payable by an employer.
- There should be Employer / Employee relationship. So directors, advisors, partners are not covered if there is no employer – employee relationship.
- Even if, there is a single employee, the section would apply. However, if there is no employee, chapter would not apply

III ***Fringe Benefits : U/S 115 WB***

- U/s. 115 WB (1) Fringe Benefits means any consideration for employment, provided by an employer by way of

  a) any privilege, service, facility or amenity, directly or indirectly, whether by way of reimbursement or otherwise to his employee or former employee/s, [No specific provision to determine Taxable value of FB – as this is an enabling clause]

  b) any free or concessional ticket provided by the employer for private journey to his employees and their family members ;[As provided by the employer to the general public as reduced by any amount paid / recovered]. Applicable only to employees in carriage of goods, passengers or its agents (see. Question 34 of circular 8 dated August 29, 2005.

  c) any contribution by the employer to an approved super annuation fund exceeding Rs. 1/- lac per employee: So contribution to unapproved superannuation fund not covered. – Not allowable as a deduction u/s. 36(1)(iv), and

  d) ESOP to employees or directors (value to be taken at the date of option vest employees fewer amounts recovered from them). Effective from assessment year 2008/09

- U/s. 115 WB(2), the Fringe Benefits shall be <u>deemed</u> to have been provided by the employer to his employees <u>in the course of his business</u>, whether for profit or otherwise, incurred any expense on or made any payment for viz :

Kind of Expenditure	Value of Fringe Benefits	Special Cases
A) **Entertainment** Expenditure	**20% of Entire Expenses**	**-**
B) Expenditure on **provision of and hospitality of every kind** by the employer to any person excluding a) any expenditure on food and beverages provided to employees in office or factory. b) any expenditure through paid vouchers which are not transferable and usable only at eating joints or outlets.	20% of Entire Expenses	5% of the Entire Expenses in the case of engaged in business of **Hotel**, **Airlines and shipping.**
C) **Conference** Expenditure, other than fee for participation by the employee in any conference.(Any expenditure on conveyance, tour and travel including foreign travel, on hotel, or boarding and lodging in connection with any conference shall be deemed to be expenditure incurred for the purpose of conference)	20% of Entire expenses	
(D) **Sales promotion including publicity** but excluding: i) expenditure (including rental) on advertisement of any form in any print (including journals, catalogues or price lists) or electronic media or transport system: ii) expenditure on the holding of, or the participation in, any press conference or business convention, fair or exhibition; iii) expenditure on sponsorship of any sports event or any other event organized by any Government agency or trade association or body iv) expenditure on the publication in any print or electronic media or any notice required to be published by or under any law or by an order of a court or tribunal v) expenditure on advertisement by way of signs, art work, paint banners, awnings, direct mail, electric spectaculars, kiosks, hoardings, bill boards, display or products or by way of such other medium of advertisement; and vi) expenditure by way of payment to any advertising agency for the purposes of clauses (i) to (v) above.	20% of Entire expenses	

Kind of Expenditure	Value of Fringe Benefits	Special Cases
vii) Expenditure on distribution of free samples of medicines or medical equipments to doctors (for assessment year 2007/08) and samples to any one (from assessment year 2008/09) viii) Expenditure by way of payment to any person of repute for promoting sales/services.		
E) **Employees' welfare** (Any expenditure incurred or payment made to fulfill any statutory obligation or mitigate occupational hazards or provide first aid facilities in the hospital or dispensary run by the employer shall not be considered as expenditure for employees welfare)	20% of Entire Expenses	
F) Expenditure on **Conveyance,**	20% of Entire Expenses	5% of the Entire Expenses in case engaged in business of **Construction, Pharmaceutical & Computer Software.**
G) Expenditure on use of **hotel, boarding & lodging** facilities;	20% of Entire Expenses	5% of the Entire Expenses in case of engaged business of manufacturing and production of **Pharmaceutical & Computer Software Business, Airlines and Shipping**
H) Expenditure on repair, running (including fuel), maintenance of **motorcars** and the amount of depreciation thereon;	20% of Entire Expenses	5% of the Entire Expenses in case of engaged in business of **Carriage of Passengers/ Goods by Motor Car**
I) Expenditure on repair, running (including fuel) maintenance of **aircrafts** and the amount of depreciation thereon;	20% of Entire Expenses	NIL in the case of engaged in business of **Carriage of Passengers/ Goods by Air Craft**
J) Expenditure on use of **telephone** (including mobile phone) other than expenditure on lease telephone lines.	20% of Entire expenses	
K) Expenditure **on maintenance of any accommodation in the nature of guest house** other than accommodation used for training purposes.	20% of Entire expenses	
L) Expenditure on **Festival celebrations**	50% of Entire expenses	
M) Expenditure on use of **health club** & similar facilities	50% of Entire expenses	

Kind of Expenditure	Value of Fringe Benefits	Special Cases
(N) Expenditure on use of **any other club facilities**	50% of Entire expenses	
O) Expenditure on **Gifts**	50% of Entire expenses	
P) Expenditure on **Scholarships.**	50% of Entire expenses	
Q) Expenditure on **tour and travel** (including foreign travel)	5% of entire expenses	

- U/s.115 WB(3) provides that privilege, service, facility or amenity u/s. 115WB(1) does not include perquisites in respect of which tax is paid or payable by the employee, any benefit or amenity of free or subsidies transport or any such allowance by the employer to employee from residence to place of work and *vice-versa*

<u>Issues for consideration:</u>

1) For FBT – whether expenditure debited in the books or allowable under I. T. Act to be considered? e.g. Depreciation.
2) AO may disallow certain expenses whether FBT is payable on such expenses?
3) If expenditure is capitalized as per AS-10 whether FBT is payable?
4) If any amount is recoverable from employee/client whether the same should be deducted for calculating FBT?
5) If expenses are shared by group cos. on certain agreed ratio whether FBT is payable by the parent co. on the total expenses or on proportionate share debited to P & L A/c.?
6) The wordings are “employer has incurred any expenses on” or “made any payment for”-
7) If income is assessable on presumptive basis e.g. 44AD/44AE/44AF/44BB/44BBA/44BBB whether FBT is payable?
8) Whether expenses incurred by the employer which are exempt in the hands of the employee (e.g. S. 10(5)/ 10(14) would be liable for FBT?
9) Certain expenses (e.g. medical expenses, rent free quarters etc.) which are partly exempt in the hands of the employee, whether FBT is payable on balance amount?
10) Whether any Indian employer providing any benefits to its employees residing outside India is liable to pay FBT?
11) Whether benefits provided by firms to its partners would be covered by FBT?
12) Whether working partners are employees?
13) An assessee who has employed one employee for five months during the year, would FBT would be payable for five months or whole year?
14) Whether FBT is a tax within the meaning of “Taxes covered” under Article 2 of DTAA and consequently will the credit for FBT is available to a foreign co. In the resident country against taxes on income or taxes on FB, if levied?
15) Will grant of ESOP or sale of co.’s product at concessional or discounted price will be liable for FBT?
16) If return is filed showing income under the head “Capital Gains” and AO considers as “Business Income” whether FBT is payable?
17) Whether co-operative society is an employer?
18) Whether State Electricity Board is an employer?

19) Co. outsourcing collection of rent to a firm by paying consolidated amount as collection charges. Is it an employer?

20) Reimbursement of out of pocket expenses to Auditor for traveling whether liable for FBT?.

21) Who are family members under sub-section 1(b) of S. 115WB? - Explanation to S. 10(5) would be applicable?

22) If there are expenditure which can not be attributed, directly or indirectly to employees whether FBT is applicable?

23) Whether genuine business expenses with respect of business travel, sales promotion, conference etc. Be also liable for FBT?

24) If assessee maintains separate account for expenses in respect of employees, whether FBT is payable on the total amount spent by the employer or only on the expenses of the employees?

25) S. 115WC provides for method of computation of value of Fringe Benefits. FB falling u/s 115WB (1) (a) are not included for the purpose of computation of value of FB as per section 115WC. Does this employ that FB falling u/s. 115WB (1) (a) are exempt?

26) Expenditure on hire/lease of motorcar would attract FBT? Whether interest paid on loan taken for acquiring motor car is also cover?

27) Provision for food etc., to employees in the office or factory is excluded from the hospitality expenses. Will it then be covered under the head "employee's welfare"?

28) What happens to the expenses incurred by the employees posted on construction/installation side or customers site?

29) Expenditure incurred by way of trade discount/cash discount, sales commission etc. is sales promotion and publicity?

30) CIT Vs. Santosh Agencies [210 ITR 78 (Cal)]

31) Sales expenses can not be considered as sales promotion

32) CIT Vs. Popular Automobiles Ltd. [212 ITR 617 (Ker.)]

33) CIT Vs. Hindustan Times Ltd. [191 ITR (St.) 305 (SC)]

34) Circular 240 dt. May 17, 1998. – para 12.4

35) Will expenditure on samples, free schemes be covered under sales promotion?

36) Smith Kline & French (India) Ltd. Vs. CIT [219 ITR 581 (SC)]

37) Will the gift articles given to the dealers, distributors will also be part of sales promotion? Will the payments made to celebrities as Brand Ambassador will also be covered in the publicity expenses? If there are no benefits accruing directly or indirectly to the employees, could it be treated as liable for FBT? Will the salary of the sales personnel be also treated as sales promotion expenses? If the company has overseas branches for publicity of liaison with the customers etc., will it also get roped in?

38) Buy one get one free – Is it sales promotion?

39) Whether sales promotion through "Call Centre" is exempt.

40) Various companies distribute free items to its dealers on the basis of their sales performance. In the case of FBT whether the said expenditure would be classified under publicity expenses (20%) or gifts (50%)?

41) Whether fashion shows, beauty pageants, maintenances of a traffic island is sales promotion and publicity?

42) What is meant by "engaged in the business of"

43) What is meant by manufacture or production of software? Will various IT enabled services as listed in see. 10A, 10B or 80HHE will also be eligible for concessional taxability for equity?

44) What is meant by manufacture of production of Pharmaceuticals? Does it mean if only the final product manufactured can be classified as pharmaceutical, then, only the concessional FBT will apply? If the company

is carrying on manufacture of raw material till finished product, will concessional FBT will apply only in respect of final product or it will apply to entire expenditure? If the company is manufacturing say raw materials like vitamins, bulk drugs which are used for pharmaceuticals industries, will be eligible for concessional FBT treatment?

45) If case of BPO industry or telephone or telecommunication booths, which is not using leased lines, would the entire expenditure on telephone be covered for FBT?

46) Whether BPO unit/call centers will be liable to FBT @ 5% on specified benefits in relation to CBDT notification dealing with “customized electronic data”.

47) In the case of Multiple Business, whether the employer will qualify to avail the concessional treatment @ 5% (instead of 20%)? On what basis? What would be the rational basis of allocation?

48) Whether employee’s training expenses (in house/outside) is covered within term “conference”?

49) Whether contribution to group health insurance by the employer is covered under “Employee welfare expenses” for the provisions of FBT?.

50) What type of expenses will be covered by the term “Entertainment”. Whether entertainment allowance paid to employees attracts FBT?.

51) What type of expenses will be covered under the head “employee’s welfare”? If donation is given to a trust created for employee’s welfare which is disallowable u/s. 40A (9) will be liable to FBT?

52) Whether expenditure on sports facilities for employees or their children is liable to FBT? Whether expenditure on reading rooms, newspapers, magazines etc. provided for the benefit of employees will be considered as “employee welfare”?

53) What type of expenses will be considered as “Festival celebrations”? Does this refer to religious festivals or other festivals like Independence Day, Republic Day functions?

54) Whether maintenance of Guest House will include food and beverages provided to guests, salary of employees in Guest House, electricity charges, depreciation of building, furniture etc.?

55) What is difference between “conference” and “business convention”?

56) Are AGM & Board Meeting expenses are liable for FBT?

57) If any expenses on welfare of employee is forming part of employment agreement whether it is covered by FBT? e.g. payment through reconciliation officer.

58) Whether pooja expenses, school running expenses are covered by FBT?

59) Whether scooter expenses are covered by FBT?

60) Motor car will not include bus/coach/delivery van, two or three wheelers, truck etc. However, jeep will be included.

61) E.I.D. Perry (India) Ltd. Vs. CIT [243 ITR 116 (Mad)].

62) Balanoor Tea & Rubber Co. Ltd. Vs. State of Kerla [207 ITR 501(Ker)]

63) Whether expenses incurred by commuting within the factory /campus will fall under FBT?

64) Whether travel/tour expenditure incurred for purchase of plant and machinery and debited to cost of plant and machinery, whether liable for FBT?

65) Office maintain in hotel whether covered by FBT?

66) Whether fax, internet are covered by FBT? If internet is direct provided by the internet providers?

67) Whether contribution on the occasion of festival celebration is covered by FBT?

68) Whether entrance/annual fees are covered by the words use of club facility?

69) Whether Diners Club is a Club?

70) Can a co. plan its affairs in such a way that the co. enters into contract with sole proprietary concern under whom all employees work and co. makes a consolidated payment to the proprietary concern as man power supply charges? Whether FBT is payable?

71) For the purposes of S. 115WA (3) would tax paid by the employer for the employee be considered as tax paid or payable by the employee.

72) Whether expenditure incurred in respect of foods, cloths etc., in the nature of social obligation like 'Tsunami" affected areas are covered by FBT?

73) Whether service tax/VAT is applicable while valuing FBT?

74) Whether granting of "Paid Vouchers" in > Rs. 50/- to customer subject to FBT?

75) Whether contribution to PF/ESIC/gratuity/bonus etc. liable for FBT?

IV ***<u>Value of Fringe benefits</u>***

U/s 115 WC (1) the value shall of FB shall be aggregate of Cost at which the benefits u/s. 115 WB (1)(b) is provided by the employer to the general public as reduced by the amount recovered from employees.

Provided that incase the expenses referred u/s. 115WB (1) (b) are included u/s. 115 WB (2), the total expenses shall be reduced by the amount u/s.115 WB (1) (b)

V. ***<u>Return of FBT</u>***

U/s. 115 WD (1) Every employer

i) Company / person whose accounts are required to be audited u/s. 44 AB or under any other law – October, 31 of the assessment year.

ii) In any other case – July, 31 of the assessment year

- S. 115 WC (2) (3) (4) are pari materia with S.139 (2)(4)(5)

VI **<u>Assessment</u>**

S. 115 WE similar to S. 143

VII ***<u>Best Judgment Assessment</u>***

S. 115 W F in consonance with S.144

VIII. ***<u>Fringe benefits escaping assessment</u>***

S. 115 WG is in accordance with S. 147

IX. ***<u>Issue of notice where Fringe benefits have escaped assessment</u>***

S. 115 WH is like S. 149

X ***<u>Payment of FBT</u>***

Provides for payment of AT

- Can advance tax paid be adjusted ***inter-se*** during the year for excess/short payment of FBT
- Whether surcharge and education cess is payable on FBT?
- Can refund be claimed in respect of excess paid of FBT?
- Can TDS be adjusted against the FBT?

XI ***Installment of AT (S. 115 WJ)***

In case of Company.

Due date of installments	Amount payable
On or before June 15,	Not less than 15% of advance tax on FBT
On or before Sept. 15	Not less than 45% of advance tax on FBT
On or before Dec. 15	Not less than 75% of advance tax on FBT
On or before March 15	100% of advance tax on FBT

In case of non corporate assessee:

Due date of installments	Amount payable
On or before Sept. 15	Not less than 30% of advance tax on FBT
On or before Dec. 15	Not less than 60% of advance tax on FBT
On or before March 15	100% of advance tax on FBT

For late payment or non payment of advance tax the employer will have to pay 1% interest per month or part of the month,

XII. ***Interest for default in furnishing Return of FBT***

S. 115 WK = S.234A

XIII. ***Recovery of FBT by the employer from employee***

S. 115WKA inserted from assessment year 2007/08 provides that notwithstanding any agreement or scheme the employer can recover from the employee FBT paid or payable on ESOP.

XIV. ***Application of other provisions of these Act***

S. 115 WL provides all other provisions of IT Act shall, as far as may be, apply to FBT.

- Whether FBT – employees cost?
- FBT is not deductible u/s. 40(a)(ic)

TDS ISSUES AND REPORTING IN 3 CD

CONTENTS

Section 40 (a) (i)

TDS Issues

Reporting in Form 3 CD

Section 40 (a) (i)

Disallowance of Expenditure

No allowance in case of failure to deduct or failure to pay after deduction of tax

1) **Section 40 (a) (i)**

- Payment to non – residents (interest, royalty, fees from technical services or other sum chargeable under the Act)
- Expenditure deductible in the year of payment of tax, except in some cases:

- After deduction payment during the year or during the stipulated time.
- Allowable in subsequent year as and when paid.

2) **Section 40 (a) (ia)**

- Payments to residents (interest, commission or brokerage, rent, royalty, fees for professional / technical services, contract payments)
- Expenditure deductible in the year of payment of tax, except in some cases:
  - After deduction payment during the year or during the stipulated time.
  - Allowable in subsequent year as and when paid.

3) **Section 40 (a) (iii)**

- Payment of salary to non – residents
- Expenditure NOT deductible in the year of payment of tax.

4) **Issues**

- Delay in payment of tax during the year - whether 40 (a) (i) / (ia) attracted
- Section 40 (a) (i) / (ia) triggered
  - Tax not deducted or;
  - After deduction, tax not paid during the previous year; or
  - After deduction, tax not paid in the subsequent year before specified time.

5) **Issues**

- Payment of salary to non- residents – whether 40 (a) (i) applies or 40(a) (iii) applies
  - Specific overrides the general provision
- Section 40 (a) (iii) – whether salary expenditure deductible in the year of payment of tax
  - ANZ Grindlays Bank (88 ITD 53) (Del)

6) **Issues**

- Short deduction of tax – whether the entire expenses or proportionate expenses would be disallowed
  - Frontier Offshore Exploration India Ltd (2007 TIOL 192) (ITAT, Madras)
- Whether capital expenditure hit by section 40 (a)

7) **Issues**

- Rent and Royalty – inserted in section 40 (a) (ia) w.e.f. 1 April 2006 – expanded definition of rent in section 194 I and inclusion of royalty in section 194 J w.e.f 13 July 2006 – whether expenses disallowable for default in AY 2006-07
  - CBDT Circular No. 1 / 2007 dated 27 April 2007 – section 40 (a) (ia) applicable for payments from 13 July 2006

8) **Issues**

- Section 40 (a) (i) read with Section 195
- Would assessee be required to go to the A.O. every time or will a CA certificate suffice?
- Circular 10/ 2002 dated 9/10/2002

  Conflicting views

  Favour MSEB 90 ITD 793, Raymond Ltd. 86 ITD 791

  Against Frontier Drilling 2007 TIOL 192

Case Study 1

FACTS

- M, the assessee, the employer is a non profit organization
- M engages part time teachers on contract basis to teach languages. The teachers are drawn from the panel maintained by the assessee and paid honorarium at varying rates
- Part time teachers are under the direct control and supervision of the assessee.
- Contract of Service –

  The employer not only orders / requires what is to be done but also directs as to how it shall be done.
- Contract for Service –

  The principal can only require as to what is to be done and the agent (independent contractor) undertake to produce a given result using his own discretion in things not specified beforehand.

ISSUES

Whether payment made to part time teacher would be assessable as salary on which tax is required to be deducted at source.

CASE LAW

- MAX MULLER BHAVAN (286 ITR 031) [AAR]

Case Study 2

FACTS

- X Ltd. is in the business of running a call centre.
- Contract is entered with transport contractor for transporting the employees of X.
- X Ltd. uses the bus or van and such other means of transport for this purpose.
- The payments made by X Ltd. to transport contractor are fixed hire charges.
- TDS is deducted u/s 194 C.
- AO is of the view that payments are in nature of 'rent' under section 194 I, as defined by Tax Law Amendment, 2006.

ISSUES

- Is the stand taken by the AO is correct?

CASE LAW & REFERENCE

- CIRCULAR NO. 558 DATED 28.3.1990
- INDIAN NATIONAL SHIP OWNERS ASSOCIATION V. CIT OTHERS (BOM) W.P. NO. 400 OF 2007 AND CHAMBER SUMMONS NO. 183 OF 2007, DATED 29.6.2007 (NOT REPORTED)

Case Study 3

FACTS

- P. Ltd. is into business of broadcasting and telecasting.
- Company has made payments to outside producers for programmes under "commissioned category" and treated them as contract payments deducted tax u/s 194 C.
- Definition of 'work' given by Explanation III (b) to the S. 194 C not only covers broadcasting and telecasting, but also the production of programmes for such broadcasting or telecasting.
- CIT is of the view that television programme producers should be treated as professional / technical persons and should be subject to deduction u/s 194 J.

- The rate of deduction 2 % u/s 194 C vis –a –vis 10 % u/s 194 J.

ISSUES

- Is P. Ltd assessee in default for making short deduction of tax deducted at source?
- Whether the amount paid to television programme producers for producing television programme is covered u/s 194 C or 194 I?

CASE LAW

- PRASAR BHARTI (BROADCASTING CORPORATION OF INDIA) (292 ITR 580) [DEL]

Case Study 4

FACTS

- G Ltd. is a manufacturer.
- Company has made payments to an Indian entity towards the Internet connectivity, Vo- data card charges and Domain registration charges.
- No TDS is deducted on such payments made.
- Company has a view that the payments made are not in terms with 'payment for technical services' as covered under section 194J.
- However, CCIT treats the payments made as 'fees received for providing technical services' and deduct tax at source.

ISSUES

- Is G Ltd. correct in its stand that the payments made to providers of internet connectivity, facility of Vo – data card or Domain registration charges are out of the purview of 'fees for technical services'?
- Whether TDS should be deducted on such payments?

CASE LAW

- SKYCELL COMMUNICATIONS LTD. (251 ITR 53) [MAD]

REPORTING IN FORM 3CD GUIDANCE NOTE ON TAX AUDIT

Clause 17(f) – amounts inadmissible u/s 40 (a)

- Details of payments referred to in section debited to P & L to be obtained.
- Reliance can be placed on legal opinions and CA certificate.
- Need to report only if different opinion.
- Professional judgment to be exercised.
- Reliance can be placed on judicial pronouncements.
- In case of disagreement, both views to be stated.

Supplementary guidance issued by ICAI on the Tax Audit Report u/s 44 AB

1) **Clause 27 (a) and (b)**

Prior to 10th Aug 2006	After 10th Aug 2006
Tax deducted but not paid	Compliance with the provisions of Chapter XVII - B

- Compliance with Chapter XVII – B .....Clause 27 (a)
- Details of Non – Compliance .....Clause 27 (b)

2) **Clause 27 (a)**

- Whether the assessee has complied with the provisions of Chapter XVII – B regarding deductions of Tax at source and regarding payment thereof to the credit of Central Government.
- Yes / No

3) **Clause 27 (b)**

- If the provisions of Chapter XVII – B have not been complied with, please give the following details namely:

	Particulars	Amount
(i)	Tax deductible and not deductible at all	XXX
(ii)	Shortfall on account of lesser deduction than required to be deducted	XXX
(iii)	Tax deducted late	XXX
(iv)	Tax deducted but not paid to the credit of the Central Government	XXX

- Please give the details of Cases covered in (i) to (iv) above.

4) **Clause 27 (a)**

- Verification and Reporting by the Tax Auditor

VERIFICATION

- Responsibility of preparing information – assessee
- Test Checks and Compliance Checks
- Exercise own judgment
- Design audit programme
- Documentation

5) **Clause 27 (a)**

Disclosure and Reporting

- Many Debatable Issues
- Difference of Opinion between the Tax Auditor and the assessee.
- Comments in respect of the compliance with the provisions of Chapter XVII – B.

\- If the Tax Auditor is dissatisfied then the disclosure of the non – compliances in Clause (b).

6) **Clause 27 (b)**

- Sub – clause (i) – Tax deductible and not deducted at all.

\- Disclosure

Sr.No	Particulars of Payment	Tax deductible but not deducted	Remarks

- Sub- clause (ii) – Shortfall on account of lesser deduction
  - Deduction at a lower rate than what is prescribed, application of wrong rate of TDS, non – inclusion of SC and EC etc.
  - Disclosure

Sr. No	Particulars of Payment	Tax Deductible	Tax Deducted	Remarks

7) **Clause 27 (b)**

- Sub – Clause (iii) – Tax Deducted late
- Disclosure

Sr.No	Particulars of Payment	Tax Deductible	Due date of deduction	Date of deduction	Remarks

- Sub – Clause (iv) – Tax deducted but not deposited before the day of the previous year under audit i.e. 31 March.
- Disclosure

Sr. No	Particulars of Payment	Tax Deducted	Tax not paid	Remarks

INDICATIVE CHECKLIST FOR TAX AUDIT

Clause No.	*Points for Consideration*
1	Name of the Assessee
2	Address
3	Permanent Account No.
4	Status
5	Previous Year Ended
6	Assessment Year
7	i. Verify Deed of Partnership for the names of the partners and their profit sharing ratios. Disclose change/s in the ratio. Ratio for sharing losses, if different from the profit sharing ratio, should be disclosed.
	ii. Cross verify the names of the partners and their profit sharing ratios with that in the accounts of the current year and that of the previous year to ascertain any change.
8	i. Obtain list of activities /principal lines of business from client and changes from previous year (if any) (i.e. both new and discontinued businesses).
	ii. Verify above with the financial statements of the current year, board and general meeting minutes, and previous years Return of Income.
	iii. Identify and disclose new activities in pre-operative stage, even if no revenues are generated from the same. For this purpose scrutinize accounts such as capital w.i.p., pre-operative expenditure, interest costs, etc.
	iv Disclosure :
	(a) Under broad heads viz., manufacturing, trading services and financial services,
	(b) Nature of product/ services under each broad head.
9	i. For persons carrying on legal, medical, engineering or architectural professions or the profession of accountancy or technical consultancy or interior decoration or authorized representative or film artist the following books are prescribed u/s 44AA:
	a. cash book;
	b. journal, if the accounts are maintained according to the mercantile system of accounting;

c. Ledger;

d. Carbon copies of bills; and

e. Original bills wherever issued to the person and receipts in respect of expenditure incurred by the person.

ii. Obtain list of books of account maintained by the assessee. If books of account maintained on computer then obtain certificate from software developer/vendor for books of account generated by the computer.

iii. Compare list of books maintained with previous year's schedule.

iv. Disclose only those books that are verified.

10 Profit and gains assessable on presumptive basis would be of the following businesses:

- Civil Construction
- Plying, hiring or leasing of goods carriages
- Retail business
- Shipping business in case of non-residents
- Business of exploration, etc. of mineral oils
- Operation of aircraft in case of non-residents
- Foreign companies engaged in the business of civil construction, etc., in certain turnkey projects.

Scrutinize the income accounts for the nature of income to ascertain whether the same would fall in any of the above categories and the conditions/requirements prescribed under the Income-tax Act, 1961 are satisfied/complied.

11 i. Verify Notes to Account for disclosure of significant accounting policies.

ii. Compare with previous year's tax audit report for basis adopted.

iii. Scrutinize Notes to Accounts, Auditors' report and CARO for change in method of accounting and the quantification thereof.

iv. Disclose details of deviation in the method of accounting employed (based generally on ICAI Standards) in the PY from the standards prescribed under section 145. Presently, the following standards are prescribed:

- *Disclosure of accounting policies*
- *Prior period items*
- *Extraordinary items*
- *Changes in accounting policy*

12 i. Ensure disclosure is consistent with Significant Accounting Policies under Notes to Accounts.

ii. Check that the following is included in the valuation of stocks: tax, duty, cess or fee (by whatever name called).

iii. If the items mentioned in (ii) above are not included, then quantify the effect thereof on opening and closing stock valuation.

iv. The effect on the profit and loss account of deviation from method of valuation prescribed under section 145A should be given individually on the opening and closing stocks. Both the effects should be disclosed separately and not netted off. In case of netting off, there should be proper disclosure.

13 a) i. Scrutinize liability and capital reserve accounts to ascertain any amount in the nature of income.

ii. Scrutinize audit report and notes to accounts for comments, if any, on deferment/ non-accounting of income.

iii. Identify whether the business of the assessee enjoys the benefit of any import license, cash assistance for exports, claims for duty drawback, proforma credits, refunds, etc.

iv. Verify whether income when (i) to (iii) above is accrued, in accounts, if due. If not accounted, quantify separately.

v. Review the items of financial statements that considering the propriety of transaction, would be generating revenue but are provided free of cost or at subsidized rates. Disclose such items separately and quantify the effect wherever possible.

vi. Discuss with the management by making prima facie inquiry of any facilities or other benefits provided to others out of gratis or otherwise.

b) i. Discuss with the management for any of the above claims admitted as due by the authorities concerned at the year end.

ii. Verify whether the above claims have been credited to the profit and loss account and, if not, obtain reasons.

iii. Scrutinize subsequent receipts of customs or excise refunds, drawbacks and refund of sales tax. Ascertain when these claims were admitted as due by the authorities concerned.

iv. Verify recent sales tax assessment orders to determine whether any refund is due.

v. Cross check with notes to accounts and qualifications in auditors report for such credits.

c) i. Check the accounting policy followed for accounting for escalation claims as also any adverse comments in auditors' report/notes for non-accounting of claims.

d) i. Scrutinize the notes to account and auditors' report for any undisclosed/ unaccounted revenue / income. (Refer items listed in section 2(24).

e) i. Review items representing credits in the nature of capital receipt particularly those credited to capital reserve.

ii. Check whether any of these could be credited to revenue under tax laws. If yes, ensure appropriate disclosure.

14 i. Obtain a schedule in the form required under the clause. Description of asset/block of asset should be under the following heads:

- Building
- Plant and Machinery
- Furniture and Fixtures
- Vehicles/Cars (acquired after 1.4.90)
- Other Specified Assets and
- Intangible Assets
- Computers

ii. Identify the opening block of WDV from previous year's return of income.

iii. Check/vouch adjustments to the block of fixed assets during the year from statutory audit file or relevant supports.

iv. Identify separately and vouch for adjustments on account of the following:

- CENVAT, from RG 23A Part II and RG 23C Part II registers
- Change in rate of exchange of currency, from the financial statements/audit work papers
- Subsidy/grant/reimbursement, etc., verify the scheme under which it is received and ensure appropriate treatment in books.

v. Confirm whether rates and amount for claim of depreciation are as per section 32 and Rule 5 of the Income-tax Act and Rules respectively.

15 i. Discuss whether any of the sections referred are applicable to the assessee. The business activities/expenditures covered are:

- Growing and manufacturing of tea (33AB)
- Prospecting/extraction/production of petroleum and/or natural gas (33ABA)
- Operation of ships (33AC)
- Scientific research (35)
- Telecommunication services (35ABB)
- Eligible projects or schemes for promotion of social and economic welfare (35AC and rules 11F to 11-O)
- Rural development programmes (35CCA)
- Conservation of natural resources (35CCB)
- Preliminary expenses (35D)
- Prospecting/extraction/production of any minerals (35E)

ii. Scrutinize general ledger for items of allowable expenses, particularly those in the nature of capital expenditure, which under tax laws are allowed as deduction (e.g. license fees, preliminary expenses as defined under 35D)

iii. Check depreciation schedule for any capitalized asset, is claimed as an allowance under tax laws and ensure separate disclosure.

iv. Ensure appropriateness of deductions (particularly weighted deductions) claimed under the relevant sections.

For items in (i) above, verify and classify items which have been charged to current statement of profit and loss, and those that are not.

16 a) i. Obtain a schedule of bonus, ex gratia and commission paid/payable to employees stating the name of the employee, designation, amount of bonus/ex gratia/ commission paid/payable, etc.

ii. The particulars should be disclosed only if the above are payable in lieu of dividends or profits.

b) i. Check payroll records for any deductions on account of provident fund, superannuation fund, ESIC or contribution towards any other fund for the welfare of employees.

ii. Obtain and verify chart for employee's contribution towards the above funds with their respective due dates and actual dates of payment.

17 a) i. Scrutinize audited accounts and schedules for expenditures:

a. Repair & Maintenance

b. Travelling expenses

c. Salaries & Wages

d. Stores & spare parts consumption

e. Depreciation

f. Legal, Professional & Consultancy charges

g. Filing Fees

h. Capital losses written off

i. Miscellaneous Expenditure written off (Balance Sheet item)

j. Miscellaneous/general expenses, for capital expenditure written off.

k. Computer software expenses to ensure that it does not include any system software.

b) i. Verify whether Directors' remuneration and perquisites covered by contractual obligations.

ii. Scrutinize report under CARO for any personal expenses being reported.

iii. Scrutinize earlier years assessment orders for any expenses being disallowed as personal expenses by the Income-Tax Department, whether disputed or not by the assessee.

iv. Scrutinize schedules/vouchers for expenses like – Staff Welfare, Entertainment, Rent, General Expenses, Sales Promotion, Traveling, Hotel & Club bills, Guest house expenses, Drivers Salary, Telephone expenses, Electricity expenses and Motor Car expenses.

c) i. Refer to audit file for comments on contribution to political parties, if the audit carried out by the firm.

ii. Verify the supporting documents such as souvenirs or pamphlets issued by the political party. Contribution to trade unions affiliated to a political party should be reported.

d) i. Check the payments to clubs for expenditure of personal nature or entertainment. Exclude payments to Diners, Lions, Rotary, Giants, etc..

ii. Check the other revenue heads of account for payments to clubs.

e) i. Make prima facie inquiry about the applicable laws to the organization with the management and also identify specific statutes based on review of clients business.

ii. Verify from audit work papers for expenditure in the nature of penalty, fine, illegal payments.

iii. Verify Income Tax, Sales Tax, excise, P.F. and other orders for penalty and other payments.

f) i. Obtain statement of payments made outside India, (with corresponding TDS amount) on account of interest, royalty, fees for technical services or other sum paid outside India or in India to a non-resident (other than a company /foreign company) chargeable under the Act.

ii. Cross check with expenditure in foreign currency disclosed in the notes to account.

iii. Verify whether adequate tax has been deducted and paid on the above payments. If not, then give details of non/short deductions.

iv. For the items of payments stated in (i) above where the tax deducted in subsequent year or deducted but paid after the time limit given in of section 200(1), the deduction of the amount of royalty etc. should be taken in the previous year of payment of tax. Report the list of such inadmissible amounts.

v. In case of payments to residents of interest, commission or brokerage, fees for professional or technical services, contractor/sub-contractor on which tax was not deducted or deducted but not paid before the prescribed time limit such payments will be disallowed. Report the list of such inadmissible amounts.

vi. FBT and STT are inadmissible for computing income. Verify the amounts based on available information and report them separately under this clause.

vii. Disclose the amount of income tax, FBT and wealth tax charged to the statement of profit and loss.

viii. Obtain an employee wise statement of salaries paid outside India with corresponding tax withheld and verify the accuracy of the deduction.

ix. 40(a) (iv) Provident fund – TDS – Salaries – pending.

x. Write appropriate disclaimer where it was not possible to verify or ascertain certain inadmissible amounts pertaining to any of the above categories.

g) i. Verify the details of payments to partners/members for interest, salary, bonus, commission or remuneration with reference to the deed of partnership/other documents (in case of AOP or Body of Individuals) and books of account.

ii. Work out payments in excess of limits prescribed under Section 40(b)/40(ba) and report the same in the Statement of Particulars.

h) i. Obtain list of all payments (including those to employees for salaries, LTA etc.) exceeding Rs. 20,000/- in cash or by cheques/drafts which are not crossed and cross verify the same with the bank statements.

ii. Scrutinize cash book to ensure completeness of list provided by the assessee.

iii. Ensure disclosure for disclaimer with regard to cheque/draft payments through bank. (See note below)

i) i. Obtain schedule for provision for payment of gratuity.

ii. Cross tally schedule with the amount as per audited accounts.

iii. Check the provision for gratuity which has become payable to employees who have left the services.

iv. Check the actual date of payment in case of funds set up by the Company and the due date as per the trust deed.

v. Indicate the following separately

a. Provision towards approved gratuity fund contribution

b. Provision for gratuity that is due and payable during the year.

c. Other provisions.

j) i. Obtain list of payments made by an employer towards the setting up or formation or contribution to any fund, trust, company, etc., other than:

a. Recognized provident fund.

b. Recognized gratuity fund.

c. Recognized superannuation fund.

d. As required by or under any other law.

Indicate in the Statement of Particulars the payments made by the employer other than those mentioned in (i) above

k) i. Scrutinize liability accounts to identify any liability of contingent nature debited to the profit and loss account.

18 i. Obtain duly certified list of persons specified under section 40A(2)(b) and cross tally with previous years list. Also check whether the entities/parties listed in the register maintained under section 301 of the Companies Act, 1956 or referred to in any Board Minutes fall in category of specified persons.

ii. Obtain list of expenditures in respect of which payment has been made or is to be made for goods, services and facilities (including remuneration and interest to partners) to the above mentioned category of persons and check with:

- Agreements/authorization.
- Vouchers/entries in the general ledger
- Personal accounts of the parties

19 i. Confirm the workings of profits and gains as per the requirement of these sections. In respect of section 33ABA verify from the accountants' report required under sub-section (2) of this section

20 i. Obtain a statement of written back during the year. Inquire whether allowance in tax returns was claimed in earlier years.

ii. Scrutinize other income and reserves account and report receipts, upon succession of business.

iii. **For Power Companies only** – In case of sale of fixed assets, check whether the sale value exceeds the WDV of that particular asset. If yes, report difference under this clause. However, this should be restricted to the difference between cost and WDV of that particular asset.

iv. In case of sale of assets used for scientific research, the excess of sale proceeds (together with deduction under 35(2)(i), 35(2)(ia), 35(2B)(c)) over capital expenditure; or the amount of deduction above, whichever is lower should be reported.

v. Obtain a statement of recovery of debts earlier written off. Report to the extent amount allowed as deduction in the past assessments.

vi. In case assessments are not complete for the years in respect of which bad debts are recovered, ensure appropriate disclosure by way of note.

vii. Obtain list of amounts withdrawn from special reserve created under section 36(1)(viii) with corresponding deduction allowed in earlier assessments. Report with note as discussed under verification point (vi) above.

In case business (in respect of which all the above income is received) is discontinued, any unclaimed loss (other than speculation loss) of the year in which the business is discontinued for that particular discontinued business can be set off against these incomes. Consider the effect of the same in the computation under this clause.

21 i) i. Scrutinize previous years tax audit report, current liabilities & secured/ unsecured loans (for interest accrued and due) to identify any of the following amounts pertaining to ***earlier years***:

- Tax, duty, cess or fee (by whatever name called) levied under any law (e.g. excise duty provision, customs duty, service tax, electricity duty, R&D cess, textile cess, municipal taxes, profession tax, octroi duty, etc);

- Bonus or commission payable to employees;
- Interest payable on any loans or borrowings from public financial institution, state financial corporation or industrial investment corporation, and
- Interest payable on term loans availed from a scheduled bank.

ii. Verify payments relating to above (not allowed as a deduction in the earlier assessment years) with relevant supports; viz., challans, receipts, bank advice, etc. Also disclose amounts unpaid out of above.

iii. For expenditures mentioned in (i) above debited to profit and loss account (including those not routed through the profit and loss account) of the current year, determine the amount remaining unpaid (i.e., shown as liabilities) as at 31st March. Also verify amounts paid subsequently on or before the filing of return of income, and balance outstanding.

iv. In respect of any tax, duty, cess or fee reported in clause 21(i) it is necessary to state whether it is routed through the profit and loss account. For this refer to the accounting policy on sales to confirm if sales include excise duty, sales tax, service tax, etc.

Verify report under CARO for any statutory dues remaining unpaid.

ii) i. This clause applies to employers' contribution to provident fund, gratuity fund or any other fund that has been established for the welfare of employees.

ii. Scrutinize previous years tax audit report and current liabilities to identify amounts pertaining to earlier years.

iii. Verify payments during the year pertaining to the above amounts (not allowed as a deduction in the earlier assessment years) with challans, receipts, bank advise, etc. Also ascertain amounts unpaid out of the above.

iv. Where payment made by cheque, etc. whether the sum has been realized within fifteen days of due date.

v. For each of the expenditures mentioned in (i) above that are debited to profit and loss account of current year, determine amount remaining unpaid (i.e. shown as liabilities) as at 31st March. Also verify amounts subsequently paid on or before due date.

Due dates:

- *PF/FPF/EDLI/admin charges – 15th of the next month.*
- *ESIC – 21st of the following month.*
- *Gratuity fund – if funded with the LIC, the date as mentioned in the premium letter. If the employer has established a separate gratuity trust, the date mentioned in the trust deed/ regulations.*

22 a) *Purchase of goods and materials*

i. Document the system of accounting excise at the time of purchase of goods and materials, point of availment or utilization of CENVAT credit and entries passed at the time of availment/utilisation of cenvat credit.

ii. Quantify and verify from excise records the amount of cenvat credit available for the year, amount utilized and the balance outstanding.

iii. Provide a summary of above account with description and ensure disclosure of the same.

b) i. Check the items under the head prior period adjustments, or check the notes on accounts to ensure whether any expenditure or income of prior year is debited or credited to profit and loss account.

ii. Reference to be made to the method of accounting followed by the organization and stated at clause 11 of form 3CD.

In case of cash system of accounting, there will not be any item appearing under this clause

23 i. Obtain a statement of hundis borrowed and repaid during the year with the mode and amount of each individual payment.

ii. Also check the mode of payment of interest due on hundi during the year.

iii. Obtain loan confirmations.

iv. Disclose all payments made for above otherwise than by account payee cheque. The amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying.

v. Ensure disclosure of standard note of the firm for our inability to verify whether the payments are done through account payee cheque or not.

24 a) i. Obtain statement in the required format and check with relevant accounts in general ledger.

ii. Scrutinize loan accounts, current account and deposit accounts for similar items.

iii. Scrutinise advances account to find out whether such advances are in the nature of loans/deposits.

iv. Obtain loan confirmations.

v. Disclose particulars of loans/deposits taken in excess of Rs. 20,000 during the year.

b) i Obtain statement in the required format and check with relevant accounts in general ledger.

ii. Scrutinize loan accounts, current account and deposit accounts for similar items.

iii. Ensure that all the items, which are covered under 24 (a) above and in respect of which repayment is made during the year, disclosure is made under this clause.

25 i. Verify the last return of income filed, and make a list of all the carry forward losses.

ii. Verify the recent assessment orders and ensure that the effect of such assessment, so far as applicable to the carry forward losses and depreciation, has been properly dealt in the annexure prepared.

iii. Ensure disclosure of amount of carry forward loss being subject to change on account of open assessments. Include status under appeal under Remarks column.

iv. Get the annexure so prepared verified by the audit Group.

26 i. Verify the return of income of earlier years to ensure that all the deductions claimed in the previous year, and if applicable in the current year, have been disclosed.

ii. Scrutinize the current year financial statements and audit work papers for identifying any claims available under the chapter.

iii. In respect of sections under which independent certificates are required, ensure that a copy of the same is put on the file.

iv. Ensure full particulars of deductions with quantification thereof are verified and signed off by audit staff.

27 i. Obtain a statement of TDS deducted showing the particulars of the head under which tax is deducted, amount deducted, due date of payment, payment date and amount and the delay in payment.

ii. Check the relevant vouchers, challans and returns submitted of the tax so deducted.

iii. Scrutinize other relevant accounts for expense heads such as salaries, interest, royalties, contractors/sub-contractors etc.

iv. Report only tax deducted and not paid within the prescribed limits. Where tax was liable to be deducted and has not been deducted, no details under this clause are to be furnished.

28 a) i. Verify whether the quantitative information is given as per stock records maintained by the assessee or compiled from financial statements.

ii. Verify that at least the items, which constitute more than 10% of the value of purchases or consumption or turnover as the case may be are disclosed as a separate item.

iii. The information about percentage of yield, shortage of raw materials as well as shortage and percentage of finished products to be given to the extent data is available from the assessee's records. Non-receipt of particulars, if any, should be stated.

b) Verify quantitative details of finished goods from the notes to account.

29 i. Ensure that total amount of profits distributed and the tax paid thereon is as per the audited profit and loss account.

ii. Verify and obtain copy of challan for payment of tax and date of payment.

iii. Report the dates of payment in respect of tax on dividend.

30 i. Verify the CARO for any cost audit conducted under section 233B of the Companies Act, 1956. Include whether cost audit has been conducted or not in the letter of representation.

ii. If yes, whether a copy of the same has been attached to the Tax Audit Report.

iii. In case where the audit should have been conducted but not done, the fact should be reported.

31 i. Inquire with the client, whether any audit conducted under the Central Excise Act, 1944. Include whether audit under Central Excise Act, 1944 has been conducted or not in the letter of representation.

ii. If above audit has been conducted then attach copy of the same to the Tax Audit Report.

32 i. Verify figures required for the purpose of ratios from the audited accounts and ensure that they are consistently followed.

ii. Give particulars of the components of the amounts considered in the ratios.

iii. The manner of arriving at gross profit and net profit should be disclosed and followed consistently.

iv. Finished goods produced would be derived by the following formula :

Turnover	xxx
Less: Gross Profit	xxx
	xxx
Add: Closing stock of finished goods	xxx
	xxx
Less: Opening stock of finished goods	xxx
Finished goods produced	xxx

The stock figures should be taken as per books of account and not the adjusted number as per section 145A.

ANNEXURE A

Part A — Repeat the details as reported in Part A of the Form 3CD.

Part B
- i. This part should contain the relevant code applicable to the business.
- ii. Details of items stated in serial number 1 to 9 and 14 to 16 should be same as in the Annual Accounts.
- iii. Remaining items from Serial number 10 to 13 should be verified against relevant account head if given separately in the annual accounts or from the relevant account balances as per general ledger verified by the auditor.

CALENDAR FOR COMPLIANCE AND TDS RATES
UNDER THE I.T.ACT, 1961, FOR THE FY 2007-08

1. Due dates for filing of return of income for the AY 2007-08

Sr.No.	Types of Assessees	Last Date
I.	Where the Assessee is – (i) a company, or (ii) a person (other than a company) whose accounts are required to be audited, or (iii) a working partner of a firm whose accounts are required to be audited	31st October, 2007
II.	In the case of any other Assessee	31st July, 2007

2. Due dates for payment of specified instalments of advance-tax (where tax exceeds Rs.5000) for the FY 2007-08

	Corporate Assessees	Non-Corporate Assessees	Due dates (on or before)
(I)	15 per cent of total tax liability	——————————	15th June, 2007
(II)	45 per cent of total tax liability	(I) 30 per cent of total tax liability	15th Sep.,2007
(III)	75 per cent of total tax liability	(II) 60 per cent of total tax liability	15th Dec.,2007
(IV)	100 per cent of total tax liability	(III) 100 per cent of total tax liability	15th March, 2008

3. Due dates for payment of advance tax in respect of fringe benefits, as per Section 115WJ(2), for the FY 2007-08.

	Corporate Assessees	Non-Corporate Assessees	Due dates (on or before)
(I)	15 per cent of total tax liability	——————————	15th June, 2007
(II	45 per cent of total tax liability	(I) 30 per cent of total tax liability	15th Sep.,2007
(III)	75 per cent of total tax liability	(II) 60 per cent of total tax liability	15th Dec.,2007

(IV) 100 per cent of total tax liability (III) 100 per cent of total tax liability 15th March, 2008

[N.B. Advance fringe benefit tax is payable irrespective of the amount of fringe benefit tax.]

4. Due dates for quarterly statements of TDS, as per Section 200(3), during the FY 2007-08.

Sr.No.	Nature of payment	Form No. to be filed	Qtr. of the FY ended	Due dates for filing the forms
(I)	Salary-TDS under Sections 192(1) and 192(1A)	24Q	30.6.2007	15.7.2007
			30.9.2007	15.10.2007
			31.12.2007	15.1.2008
			31.3.2008	15.6.2008
(II)	Other payments - Under Sections 193,194A to 194J	26Q	30.6.2007	15.7.2007
			30.9.2007	15.10.2007
			31.12.2007	15.1.2008
			31.3.2008	15.6.2008

[N.B. (i) The quarterly statement for the quarter ended on 31.3.2007, is to be filed on or before 15.6.2007.

(ii) For more details, please refer to Section 200(3) of the Income-Tax Act and Rule 31A of the Income-Tax Rules].

5. Other requirements

(i) Getting accounts audited by an accountant and furnishing audit report to the Department - S.44 AB	In case of all such Assessees on or before 31st October, 2007
(ii) Paying tax deducted at source under Sections 192 to 196D r.w.s. 200	Within time limits as prescribed under Rule 30
(iii) Making claim for I.T. refund – S.239(2)(c)	Within one year from the last day of the relevant AY.
(iv) Making claim for refund of fringe benefit tax – S.239 (2)(d).	Within one year from the last day of the relevant AY.

RATES FOR DEDUCTION OF TAX AT SOURCE UNDER Ss.192 to 196D

OF THE I.T. ACT, DURING FY 2007-08

During the FY 2007-08, tax is to be deducted at source on various payments at the following rates

	Nature of Payment	Rate of TDS (Per cent)
A.	**Salary to an employee – S.192**	As per prescribed rates
B.	**In the case of payment to a resident other than a company:**	
(i)	Interest other than interest on securities	10
(ii)	Interest on debentures or securities other than a security of the Central or a State Government for money issued by or	10

on behalf of a local authority or a statutory corporation or listed debentures of a company.

(iii)	Rent to a resident for the use in any machinery or plant or equipment.	10
(iv)	Rent to an individual or HUF for the use of any land or building or furniture or fittings.	15
(v)	Rent to a resident other than an individual or HUF, for the use of any land or building or furniture or fittings.	20
(vi)	Payment to a contractor (in the case of advertising contracts: 1 per cent)	2
(vii)	Payment to sub-contractor	1
(viii)	Fees for professional or technical services [5% upto 31.5.2007]	10
(ix)	Any other income	20

C. In the case of payment to a domestic company.

(i)	Interest other than interest on securities	20
(ii)	Payments to a contractor (in the case of advertising contracts: 1 per cent)	2
(iii)	Payments to sub-contractor	1
(iv)	Rent for the use of any machinery or plant or equipment	10
(v)	Rent for the use of any land or building or furniture or fittings	20
(vi)	Fees for professional or technical services [5% upto 31.5.2007]	10
(vii)	Any other income	20

D. In the case of payment to a non-resident other than a company

I. In the case of non-resident Indian

(i)	Any investment income	20
(ii)	Income by way of long-term capital gains referred to in S.115E	10
(iii)	Income by way of short-term capital gains referred to in S.111A	10
(iv)	Other income by way of long-term capital gains [not being capital gains referred to in clauses (33),(36) and (38) of Section 10]	20
(v)	Income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency.	20
(vi)	The whole of other income	30

II. In the case of any other person

(i)	Income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency.	20
(ii)	Income by way of long-term capital gains [not being long-term capital gains referred to in clauses (33),(36) and (38) of Section 10]	20
(iii)	The whole of other income.	30

E. In the case of payments to a non-domestic company

(i)	Income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the	20

Indian concern in foreign currency.

(ii)	Royalty payable by Government or an Indian concern, in pursuance of an agreement made after 31.3.1976, where such royalty is in consideration for transfer of copyright in a book, to an Indian concern or in respect of software to a person resident in India	
(a)	where the agreement is made before June 1, 1997	30
(b)	where the agreement is made on or after June 1, 1997, but before June 1, 2005.	20
(c)	where the agreement is made on or after June 1, 2005	10
(iii)	Royalty [not being of the nature referred to in (ii) *supra*] payable, in pursuance of an agreement, by Government or Indian concern (approved by the Government):	
(a)	where the agreement is made after March 31, 1961 but before April 1, 1976	50
(b)	where the agreement is made after March 31, 1976 but before June 1, 1997	30
(c)	where the agreement is made on or after June 1, 1997 but before June 1, 2005	20
(d)	where the agreement is made on or after June 1, 2005	10
(iv)	Fees for technical services payable, in pursuance of an agreement, by the Government or Indian concern (approved by the Government)	
(a)	where the agreement is made after February 29, 1964 but before April 1, 1976	50
(b)	where the agreement is made after March 31, 1976 but before June 1, 1997	30
(c)	where the agreement is made on or after June 1, 1997, but before June 1, 2005	20
(d)	where the agreement is made on or after June 1, 2005	10
(v)	Income by way of short term capital gains referred to in S.111A	10
(vi)	Income by way of long-term capital gains [Not being long-term capital gains referred to in clauses (33),(36) and (38) of Section 10]	20
(vii)	Any other income	40

[NB: Please look for more details regarding Entries No.(ii),(iii) and (iv) – supra]

SURCHARGE ON INCOME-TAX:

The amount of income-tax deducted, shall be increased by a surcharge for purposes of the Union, at the following rates:

(i) In the case of individual, HUF, association of persons and body of individuals, whether incorporated or not - @ 10% of such tax, where the income or aggregate of such **incomes paid or likely to be paid** and subject to deduction, exceeds Rs.10 lakhs. There will be no surcharge where such income is equal to or lower than Rs.10 lakhs.

(ii) In the case of every artificial juridical person referred to in S.2(31)(vii) of the I.T. Act @ 10% of such tax.

(iii) In the case of a firm or domestic company, with income exceeding Rs.1 crore @ 10% of such tax.

(iv) In the case of every company other than a domestic company, with income exceeding Rs.1 crore @ 2.5% of such tax.

(v) In the case of co-operative society or local authority - Nil

EDUCATION CESS:

The amount of aforesaid surcharge shall be increased by (i) education cess @ 2% and (ii) education cess called secondary and higher education cess @ 1% (Total 3%) of income-tax and added to the tax deducted at source.

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Special Session

"ENTRY OF RETAILING GIANTS IN INDIA AND EFFECT ON INDIAN ECONOMY "

CHAIRMAN

CA. M. C. JOSEPH, FCA
Past Central Council Member, ICAI

CA. M.C. Joseph is a Senior practising Chartered Accountant in Kochi.

Positions Held

Member, Central Council: 1998- 2001

Member, SIRC: 1983-1985 and 1988- 1997

Treasurer: SIRC: 1983

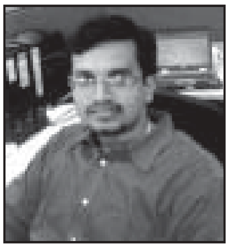
Secretary, SIRC: 1994

Vice- Chairman, SIRC: 1995

Chairman, SIRC: 1996

Secretary Ernakulam Branch of SIRC: 1981- 1982

SPEAKER



Sri. PHILIP JOSE, MBA
KPMG, New Delhi

Sri. Philip Jose - Manager, Business Advisory Services, KPMG

· PGDM, Indian Institute of Management, Calcutta - 2001

· B.E. (Electical), Indian Institute of Technology, Roorkee - 1999

Philip has six years of management consulting experience with KPMG Consulting and Andersen Business Consulting. Philip has been leading strategy and operations consulting engagements across sectors such as FMCG, consumer durables, retail and telecom.

He has worked on engagements for leading firms such as Britannia, Samsung Electronics, ITC, Nilgiri's Retail and Reliance Communications. He is a member of KPMG's global supply chain practice and has led successful business development efforts for KPMG in the supply chain and consumer markets space.

His thought leadership participation includes:

· KPMG's report on Indian Retail released by FICCI in December 2005

· Indian retail scenario, Private session, World Economic Form, November 2006

Third Technical Session

"EMERGING OPPORTUNITIES FOR CAs IN CORPORATE SECTORS - THE INITIATIVES OF CALC"

CHAIRMAN

CA. JOSE POTTOKARAN, FCA,
Past Central Council Member, ICAI

CA. Jose Pottokaran is a Senior practising Chartered Accountant in Thrissur.

He was the Founder Secretary of Chartered Accountants Students Association, Thrissur.

He was the Committee member of All Kerala Chartered Accountants Students' Association, and SICASA,Thrissur.

He was also the Founder Secretary of Chartered Accountants Association, Thrissur.

He was elected to the Regional council for 2 times and served as SICASA Treasurer, Secretary, Vice Chairman and Chairman of SIRC

SIRC has secured Best Region Award for the first time during his tenure.

He was elected to Central Council in 1988 and Chairman of various Committees. He is the only person served in the Executive Committee from Kerala State.

Now he is the Presidence of All Kerala Chartered Accountants Association.

He was the director in South Indian Bank Ltd. Trichur Heart Hospital and various other charitable institutions.

He was authored various books:

i) Planning for Non-Resident Indians
ii) A Handbook for Charitable Institutions
iii) Management of Catholic Institutions
iv) Kerala Value Added Tax

SPEAKER

Dr. ALOK RAY,
Secretary, Corporate & Allied Laws Committee,
ICAI, New Delhi

A Doctorate in Law, is the Secretary of Corporate and Allied Laws Committee of the Institute. Earlier he was the Secretary, Committee on Ethical Standards & Unjustified Removal of Auditors, Committee on Corporate Governance, Study Group on Section 25 of the Chartered Accountant Act, 1949 & Other related issues thereto & Study Group on Capacity Building Measure of CA Firms. He is the Nodal Officer of the Institute on Competition Law issues and in MCA-21 Project. He is a Guest Faculty of National University of Juridical Sciences & Indian Law Institute. He is presenting articles/papers in various Seminars & Workshops and his articles on Corporate Law, Constitutional Law, Intellectual Property Law, International Law, Arbitration, issues relating to Public Sector etc. are being published in All India Reporter, Labour & Industrial Cases, Corporate Law Cases and other major Law Journals, The Chartered Accountant & in Newspaper.

Emerging Opportunities for Chartered Accountants – Initiatives of Corporate and Allied Laws Committee

By
Dr. Alok Ray,
Secretary,
Corporate and Allied Laws Committee
Institute of Chartered Accountants of India

Accounting profession is standing at the cross road

- Revolutionary development in IT, Telecommunication and multimedia.
- Globalization and proliferation of multi-nationals have transgressed the National and Regional barriers.
- Professions are now market driven.
- From a post-mortem approach of score-keeper to leadership guiding decision making process at every stage of development. – planning, policy making, investment, implementation and evaluation.

Three key drivers of change

- Technology
- Globalization
- Concentration of market power

Beyond Budgeting and Auditing Concept

- The forces of globalization might create pressures for opening up of market for accountancy services in India.
- Urgent need for paradigm shift in the thinking and vision of the profession.
- Challenges lies in using the core-competency for strategic planning and to develop transparency and accountability at all levels.

Beyond Budgeting and Auditing Concept (contd..)

- A pro-active role in promoting the economic development by lending credibility to the financial structure and systems at macro as well as micro level.
- A crucial role in formulation of economic policies and implementation thereof.
- The profession has to be a partner in the nation building process.

International perspective

- India has been accepted as a emerging world economic power.
- Indian companies are acquiring foreign companies to show the might and to integrate with the world market.
- The total member strength has increased from 1,600 in 1949 to more than 1,40,000.
- More than 50 countries have no accounting body.
- The brand of Indian Chartered Accountants has been accepted world wide.

Opportunities – Conventional Areas

- Auditing, relating certification and assurance services
  - Statutory Audit of private and public sector
  - Statutory Audit of insurance companies and banks
  - Internal Audit and concurrent audit.
  - NPA Audit
  - Tax Audit
  - Audit of Urban Local Bodies
  - Energy Audit
  - Certification of EXIM policy

Opportunities – Conventional Areas

- Tax Consultancy and allied services
  - Direct Tax
    - Income Tax
    - Wealth Tax
    - House and Property Tax
    - Agricultural Tax
  - Indirect Tax
    - Sales Tax, VAT
    - Service Tax
    - Customs
    - Excise

Opportunities – Conventional Areas

- Accounting and Secretarial Work
  - Compilation of Accounting information
  - Conversion of Accounts
  - Conversion of Indian GAAP to US GAAP
  - Small Scale Industrial Sector
  - NGOs

Extension of Conventional Areas

- Legal Support and Advisory Services
  - Insolvency and Corporate Recovery
  - Valuation of Assets, Shares, Intellectual Property Rights
  - Executors and Trustees
  - Liquidators
  - Representatives before
    - Central Excise Authorities
    - Income Tax Appellate Tribunal
    - CLAT
    - CCI
    - ADR (including Arbitration)

Extension of Conventional Areas

- Financial and Management Services
  - Financial Services Sector
  - Management Consultancy and other Services
  - Directorship
  - Financial planning
  - Investigation
  - Consultants in the World Bank
  - Project Finance
  - Restructuring

Extension of Conventional Areas

- Financial and Management Services (contd…)
  - Due Diligence
  - Litigation Consultant
  - Performance Measurement Services
  - Re-engineering of processes

Emerging Areas

- Value Added Services
  - Risk Assessment
  - Fraud and Forensic Accounting
  - Performance Measurement Services
  - Business Performance Improvement
  - Enterprise Governance
  - Long Term Strategic partner
  - Stakeholder Value creation
  - Corporate Environment and Team
  - Insurance

Emerging Areas

- Management Services
  - Strategic Management
  - Change Management
  - Knowledge Management
  - Quality Management
  - Disaster Management

Opportunities in Globalized Environment

- Services to Global organizations
- WTO Regime
- BPO, KPO, LPO, FPO
- Expertise in IFRS
- Transnational anti-competitive agreement

Corporate Governance

- Clause 49 compliance
- Guidelines for CPSEs issued by the Central Government
- Legal compliance audit
- Legal compliance outsourcing services in I.P.O., corporate management and governance.
- Enhanced financial disclosure - an ingredient of accountability.
- To promote ethical framework

Information Technology and Computer Software

- E-governance and E-Accounting
- System Development Life Cycle
- Information Security
- Review of IT organizational structure
- Risk Analysis
- Selection of software tools
- Disaster recovery planning
- Audit of Application control
- IT Budgeting

Areas where services may be rendered to the Central and State Government

- Power Sector Reform and restructuring of distribution sector
- Transport and civil aviation
- Railways
- Steel
- Health
- Civil supplies and public distribution
- Programme implementation
- Communication

Areas where services may be rendered to the Central and State Government

- Personnel and HRD
- Animal resource development
- Finance department
- Water Resource management
- Alternative energy sector
- Forestry
- Mining related activities
- Economic planning

CA as Entrepreneur

- Professional excellence can be translated into business
- CAs can be visionary entrepreneur to create wealth for the nation
- To encourage individual entrepreneurship, one person company be recognized in law – recommendation of Dr. J.J. Irani Committee

Initiatives of Corporate and Allied Laws Committee

- Course on Valuation
- Course on Arbitration
- Formulation of Corporate Affairs Standard on Valuation of Assets and Shares, Arbitration, Labour Laws, Merger & Demerger, Appointment and qualification of auditor
- Compulsory audit be prescribed in FCRA

Initiatives of Corporate and Allied Laws Committee

- Certification and attestation on various documents under FEMA
- MCA-21 Project – CFC Centre
- L.L.P. Bill
- Competition Law
- Reform in Company Law

Thank you

Fourth Technical Session

"CORPORATE TAX PLANNING & TDS"

CHAIRMAN

CA. VENUGOPAL C. GOVIND, FCA

CA. Venugopal C Govind is a Senior Consultant and Financial Adviser to many leading Public and Private Sector companies in South India. He has been a Senior Faculty in Management of various Management Institutes and Universities in South India. He is a member of the Advisory Boards/Academic Councils of various Educational Institutions and Business Schools in Kerala.

He has served in the Expert Advisory Committee, Fiscal Laws Committee, WTO and International Trade Committees of the Institute of Chartered Accountants of India, New Delhi and he is a resource person for training of Peer Reviewers of our Institute. He has also served as Member of the Managing Committee and the Expert Committee in Trade, Industry, Banking and Finance, Direct and Indirect Taxes of the Associated Chambers of Commerce & Industry, New Delhi. He has served in the National Executives of All India Manufacturers Organisation, All India Shippers Council and Indo-American Chamber of Commerce, Bombay. He is a member of the Kerala State Executive Council of FICCI.

He has served as Director on the Board of Directors of many Indian Public and Private Sector Companies. He is currently a Director of Parry Agro Industries Ltd., Chennai, KITCO Ltd., Cochin, Alleppey Co.Ltd., The Kerala Balers Pvt. Ltd. and William Goodacre & Sons Pvt.Ltd.

He was awarded the Management Leadership Award by the Kerala Management Association for his significant contribution to Business, Industry and Management. He was District Governor of Rotary International (District 3200) in South India.

He has addressed many professional Seminars and Conferences in India and abroad.

SPEAKER

CA. K. C. DEVDAS, FCA,

Secunderabad

CA. K.C Devdas is a senior member from SECUNDERABAD, specializing in the field of Taxation.

Being keenly interested in Taxation, he has presented papers in Seminars and Conferences organized by the Institute of Chartered Accountants and its Regional Branches.

He has delivered talks on the subjects known to him at various forums like the Life Insurance Corporation of India, Rotary Clubs, Educational Institutions and has been a gust-lecturer of the Courses organized by the State Bank of India, Staff College, Hyderabad.

He was elected to the Southern India Regional Council of the Institute of Chartered Accountants during the year 1983 to 1988 and was a member of the Taxation Committee of SIRC during the year 1983 – 84 and was its Secretary during the year 1985 – 86.

He was a co-opted member of the Taxation Committee of the ICAI, New Delhi during the year 1988-89. Secretary of the Tax Bar Association, Andhra Pradesh, during the year 1990-91.

He was on the Managing Committee of the prestigious Secunderabad Club for two terms during the year 1990 to 1992 and from 1993 to 1995 and a co-opted member on Purchase and Finance Sub-Committees of the Club until July 1998, and was again nominated as a co-opted member in the Finance Sub-Committee for the year 2000-2001, 2002-20003 and 2003-2004.

He has authored a monograph on "Tax Deducted at Source" for the Hyderabad Branch of SIRC of ICAI and Monograph on Taxation of H.U.F for AP Tax Bar Association. He was President of the Tax Bar Association-Andra Pradesh during the year 2003 -2004

CORPORATE TAX PLANNING – CASE STUDIES

1) ABC Ltd is into the business of civil construction business. During the previous year 2006-07 relevant to the assessment year 2007-2008, the company had undertaken a contract for civil construction for an Indian Office of an MNC company on urgent basis.

   In view of the past relationship, ABC Ltd commenced the work without entering into a formal contract since the rate for the contract were yet to be approved by Head office of the client. The company was assured that the Rates quoted by it would be accepted.

   Work had commenced in January 2007 and completed by March 2007. The company had also received advance based on the normal rates. The company finalized it's account in June 2007 by which time the local Indian office of MNC had not received the approval from the head office and therefore neither a formal contract was entered into, nor a bill was raised for the work done. Therefore both the cost incurred and the advance received was not reflected in P &L Account and both the amounts were carried forward to the next year.

   After the Approval was received for the rates quoted by the company in August 2007 a formal contract was entered into and the company raised a Bill and a payment was also received for the same. The company wishes to disclose whole of the income in the current year. ie for the period 1.4.2007 to 31.3.2008 relevant to the assessment year 2008-2009. Is this proposition correct?

2) PQR Ltd a sick company settles its bank liability of Rs.70 lacs, which comprises principal of Rs.50 lacs and interest of Rs.20 lacs. The whole of the interest was waived and out of the principal sum of Rs.50 lacs, the bank waived a sum of Rs.10 lacs. PQR Ltd wishes to utilise the waived sum of Rs.10 lacs for expansion without paying any tax? Is this possible?

3) ABC Ltd borrowed a sum of Rs.50 lacs from a Bank and advanced a interest free loan of Rs.25 lacs to it's sister concern. The sum of Rs.25 lacs was used by the sister concern of ABC Ltd for it's business.

   ABC contends that no portion of the Interest on Bank loan is to be disallowed as the amount was borrowed for business purposes though it related to the Business of sister concern. ABC Ltd has taxable Income of high order while it's sister concern is in Losses.

   ABC Ltd insists that it is a legal tool of Tax planning and not a devise or mode to avoid Tax. Is this stand Tenable?

4) XYZ Ltd an infrastructure company which enjoys substantial deduction u/s 80IA of the Act proposes to transfer one its undertaking on 15.09.2007 which enjoys the aforesaid exemption through the process of demerger to claim capital gains exemption. However, the transferee company wishes to avail the benefits of section 80IB. Is this possible?

5) For the Asmmt year 2004-05, CE Ltd had claimed deduction u/s 80IB, 88HHC and 80JJAA of the Income Tax Act, 1961.

   It has been advised that as it had claimed deduction u/s 80IB it would not be entitled to deduction u/s 80HHC and 80JJAA to the extent of Profit u/s 80-IB on account of the embargo placed by section 80IB(13) r.w.section 80IA(9)of the I.T.Act, 1961.

   CE Ltd as a Tax planning measure is of the view that what section 80IB(13) r.w 80IA(9) of the Income-tax Act, 1961 stipulates is that the deduction u/s 80HHC, 80IB and 80JJAA in the aggregate should not exceed the gross total income. Is this contention correct?

T.D.S. PROVISIONS – A CAPSULE

1 Chapter XVII of the Income Tax **–** Contains provisions for collection and Recovery of Tax. PART A (General) – deals with Deduction of Tax at Source and Advance payment.

Section 190, interalia, provides that not withstanding that the regular assessment in respect of any income is to be made in a later assessment year, the Tax on such income shall be payable by Deduction or collection at Source or by advance payment, as the case may be, in accordance with the provisions of the Chapter. Hence, before a regular assessment is made, Tax on income shall be payable by Deduction or collection at Source or by advance payment in accordance with the other Provisions.

Section 191, provides for the direct payment of Income-Tax by the assessee where provisions is not made under the Chapter for deducting Income-Tax at the time of payment.

Explanation to Sec.191 provides that a person who is liable to deduction of Tax at Source will not be treated as a defaulter if the Payee pays the Tax directly

1.1 Part B of the Said Chapter contains a group of sections which provides for "Deduction of Tax' at source. These are:-

(i) Tax from salary [Section 192] **:** Any person paying salary shall deduct TDS on the estimated income of the assessee under the head 'Salaries'. The income-tax is required to be calculated on the basis of regular rates applicable to an individual and shall be deducted on average at the time of each payment. No tax will, however, be deducted at source in any case unless the estimated salary income including the value of perquisites, for the financial year exceeds the Taxable limit chargeable to Tax.

(ii) TDS from interest on securities [Section 193]: Any person paying income to a resident by way of interest on securities shall at the time of credit of such income or at the time of payment, whichever is earlier, shall deduct tax at source. However no deduction is required in the case of company in which public are substantially interested if the payment does not exceed Rs.2500

(iii) TDS from dividends [Section 194]: With effect from 1.4.2003, no tax shall be deducted in respect of any dividends referred to in section 115-O.

(iv) TDS from interest other than interest on securities [Section 194A]: Where the payer is a Banking Company, Co-operative society or Post Office pays to a resident any income by way of interest other than interest on securities must deduct tax at source at the amount payable or credited exceeds Rs.10000 during the financial year and Rs.5000 in any other case. Tax is to be deducted at the time of credit or at the time of payment of interest, whichever is earlier. In the case of individual or HUF assessee, If their accounts are subjected to tax audit during the year preceding to the interest payment, the such assesses are also covered by this section.

(v) TDS from winning from lottery or crossword puzzle [Section 194B]: Any person paying income by way of winning from any lottery or crossword puzzle or card game and other game of any sort shall deduct tax at source of the time of payment thereof if the amount exceeds Rs.5000.

(vi) TDS from winning from horse races [Section 194BB]: Any person being a book maker or to whom a licence has been granted for horse racing in any race horse or for arranging for wagering, betting in any race course must deduct tax on income payable by way of winning from any horse race if the amount payable exceeds Rs.2500 (at the time of payment thereof).

(vii) TDS from payment to contractors and sub-contractors [Section 194C]: Where the Central or State Government or any local authority or any corporation or any company or a Co-operative society or any trust or society or university or any firm makes a payment or credit to the contractor and not being an individual of HUF not covered by tax audit provision of Rs.20,000 or more, it shall deduct TDS. Moreover, a person being a contractor and not being an individual or HUF not covered by tax audit provisions gives any work by subcontracting it to another person, then he shall also deduct tax on the amounts paid or payable to the sub-contractor. However, if the aggregate payment in a financial year exceeds Rs.50, 000, the tax will be deducted at source even though the value of each contract is below Rs.20,000.

(viii) <u>TDS from insurance commission [Section 194D]:</u> Amounts paid to a resident by way of commission or otherwise for soliciting or procuring Insurance business is deductible at the time of payment or credit to the account of the recipient – whichever is earlier. However, no deduction is to be made if the payment to a person does not exceed Rs.5000.

(ix) <u>TDS from payment in respect of deposits under NSS [Section 194EE]:</u> Any person making the repayment of deposits under National Saving Scheme to any person shall deduct TDS thereon at the time of actual payment. However no deduction is to be made if the aggregate payment during the financial year is less than Rs.2500.

(x) <u>TDS from payments on account of repurchase of units by mutual fund or UTI [Section 194F]:</u> Any amount invested in equity linked saving scheme and for which deduction under section 80 CCB has been obtained (upto the assessment year 1992-93) upon repurchase of such units the payer being mutual fund or UTI shall deduct tax on the amount paid and not the income comprised therein.

(*xi) <u>TDS from commission on sale of lottery tickers [Section 194G]:</u>* *A*ny commission remuneration or prize paid towards stocking, distributing, purchasing or selling lottery tickets is liable to tax deduction if the commission exceeds Rs.1000 during the financial year.

(xii) <u>TDS from commission or brokerage [Section 194H]:</u> Any income by way of commission (other than insurance commission referred to in section 194D) or brokerage paid by an assessee (other than individual or HUF) shall deduct at the time of credit or payment whichever is earlier. No deduction is to be made where the aggregate of payments to such person during the financial year does not exceeds Rs.2500. It will not apply to individual and HUF assesses unless they are covered by the audit provisions under section 44AB.

(xiii) <u>TDS from rent [Section 194-I]:</u> Any person other than individual or HUF paying any income by way of rent to any resident and if the aggregate payment exceeds Rs.1,20 lakhs during the financial year, then he shall deduct tax at source at the time of credit of such rent or payment, whichever is earlier. However, individuals or HUF assesses whose accounts are subject to audit under section 44AB are also covered by this section. The word “Rent” has been defined in Explanation to Section 194-I to means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,—

(a) land; or

(b) building (including factory building); or

(c) land appurtenant to a building (including factory building); or

(d) machinery; or

(e) plant; or

(f) equipment; or

(g) furniture; or

(h) fittings,

whether or not any or all of the above are owned by the payee;]

(xiv) <u>TDS from fees for professional or technical service [section 194J]:</u> Any person (other than individual or HUF assesses responsible for paying to a resident any sum by way of fees for professional services or fees for technical services or Royalty or any other sum referred to in clause (va) of Section 28; shall deduct tax at the time of payment or credit to the account of the payee – whichever is earlier. However, no deduction is to be made if the aggregate of sum payable to the payee does not exceed Rs.20,000 Individuals and HUF assesses are not covered by this section under following circumstances:-

if they are not covered by Tax audit provisions.

If the payment is exclusively made for personal purposes.

(xv) TDS from compensation in certain cases on acquisition of immovable property [Section 194LA]: Where a sum is payable to a resident towards compensation or enhanced compensation on account of compulsory acquisition of any immovable property under any law then at the time of payment in cash or by cheque or by draft or by any other mode if the payment exceeds Rs.1 Lakh, tax is deductible. However, compulsory acquisition of agricultural lands will not be subject to this provision for the reason that it is not a chargeable capital gain.

1.2 TDS in respect of payment to non-residents

Following payments to non-residents are covered by TDS provisions:-

(i) TDS from payment to non-resident sportsmen or sports association [Section 194E]: Any income covered by section 115BBA to a non resident sportsmen or sports associations is liable for tax deduction at the time of credit of such income to the account of the payee or at the time of payment - whichever is earlier. Income referred to in section 115BBA is income by way of advertisement or, income from contribution of articles relating to any sports in India in newspapers, magazines, journal or income from participation in any game inn India (other than card game, lotteries, crossword puzzles, etc.].

(ii) TDS from payments to non-residents [Section 195]: Any person paying to a non resident (not being a company or a foreign company) any sum other than salary chargeable under the provisions shall deduct tax at source. The deduction shall be at the time of credit of such income to the account of the payee or at the time of payment whichever is earlier.

(iii) TDS from income from units to offshore funds [Section 196B]: Where any income in respect of units referred to in section 115AB or by way of long-term capital gains arising from the transfer of such units is payable to an offshore Fund, the person responsible for making the payment shall, at the time of credit of such income whichever is earlier, deduct income-tax thereon.

(iv) TDS from income from Foreign Currency Bonds or Global Depository Receipts [Section196 C]: Any income by way of interest or dividend in respect of Bonds or Global Depository Receipts referred to in section 115AC or by way of long-term capital gains arising from the transfer of the said Bonds or Global Depository Receipts payable to non-residents is liable for TDS. However, no deduction is required in respect of any dividend referred to in section 115-O where it is declared or paid on or after 1-4-2003.

(v) TDS from income from securities to Foreign Institutional Investors [Section 196 D]: Where any income (other than capital gain) in respect of securities referred to in clause (a) of sub – section (1) of section 115AD is payable to a Foreign Institutional Investor, the person responsible for making the payment shall, at the time of credit of such income or at the time of payment thereof, whichever is earlier, deduct income-tax thereon.

Applicability of other TDS sections: It is to be noted that in respect of non-resident and foreign companies, section 195 overlaps with various other TDS sections, viz., sections 194B, 194BB, 194E, 194EE, 194F, 194G, 196A,196B,196C and 196D. In such situation, the aforesaid sections would take precedence and override section 195. Thus, all the aforesaid sections shall also apply to non-residents.

1.3 Time limit for payment of TDS to credit of Central Government

Rule 30 of the Income Tax Rules, 1961 lays down the time limit for remittance of tax deducted at source to the credit of the Central Government. Accordingly, where tax is deducted by the Government, then it must be remitted on the same day, Similarly where the tax is deducted on behalf of the Government (i.e., where the payee is Government) then also, it must be remitted on the same day. In other words, the amount deducted must be deposited by the payer of income on very date of deduction.

In respect of deductions made on payments to other parties (not being deducted by government or deducted on behalf of the government), the time limit for remittance is given in the following table.

Date of credit or payment	Time limit for remittance
a. Where the income [referred to in sections 193, 194A, 194C, 194D, 194E, 194B, 194H, 194-I, 194J, 195, 196A, 196B, 196C, 196D] is credited to the account of the payee on the date upto which the accounts of such person are made.	Within 2 months from end of the months in which the sum is credited to the account of the payee.The amount has to be remitted on or before 31st May.
b. In any other case	Within one week from the last day of the month in which deduction is made

1.4 ***Certificate of TDS (Section 203)***

As per section 203 read with rule 31 of Income Tax Rules, 1962, after having deducted TDS and remitted the sum with the exchequer, the assessee must issue a certificate for tax deducted in the following prescribed forms:

Date of credit or payment	Time limit for remittance
a. Where the income [referred to in sections 193, 194A, 194C, 194D, 194E, 194B, 194H, 194-I, 194J, 195, 196A, 196B, 196C, 196D] is credited to the account of the payee on the date upto which the accounts of such person are made.	Within 2 months from end of the months in which the sum is credited to the account of the payee.The amount has to be remitted on or before 31st May.
b. In any other case	Within one week from the last day of the month in which deduction is made

The Finance (No.:2) Act 2004 envisaged dematerialisation of certificates for tax deducted or collected at source. Accordingly, a person deducting/collecting the tax was not required to issue any certificate for tax deducted/ collected at source and credit for such tax was to be given based on information captured otherwise. The person claiming the credit was also not required to produce certificate for the tax deducted / collected at source. This was to become effective from 1st April, 2005.

However, since the infrastructure required for the system is not fully ready, the plan to dematerialise the T.D.S. certificates is being postponed to 1.4.2008. Consequently, the existing procedure of issue of certificates etc. continues. Can the present system be substituted?

1.5 *No deduction or deduction of TDS at lower rate*

Under the Income Tax Act, certain exceptional circumstances are provided where under on fulfillment of certain conditions, no tax will be required to be deducted at source.

Accordingly, section 197A enables the persons with nil or low estimated total income (not exceeding Rs.50,000) on which there will be no income –tax liability at all, to receive certain income referred to in sections 193, 194, 194A and 194K from the payer without deduction of TDS on furnishing to the payer, declaration in writing in the following prescribed forms:

Section	Relevant form
Resident individual for incomes referred to in sections 194 and 194EE	From No. 15G
By any person [other than company or a firm] for incomes referred to in sections 193, 194A and 194K	Form No: 15G
Senior citizen resident in India for income referred to in sections 193, 194,194A, 194EE and 194K.	Form No. 15H

It is to be noted that the benefit of section 197A will be available to eligible persons other than senior citizens only if aggregate of income under sections 193, 194, 194A, 194EE or 194K does not exceed the maximum limit chargeable to tax.

Furthermore, in view of section 197 if an assessee finds that his total income may be below taxable limit or if the tax ultimately paid by him would be less than the tax deducted at source, he can make an application in Form No. 13 to the concerned assessing officer for providing a certificate of tax deduction at source at lower rate of no deduction. The assessing officer, on satisfaction of the existence of such circumstances, may grant a certificate to the assessee for no deduction or lower deduction of TDS in respect of income referred to in sections 192, 193, 194, 194A, 194C, 194D, 194G,194H,194-I, 194J, 194K, 194LA and 195. After the certificate is given, the payer shall until such certificate is cancelled, deduct the income-tax at the rates specified in such certificate or shall not deduct any tax, as the case may be.

1.6 Penalty for non complying with TDS provisions.

Following are the consequences of not complying with the TDS provisions.

The assessing officer shall levy interest @ 12per cent per annum on the amount of such tax which was deductible at source. The interest is to be computed from the date on which it was deductible and upto the date on which the Tax is actually paid. [Section 201(1A)].

The assessing officer shall treat the person as on assessee in default in respect of the tax [Section 201(1)]. As a consequence, the assessing officer may levy penalty which cannot exceed the tax in arrears [Section 221]

Merely because tax was not deducted at source by the payer of income will not give any relief to the person to whom the income accrues. The recipient of income is still liable to pay tax on such income also. Tax deduction at source is only one of the modes of recovery of tax [Section 200].

Section 271C says that if any person fails to deduct tax at source if not filed within the prescribed time, then the assessee shall be liable for penalty at Rs.100 for every day of delay. However, the penalty will not exceed the sum deductible at source.

Section 272A(2)(c) says that the annual return of tax deduction at source if not filed within the prescribed time, then the assessee shall be liable for penalty @ Rs.100 for every day of delay. However, the penalty will not exceed the sum deductible at source.

Section 272A(2)(g) says that if the certificate of deduction is not given to the recipient of income, then the assessee shall be liable for penalty @ Rs.100 for every day of delay.

Section 276B says that in addition to penalty under section 271C, the assessee may be punishable with prosecution which shall not be less than 3 months and which may extend to 7 years and with fine.

I have not touched upon the Provisions of Sec.206C which deals with collection of Tax at Source on Profits and gains of Business of Trading in Alcoholic liquor, Forest produce, scrap, party lot, Toll plaza, Mining and quarry, etc.

***2.1 Precedents*:**

The recent judicial Decisions on the subject is classified under Precedents which is annexed to this paper.

2.2 TDS Chart:

TDS Chart for payments to Residents and Non-resident is appended as Annexure A to this paper..

Conclusion:

The Provisions relating to TDS are becoming tedious with the passing of each year. It is a subject and a separate code by itself. The Challenges for its Compliance are being met very ably by the Tax Paying Citizens of this country. Yet they are being penalized and prosecuted for doing ably what the Government should be doing.

P R E C E D E N T S

I. Section 199

It was held by the Punjab & Haryana High Court in Commissioner of Income Tax Vs Daljit Singh Pyare Lal & Co. reported in 141 Taxman 538 that the claim of credit for tax deducted at source cannot be denied on hyper technical ground that it was not claimed in prescribed form.

The Mumbai Bench of ITAT in Capt. J.G.Joseph Vs. JCIT reported in 92 TTJ 1067 held that credit for TDS can be given only on TDS certificate issued by the Employer. However it was held that as per Sec.205 no demand can be made on the Assessee to the extent to which tax has been deducted at Source. Non furnishing of Certificate was held to be beyond the power and control of the Assessee and the Department did not exercise its power against the Assessee's employer to enforce payment of tax deducted at source and issue of certificate. Under these circumstances it was held that no tax and interest can be recovered from the Assessee till such powers are exercised by the Revenue Authorities.

II. Section.201 & 201(1A)

No interest under secion 201(1A) is Imposable merely because in initial months tax was deducted short:

In Vinsons v. Third ITO (2004) 79 TR(Dir. Tax) (Mum 'H' Trib) 325 : (2004) 89 ITD 267(Mum-Trib): (2004) 83 TTJ (Mum-Trib) 594, it was held that the TDS instalments of each month need not necessarily be accurate as otherwise the expression "increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year" will have no meaning. Therefore, on mere short deduction of tax at source from the salaries paid to the employees, section 201(1A) cannot be invoked unless the total tax deducted by the end of the year is less than the tax deductible on salary paid to the employee in that year.

Section 201 (1A) Interest

ITAT Jodhpur 'SMC' Bench in Grasim Industries Ltd. Vs. ITO reported in 92 TTJ (Jd) 944 held that Interest u/s.201(1A) of I.t.Act was not applicable on account of unequal deduction of tax from deductions. It was held tax was deducted as per law and there was no loss to Revenue and therefore interest was not chargeable.

Tax deduction at source – Interest under section 201(!A) – Applicability of provisions – Delaying filing of Form no. 15H- Said declaration received later than date of credit of interest to recipients

The provisions of section 201(1A) are attracted only in the case in which payment is actually made, in view of Circular Nos. 346, dt. 30-6-1982 and 351, dt.26.11.1982 and therefore assessee could not be treated in default and interest under section 201(1A) could not levied.[ITO v. Pearl Organic Coatings (2004) 84 TTJ (Jod- Trib) 802].

III. Section .194-A

Tax deduction at source – Under section 194A – Interest on compensation awarded by Motor Accidents Claims Tribunal (MACT)- Entire amount to be deposited or amount remaining after deducting TDS – MACT claimed entired amount to be deposited.

In view of specific provision of section 194A(ix) the Insurance Company was durty bound to deduct the amount of income-tax from the amount of interest payable, by it, therefore, in view of the express provision as aforesaid, the decree passed against the petitioner Insurance Company shall stand modified accordingly.

Held the provisions of section 194A have been specifically made applicable to the interest payable on the amount of compensation awarded by the Motor Accidents Claims Tribunals.

The clause (ix) of section 194A has been inserted with effect from 1.6.2003 by the Finance Act, 2003. Admittedly, the amount of interest has been deposited by the petitioner-Insurance Company on 2.7.2003, i.e. after 1.6.2003. in view of the aforesaid specific provisions contained in the Income Tax Act, the Insurance Company was duty bound to deduct the amount of income-tax from the amount of interest payable by it. In view of the express provision as aforesaid, the decree passed against the petitioner Insurance Company shall stand modified accordingly [United India Insurance Co. Ltd v. Mitaben Dharmeshbhai Shan (2004) 269 ITR 63 (Guj)] .

The Madras High Court in New India Assurance Company Ltd. Vs. Mani reported in 142 Taxman 523 held that the Insurance Company was bound to deduct Income Tax on Interest if the amount paid exceeded Rs.50,000/-.

IV. Section. 194-B

The Kerala High Court in Sampanna Kuries (P) Ltd., Vs. ITO reported in 141 Taxman 615 held that in the instance case, so far as the kuri companies were concerned, it as a matter of fact the prize scheme was introduced only for the limited purpose of ensuring the due payment of kuri instalments and it it was made available only to those subscribers who promptly remitted the kuri instalments it could not be said that there was any consideration for the draw. In other words, insofar as Kuri transactions and the price schemes thereunder were concerned, unless there was independent material to show that a separate consideration other than the instalment payments was provided in the scheme, there was no question of treating the kuries conducted by the petitioners herein as lotteries to attract the provisions of Sec.194B. However, that matter had to be considered by the authorities concerned in appropriate proceedings with reference to the price schemes of the respective petitioners.

So far as the price scheme of the petitioners who were dealers in consumer goods was concerned, it was a matter for the authority to consider the question of applicability of sec.194B with reference to the prize scheme introduced by the petitioners. The pamphlet produced in the writ petition showed that if a person joined the scheme by making a payment of Rs.12,500 and if he won in the draw which was being taken every month five times, he will get a Chetak Bajaj vehicle valued at Rs.25,000 without any obligation to pay any further amount. All the details regarding the prize scheme were not contained therein. If what was stated in the pamphlet represented the correct position it was a matter for consideration as to whether the said scheme was similar to the scheme considered by the Full Bench of the Madras High Court in Sesha Ayyar's case. In short, it was for the Assessing Officer who issued notices to consider the objections to be taken by the petitioners keeping in mind the principles laid down by the Full Bench of the Madras High Court and by the decision of the Supreme Court.

From the decision of the Full bench of the Madras High Court in Sesha Ayyar Vs. Krishna Ayyar AIR 1936 Mad. 225 and the decision of the Supreme Court in H. Anraj's case the following propositions emerge. The essential elements that go to constitute a lottery are:

- a prize or some advantage in the nature of a prize
- distribution thereof by chance, and

- consideration paid or promised for purchasing the chance.

Thus unless all the three elements are satisfied, the prize scheme cannot be considered as a lottery.

V. Section.194-H

The High Court of Madras in the Case of Around the World Travels & Tours (P) Ltd., Vs Union of India reported in 141 Taxman 53 held that Tax should be deducted at Source u/s.194H on the amount available to the Agents being difference between air fare fixed by the Airlines and price at which agents to enable to sell tickets

VI Section.194-I

In Hindustan Coca-Cola Beverages Pvt. Ltd. Vs. CIT reported in 141 Taxman 60 the Delhi High Court held where only Land and Warehouse are used and no other services are provided, payment made is rent subject to deduction of tax at source under section 194-I of the I.T.Act.

Further the Supreme Court recently in the very same case reported in 293 ITR 226(SC) held that since the recipient had paid the Tax on the entire amount the company was only liable to pay interest u/s 201(1A) and that the Tax could not be recovered once again from the Assessee **[Hindustan Coco Cola Beverages (P) Ltd vs. CIT – 293 ITR 226(SC].**

P.S. Cars (P) Ltd. vs. ITO, the Delhi Bench of Income Tax Appellate Tribunal “A” Bench reported in 92 TTJ 71 held that the interest free refundable security deposit was not rent and therefore the Provisions of Sec.194I was not applicable.

The Delhi Bench of the ITAT in DCIT Vs. Japan Airlines reported in 92 TTJ 687 held that payment made by Japan Airlines to Airport Authority of India (AAI) for providing landing and parking facilities, of aircraft—payments are not in the nature of rent as the charges are regulated by weight and not with regard to any specified area of land. It was held that Provisions of Sec.194C was attracted and not 194I.

The Words “any other Agreement or Arrangement” used in section 194-I have to be read ejusdene Generis with expression ‘ Lease, sub-lease or Tenancy’ and therefore it was held that the payment to C &FR Agents was not in the nature of Rent and Tax was deductible u/s 194C .

In Deputy.C.I.T. Vs. Japan airlines, the ITAT-Delhi [93 ITD 163] found that the assessee, a foreign company, was engaged in the business of carrying passengers and cargo by aircrafts. During the financial year 1997-98, the assessee had made payments to airport authorities on account of landing and parking fee and deducted TDS at 2 per cent by applying provision of section 194C. The Assessing Officer held that landing and parking facilities provided by the Airport Authority of India (AAI) fell within the purview of section 194-I and the charges being taken by way of rent, tax should be deducted at rate of 20 per cent. He, therefore, worked out the short deduction and made addition.

On appeal, the Commissioner (Appeals) held that the payments made could not be treated as rent as the same were not for any fixed or enclosed area of land and were correctly treated by the assessee as payments made to the contractor as per section 194C. The Commissioner (Appeals) accordingly, deleted the addition made by the Assessing Officer.

The ITAT held that the Provisions of Sec.194-C was applicable and upheld the CIT(A) Order.

VII. Section195—Payment to Non Resident

The Bangalore Bench of the ITAT in WIPRO Ltd. Vs.ITO reported in 92 TTJ 796 hed that Income deemed to accrue or arise in India—Royalty—Annual subscription for providing access to data base through web—In-depth information collected by GG of USA is made available on subscription to anyone willing to pay—It is in the form of publications and is not an information or advice given individually—Further, it is a copyrighted information and cannot be passed on to anyone else—Payment is for use of copyrighted article and not for transfer of right in copyright—Even otherwise, since the copyright is not of a literary, artistic or scientific work, the payment is not covered by ‘royalty’ under art.12(3)(a) of DTAA between India and USA—Data server is indisputably located outside India—Consequently, the provision of services of offering the database is an event outside the taxable territories of India—GG has no permanent establishment in India—Thus, such as access to database cannot fall within the scope of Art.12(3)(a)—Since s.9(1)(vi) is not attracted, payment made is not subject to deduction of tax under s.195 and consequently assessee has no obligation to deduct tax.

In Lufthansa Cargo India Pvt.Ltd. Vs. DCIT—The Delhi Bench of ITAT reported in 92 TTJ 837 held that no Income accrued or arose in India—Fees for technical services—Payment for repair of aircrafts, etc.—Assessee, a domestic company, acquiring four cargo aircrafts and obtaining licence to operate them on international routes only—Assessee also engaged crew, etc. and wet-leased the aircrafts to a foreign cargo company—Assessee made periodical payments to non-residents on account of overhaul, repairs of aircrafts, engines sub-assemblies and rotables in workshops abroad—AO, holding that payments were in the nature of fee 'for technical services' as defined in Expln. 2 to S.9(1)(vii)(b), were chargeable to tax, hence liable to TDS under S.195(1) and treated the assessee to be assessee in default under S.201—Not justified—The foreign party 'T' carried out the activities in the normal course of its business at its facilties in Germany without any involvement of the Assessee—There was no interaction between the technicians of 'T' and assessee's personnel and the payments by assessee were clearly business receipits in the hands of 'T'—Such a position is clarified by the CBDT Circular No.715 dt.8th Aug., 1995—'T' therefore, did not render any managerial, technical or consultancy service to assessee as defined to Expln. 2 to s.9(1)(vii) and the services fell within the exclusionary clause of S.9(1)(vii)(b) as the payments for repairs of aircrafts were made for earning income from source outside India—Payments to non-residents not being chargeable to tax by virtue of exclusionary clause in S.9(1)(vii)(b), assessee was not obliged to deduct tax at source even if it had made no application under s.195(2).

The Delhi Bench in **NQA Quality Systems Registrar Ltd. Vs. DCIT** held that the Provisions of Sec.195 were not applicable as no Income arose to non residents in India. Income not accruing to non- residents in India—Payments made to NQA, UK, for providing ISO Certification and to one P of UK for certification at final audit—Payments made to NQA, UK, are neither royalty nor fees for technical services within the meaning of art.13(3) of Indo-UK DTAA—The services do not result in making available any technical knowledge, experience, skills, know-how or process to the assessee—This was essential before it could be said that the payments made by the assessee to the non-residents were fees for technical services rendered as the services involved making assessment surveillance for the purpose of ISO certification hence not taxable in India—Services rendered by P were also professional services and hence also not taxable in India as he had not stayed in India for a period aggregating 90 days and he had no fixed base regularly available to him in India—Non-residents having no permanent establishment in India, the business profits were not taxable in India, the business profits were not taxable in India—Provisions of S.40(a)(i) were thus not attracted—It cannot be said that the assessee should first deduct tax at source without considering the fact whether the income in question is chargeable to tax in the hands of the recipient—Consequently, the provisions of S.40(a)(i) were not applicable and the action of the Revenue authorities in refusing to allow deduction of these expenses by taking recourse to the said provisions cannot be sustained—Assessee was not liable to deduct tax at source from payments to non-residents and the same could not be disallowed by application of S.40(a)(i).

The assessee's business of wet-leasing of aircrafts has been predominantly carried on outside India. However, it cannot be said that the entire business has been carried on outside India. The assessee's business of wet-leasing of aircrafts is composed of a number of operations such as acquisition of aircrafts, wet-leasing, maintenance of crew and engineering personnel, aircrafts maintenance and establishment, etc. It is settled law that profits of a business cannot be said to accrue only in the place where sales take place or the revenue is earned, but they are embedded in each distinct operation of the business, both on the revenue and the expenditure side. The payments made to T and other foreign companies for maintenance repairs are not in the nature of fees for technical services as defined in Explanation 2 to section 9(1) (vii)(b). Further, in any event these payments are not taxable for the reason that they have been made for earning income from sources outside India and therefore fall within exclusionary clause of section 9(1)(vii)(b). The impugned payments to non-residents for repairs of components are not chargeable to tax under the Act, and, therefore, the assesseee was not liable to deduct tax under section 195.

Tax Deduction at Source—UNDER SECTION 195—Payment to non-resident—Payment in kind, in form of 85 percent of catch of fish—The High Court held that payment made to the non-resident by the Assessee in India, and the receipt in the form of 85 per cent of the catch of fish by the non-resident was in India and since all the formalities were completed in India, there was payment to the non-resident by the Assessee, even though in kind, and, therefore, the assessee was liable to deduct tax at source under section 195 on the payment made to the non-resident towards hire charges, and on non-deduction the assessee was in default under section 201 for the failture to deduct tax under section 195**[Lufthansa Cargo India (P) Ltd. Vs. Dy. CIT (2004) 91 ITD 133 (Del-Trib)].**

Payment for services rendered by foreign technicians—same covered by DTAA—The High Court held that the assessee was not liable to deduct tax under section 195(2) on the amount remitted by it to the foreign company, on the ground that the services rendered by the foreign company were covered under article 15 of the DTAA as independent professional services, and the sums were not taxable in India because the foreign technicians stayed in India for less than 90 days. The SLP filed by the revenue was dismissed **[Director of Income Tax Vs. Paper Products Ltd., CC No.2353-54 of 2003L2003) 263 ITR (St) 21].**

VIII <u>Where payment to non resident is not taxable in India, no tax is required to be deducted. :</u>

In Maharashtra State Electricity Board v. Dy. CIT (2004) 79 TR (Dir. Tax) (Mum 'H' Trib) 422: (2004) 83 TTJ (Mum.Trib) 325, it was held that for invoking section 195(2), it is a sine qua non that sum being paid to the non-resident is 'chargeable under the provisions of the Act', i.e., Income Tax Act, 1961 whether fully or partly, i.e., the entire sum or the income hidden or embedded therein. Therefore, a fortiorari, when an income was not exigible to tax in India, and by virtue of the provisions of the applicable DTAA, the deduction of tax under section 195 did not come to play at all. Hence, lower authorities were directed to refund the tax deposited by the deductor.

IX) <u>Latest Precedents:-</u>

Section 201 r.w. 201(A):- The period for which Interest can be claimed u/s 201(1A) is "from date on which such Tax was Deductible to date on which such tax is actually paid. Tax can be paid either by the Deductor or Deductee **[CIT Vs. Adidas Industreis Marketing (P) LTD 288 ITR 580 (Delhi)].**

No Interest u/s 201(1A) was Imposable where the deductee had paid Advance-tax which was more than TDS and further self-Assessment tax was also paid [**.C.I.T Vs. Rishikesh Apts 253 ITR 310 (Guj)]. See Contra in C.I.T vs. Rathi Gum Industries (213 ITR 98).**

Where a Non –Resident provided Access to Internet Bases Air Cargo Portal outside India and Indian subscribers paid fees for Access and use of Portal for Booking cargo with Airlines, Training subscribers and help connected therewith the payment was for fees for Royalties and Technical services and therefore Tax was deductible in India **[Cargo Communicating Network PTE Ltd 289 ITR 355((AAR)].**

Prosecution can be initiated for delay in paying tax after deduction **[Madhumilan Syntax Ltd & Others Vs. Union of India and others – 290 ITR 199(SC)]-**The Supreme Court held that once a statute requires to pay tax and stipulates the period within which such payment is to be made, the payment must be made within that period. If the payment is not made within that period, there is a default and an appropriate action can be taken under the Act. Interpretation canvassed by the counsel of the Appellant would make the provision relating to prosecution nugatory. As to the contention that no offence had been committed in view of reasonable cause shown by the Appellant, the Supreme Court observed that the question could be decided on the basis of evidence which would be adduced by the parties before a competent Court. Also whether the directors could be said to be principal officers or not requires evidence and it could be considered only at the stage of the trial. The Supreme Court therefore dismissed the appeal, however, clarifying that it had not considered the merits of the matter and had only decided the question raised by the appellants as to the maintainability of the criminal complaint and the contentions of all the parties were kept open and The Supreme Court made the following important observation in the matter:-

- A matter may be restored for hearing, but not for adjournment.
- If a High Court does not think it to be a fit case to exercise inherent powers in the light of controversy raised, it cannot be said that the Court must pass a detailed speaking order or record the reasons in support of such order.
- There is no doubt that the company is not a natural person but a 'legal' or 'juristic' person, but that however, does not mean that the company is not liable to prosecution under the Act.
- No independent or separate show-cause notice is necessary to be issued to the directors, when in the show-cause notice the directors are considered as the principal officers under the Act and a complaint is filed.
- Prosecution against a lady-member cannot be dropped at the stage of the complaint.

<u>Glaxo Smith line Consumer Health Care Ltd Vs. ITO [12 SOT 221] (Delhi)</u>

Services of clearing and forwarding Agents fall under u/s 194C and therefore Tax is to be deducted thereon.

<u>Sections 194(A)(1) r.w. 201(1A):</u> Loans were taken in Individual capacity by Directors by cheques in the name of the Company and transferred to their accounts on the same day. Repayment of Loan and Interest routed through company. It was held that the company was liable to deduct tax at source on Interest u/s 194-A **[C.I.T Vs. Century Building Industries (P) Ltd– 293 ITR 194(SC)].**

ANNEXURE A

TDS CHART FOR FINANCIAL YEAR 2007-08 (1.4.2007 TO 31.3.2008)

For payments to Residents

Section	*Nature of Payment*	*Exemption & Limit*	*Resident Payees*		*IF the recipient is (a) an individual, HUF, BOI or AOP(aggregate of payment or credit subject to tax deduction does not exceed Rs.10,00,000 or (b) a Co-operative society or (c) a local authority or (d) a firm/domestic company and aggregate payment /credit does not exceed Rs.1.crore excluding Surcharge*	*IF the recipient is (a) an individual, HUF, BOI or AOP(aggregate of payment or credit subject to tax deduction exceeds Rs.10,00,000 or (b) a Co-operative society or (c) a local authority or (d) a firm/domestic*
193	Interest on Securities	Rs.2,500 for interest on Debentures paid by a widely held company	(i) (ii)	Companies Individuals /HUF / AOP/BOI	20.60% 10.30%	22.66% 11.33%
194A	Interest (Other than interest on Securities)	Rs.5000	(i) (ii)	Companies Individuals /HUF / AOP/BOI	20.60% 10.30%	22.66% 11.33%
194B	Winnings from lottery, crossword, puzzle or card game & other game	Rs.5,000	(i)	Individual/HUF / AOP/BOI	30.90%	33.99%
194BB	Winnings from Horse Races	Rs.2,500	(i)	Individual/HUF / AOP/BOI	30.90%	33.99%
194C	Payments to Contractors	Rs. 20,000 per contract or Rs. 50,000 per financial year	**a)** (i) **b)** (i) **c)** (i)	**Advertising Contract** Individual/HUF / AOP/BOI **Other Contracts** Individual/HUF / AOP/BOI etc **Payments to resident Sub-contractors (by above contractors)** Individual/HUF / AOP/BOI	 1.03% 2.06% 1.03%	 1.13% 2.27% 1.13%

194D	Insurance Commission	Rs. 5,000	(i) (ii)	Companies Individual/HUF / AOP/BOI	20.60% 10.30%	22.66% 11.33%
194EE	Payment of Deposits under NSS referred to in Sec.80CCA	Rs. 2,500	(i)	Individual/HUF / AOP/BOI	20.60%	22.66%
194F	Payment on account on repurchase of units referred to in Sec. 80CCB	N.A	(i)	Individual/HUF / AOP/BOI	20.60%	22.66%
194G	Commission Rs. 1000 etc. on sale of lottery	Rs. 1,000	(i)	Individual/HUF / AOP/BOI	10.30%	11.33%
194H	Commission & Brokerage	Rs.2,500 p.a.	(i) (ii)	Individual/HUF / AOP/BOI upto May 31, 2007 Individual/HUF / AOP/BOI from June 1,	5.15% 10.30%	5.67% 11.33%
194 I	Rent paid to a Resident	Rs.1,20,000p.a	(i) (ii) (iii) (iv) (v)	Individual/HUF upto May 31, 2007 AOP/BOI upto May 31, 2007 Individual/HUF / from June 1, 2007 AOP/BOI from June 1, 2007 Rent of Plant, Machinery or equipment to any Person from June 1, 2007	15.45% 20.60% 15.45% 20.60% 10.30%	17.00% 22.66% 17.00% 22.66% 11.33%
194J	Fees for professional services or for technical services	Rs.20,000 p.a.	(i) (ii)	Individual/HUF / AOP/BOI upto May 31, 2007 Individual/HUF / AOP/BOI from June 1,	5.15% 10.30%	5.67% 11.33%
194LA	Payments of compensation on compulsory acquisition of Immovable property (except Agri-ultural Land)	Rs. 1,00,000	(i)	Individual/HUF / AOP/BOI	10.30%	11.33%
115-O	Dividend Dis-tribution Tax	N.A		Any person		17.00%
115-R(2)	Tax on distri-buted income to unit holders (except Open Ended Equity	N.A	(i) (ii)	Individual/HUF Others		14.16% 22.66%

ANNEXURE-B

TDS CHART FOR PAYMENT TO NON-RESIDENTS

Sl No.	Nature of Income	*IF the recipient is (a) an individual, HUF, BOI or AOP(aggregate of payment or credit subject to tax deduction does not exceed Rs.10,00,000 or (b) a Co-operative society or (c) a local authority or (d) a firm/domestic company and aggregate payment /credit does not exceed Rs.1.crore excluding Surcharge*	*IF the recipient is (a) an individual, HUF, BOI or AOP(aggregate of payment or credit subject to tax deduction exceeds Rs.10,00,000 or (b) a Co-operative society or (c) a local authority or (d) a firm/domestic company and aggregate payment /credit exceed Rs.1.crore including Surcharge.*
1	Non- Resident Indians		
	A. Investment Income	20.60%	22.66%
	B. Long Term Capital Gains referred to in Section 115E	10.30%	11.33%
	C. Other long term capital gains (other than those referred to in section 10(33), section 10(36) and section 10(38))		
	D. Interest income on foreign currency loans given	20.60%	20.66%
	E. Winnings from lotteries, crossword puzzles, card games and other games of any sort	20.60%	20.66%
	F. Winnings from horse races	30.90%	33.99%
	G. Any other income		
		30.90%	33.99%
		30.90%	33.99%
2	Other Non- Residents(not being a Foreign Company)		
	A. Interest income on foreign currency loans given	20.60%	20.66%
	B. Winnings from lotteries, crossword puzzles, card games and other games of any sort	30.90%	33.99%
	C. Winnings from horse races		
	D. Long term capital gains (other than those referred to in section 10(33), section 10(36) and section 10(38))	30.90%	33.99%
	E. Any other income.	20.60%	20.66%
		30.90%	33.99%
3	Royalty and fees for Technical services payable to Non-resident/foreign Company.		
	f) Royalty (see Note 5)		
	where the agreement is made before June 1, 1997		
		30.90%	33.99%
	where the agreement is made after May 31, 1997 but before June 1, 2005		
	where the agreement is made on or after June 1, 2005	20.60%	22.66%
		10.30%	11.33%
	g) Royalty [not being royalty of the nature referred to in (f) supre][see Note 6]		
	where the agreement is made after March 31, 1961 but before April1, 1976		
	- if recipient is a non-resident non –corporate person		
	- if recipient is non-domestic company		
	where the agreement is made after March 31, 1976 but before June 1, 1997	30.90%	33.99%
	where the agreement is made after May 31, 1997 but before June 1, 2005		
		51.50%	N.A
		30.90%	33.99%
		20.60%	22.66%

	• where the agreement is made on or after June1, 2005 h. fees for technical services [See note 7] • where the agreement is made after February 29, 1964 but before April 1, 1976 -if recipient is a non- resident non corporate person -if recipient is non-domestic company • where the agreement is made after March 31, 1976 but before june 1, 1997 • where the agreement is made after May 31, 1997 but before June 1, 2005 • where the agreement is made on or after June1, 2005 i. any other income -if recipient is a non- resident non corporate person -if recipient is non-domestic company	10.30% 30.90% 51.50% 30.90% 20.60% 10.30% 30.90% 41.20%	11.33% 33.99% N.A 33.99% 22.66% 11.33% 33.99% N.A
	Sec. 196B – Income from units (including long term capital gains on transfer of such units) to an offshore fund	10.30%	11.33%
	Sec. 196C – Income from foreign currency bonds or GDR (including long term capital gains on transfer of such bonds) not being dividend).	10.30%	11.33%
	Sec. 196D – Income of Foreign Institutional Investors from securities (not being dividend, short term or long term capital gain)	20.60%	22.66%

Notes:

1. Royalty payable by Government or an Indian concern in pursuance of an agreement made by non-resident with the Government or the Indian concern after March 31, 1976, where such royalty is in consideration for the transfer of all or any rights(including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to section 115A(1A) to the Indian concern or in respect of computer software referred to in the section proviso to section 115(1A), to a person resident in India.

2. Not being royalty of the nature referred to above, payable by Government or an Indian concern in pursuance of an agreement made by non-resident with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to matter included in the industrial policy, the agreement is in accordance with that policy.

3. Fees for technical services payable by the Government or an Indian concern in pursuance of an agreement made by non-resident with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to matter included in the industrial policy, the agreement is in accordance with that policy.