guwahati@icai

E-Newsletter of the Guwahati Branch of EIRC of ICAI

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Contents

Editorial Board

Write to Editor

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

Chairperson's Message ...

Dear Professional Friends, Colleagues & my dear Students,

It is that time of the year when the sultry milieu makes way for the refreshing cool of the winter breeze. In the backdrop of the festive season and most importantly for us, the Chartered Accountants, with the deadlines being taken care of, at least for the time being, it is finally time to catch our breath and be calm.

Our feelings at this point is very rightly phrased by Robert Frost in his ode "October"

O hushed October morning mild,
Thy leaves have ripened to the fall
Tomorrow's wind, if it be wild,
Should waste them all……..

Begin the hours of this day slow.
Make the day seem to us less brief.
Hearts not averse to being beguiled,
Beguile us in the way you know……..

On the branch activity front, a much awaited seminar on "Companies Act 2013" was organized on 26th October, where the talks of both the speakers CA.(Dr.) Debashis Mitra & CA. Manoj Banthia gave ample fodder for thoughts to us Chartered Accountants, as to the additional responsibilities, and somewhat harsh penalties sought to be imposed for defaulting auditors and the rigorous compliances thereof.

CA. Rupshikha Saikia Borah who hails from Assam takes over as Director (Finance) at Oil India Ltd. She is the first lady to become the Chief Financial Officer in an oil company in India. Congratulations to her for this achievement & we wish her further success in her career. **"See your goal, understand the obstacles, create a positive mental picture, clear your mind of self doubt, embrace the challenge and stay on track. Show the world you can do it!"**

Regarding the upcoming events, we will be conducting an IT workshop on 9th November. Talk is also on to organise Certificate Courses on Indirect Tax Practice & Concurrent Audit. A residential program is also on the cards. An International Conference will be held for the first time in the Eastern Region in Kolkata from 21st to 23rd of November. An appeal is made to members to make it convenient to spare time out & plan accordingly to attend this conference.

On the students' front, EICASA Guwahati has been regularly organizing activities like the Dandiya celebrations on 9th October and an Educational Tour at SBI, Learning Centre, Guwahati on 25th October.

With the exams at the doorsteps, I am sure you all are busy with your revisions. My best wishes & prayers for you all... **"If you do your best, God will do the rest"**

Friends, you all must be aware, the count-down for the yearly mega event, the National Conference to be held on 13th& 14th of December, has begun. We are glad to share with you that some of the finest speakers of the country including a few past Presidents of the Institute has given their official confirmation to enlighten you on this program. To name a few, they are none other than CA. M M Chitale, CA. N D Gupta, CA. Vikamsey Kamlesh Shivji, CA. Girish Ahuja, CA. P R Ramesh, CA. Ashok Batra, CA. V Raghuraman, CA. M Kandasami, Dr. Suman Mukerjee, CA. (Dr.) Debashis Mitra including other dignataries like our ICAI President, Vice-president, our Council members & CPE Chairman, ICAI CA. Charanjot Singh Nanda. We request you to kindly freeze the dates 13th & 14th December & make it convenient to be a part of this much awaited program. I have no doubt that like in the past, the benchmark established by us for this event will be surpassed this time, and I once again call upon all to please join us in our resolve to yet again come up triumphs.

"We are here not to move mountains or rivers; we are here to be the bearer of the torch to light the way."

As the festive season is at its zenith, I am sure all of you had a very Happy & Safe Diwali. May the glow of lights illuminate your lives with joy, prosperity and happiness in all your days in the year ahead. May Goddess Maa Kali give us strength to tide over the difficult times & fight against all the negative forces in this world thus coming out victorious for the good of one and all.

"Prayer is a state of mind where an amazing exchange happens, we hand over our worries to God and he hands over his blessings to us."

– CA. Kaberi Bhuyan

"Better to light a candle than to curse the darkness"

FACE OF THE MONTH

Mrs. Rupshikha Borah

The glass ceiling is being slowly broken in India's corporate world with more and more female candidates occupying key posts at the helm. One such live example is of Mrs. Rupshikha Saikia Borah, the first woman Chartered Accountant from the North Eastern Region. Mrs. Saikia Borah has recently taken over as the first lady Functional Director of Oil India Limited on September 30, 2013. A brilliant student throughout her academic career, Mrs. Borah completed her post graduate in Commerce from Delhi School of Economics. She also received the prestigious Fulbright Hubert Humphrey Fellowship, USA. In the year 2009, Mrs. Borah received the special commendation award as "Woman of the Year in the Oil & Gas Industry". She was then functioning as a general manager (Treasury) of the Navratna.

Mrs. Borah has over 27 years of experience in diverse fields of financial management, audit, treasury, corporate finance and strategic planning. Incidentally, Mrs. Borah was also present as a guest of honour at our National Conference "Jagriti – 2011" held in December 2011 at Guwahati.

Mrs. Borah being felicitated by the then President of ICAI CA. Amarjit Chopra at "Jagriti – 2011" held at Guwahati

Interestingly, Rupshikha is the wife of former OIL CMD NM Borah, who was responsible for Oil India's foray into international exploration activities. No doubt, her family background and the support of her husband will come handy for this woman of substance in her present occupation. We wish her every success in handling the affairs of the company, in making her mark in the PSU and in doing full justice to the prestigious position she is now in.

readers write

Dear Editor,

Received your September e-newsletter.......beautifully designed and presented.

Starting from Chairperson's message with number of useful quotes, Editor's desk, meaning of Devi mantra , articles on current topics , branch activities , members' update ....each and every page is useful and colorful.

Gandhi photo now-a-days ....great!!!!

Hearty congratulations. I wish the entire team a great success. Keep it up.

Yours lovingly
CA. V. Jayaprakash
Vice-chairman, Salem Branch of SIRC

Editor's Desk...

Dear Colleagues and Student friends,

hello!

October has always been a very exuberant time in India. The monsoon rains has by then eased in most places, and the festive season is in full swing! The grandeur of Navaratri, the solemnness of Eid and Kati Bihu, and the radiance of Lakshmi Puja, all celebrated with great pomp and gaiety.

To add excitement to this festivity this year, a dream about buried gold led to an unsuccessful treasure hunt. It sounds like a plot inspired by Satyajit Ray's movie Sonar Kella (The Golden Fortress) where little Mukul's dreams of a past life and a golden fortress sets off a wild-goose chase on camels in the deserts of Rajasthan. But Swami Shobhan Sarkar, the dreamer in question, has clarified he is neither Bengali nor dreaming.People's imaginations were on fire. Rumour mills were working overtime. People were talking about the gold and the possible economic transformation it would bring about in the area. Those belonging to the village and employed outside had started returning to their native Daundia Kheda village of Unnao district in Uttar Pradesh to partake the fruits of the life-changing dream. While the history of the place indicates possibility of the treasure, the recent developments also put a question mark on Nehru's dreams of developing scientific temperament in India. Aside from the excitement, the undertaking has led some to pause and ponder upon the mislaid priorities and blind superstitions of our leaders. Why had the central government spend public money to launch a treasure hunt on the say-so of a seer?

We have witnessed Diwali Celebration. These days, religious festivals like Diwali and Navratri invite devotees to please their deities through loudspeakers and crackers. In olden days, devotees did not have these cold devices. They used to offer the warmth of their hearts. I guess that is why God does not hear them anymore.

Destruction is noisy. To create something, one has to be in a quiet place. Even a fowl looks for a quiet place to lay her egg and eggs are for creation. You know Buddha; he left the noise to find the key to sufferings. He was enlightened in solitude, not in noises. Sages who want to find God go into the silence of the jungles, but the citizens of today make more and more noise to reach God. I believe that these people are disturbing Him with their loudspeakers and crackers. ***God is within, but the ignorant look for Him outside.***

Did you know that diyas lit on the moonless Diwali night signifies the end of darkness of ignorance and the beginning of light that enlightens all? Let us celebrate an environmentally safe Diwali, a green Diwali, where there will be an explosion of joy without crackers! ***"Say 'No' to Fire crackers and 'Yes' to Life!"***

The month-end left us emotional with the demise of a great singer, composer and lyricist. One of the brightest stars of Indian music and film industry, Prabodh Chandra Dey, who is better known as Manna Dey, left for his heavenly abode on the 24th of October, 2013. With his demise, we lost another luminary of Indian Cinema. Manna Dey was too humble for the glamorous Bollywood. He enthralled the audience with his soothing voice. His songs had depth and ecstasy. With a heavy heart, we pay our final tributes to this great musician of the yesteryear.

"ज़िन्दगी कैसी है पहेली हाय....., कभी तो हँसाए, कभी ये रुलाये....."

Before concluding, I want to wish my student friends the very best for the November exams! ***Dream your dreams and may they come true!***

Happy Reading!

– CA. K P Sarda

"There are two ways of spreading light- to be the candle or the mirror that reflects" - Edith Wharton

NO SERVICE TAX ON VALUE OF GOODS SUPPLIED OR PROVIDED FREE BY A SERVICE RECIPIENT: DELHI CESTAT

By: CA. MANOJ NAHATA*

Recently, the Larger Bench of Hon'ble Delhi Tribunal in a landmark judgment has finally settled the two conflicting decisions of the co-ordinate benches of Bangalore Tribunal & Ahmadabad Tribunal. The matter was with regards to the levy of Service Tax on value of FOC material supplied by the service recipient to the service provider under the erstwhile service tax regime i.e before introduction of negative list regime.

The Division Bench of Bangalore Tribunal in case of *Cemex Engineers v. CST, Cochin (2009-TIOL-2208-CESTAT-BANG)* had held that that the value of goods supplied and provided by the service recipient to the service provider cannot be included in the value of taxable services for calculating service tax, in terms of section 67 of the Finance Act. On the other hand, in case of in *Jaihind Projects Ltd. v. CST, Ahmedabad (2010-TIOL-124-CESTAT-AHM)*, it was held that the Explanation provided that the value of goods used for providing output services had to be included in the gross amount charged for the services. Thus, the value of FOC goods supplied by the service recipient to the service provider and used by the service provider for providing output services would be included in the gross amount charged for providing such services.

Summary of the present Judgment:

On reference, the larger bench of the Delhi Tribunal in case of *Bhayana Builders (P) Ltd & Others v. CST, Delhi, 2013-TIOL-1331-CESTAT-DELHI-LB* while observing that the judgment of the division bench in Jaihind Projects (Supra) was incorrect and thus held that in terms of Section 67 of the Finance Act, the value of FOC material supplied by the service recipient to the service provider cannot be included in the gross amount charged for the taxable services. Hence commodities like steel, cement etc., supplied by the ultimate service receiver do not constitute the term "consideration" as these materials are delivered again to the service recipient in a construction industry and therefore such free supplies do not comprise the *gross amount* for valuation purpose.

The value of the goods incorporated being sale of goods would be liable to sales tax, an area within the legislative competence of State, the value of goods sold would thus be beyond the legislative competence of Parliament for levy of tax on such sale; consequently could not also constitute the value of taxable services.

Brief facts of the case& Judgment thereon:

Taxpayers were engaged in providing the taxable services of "Commercial and Industrial Construction service" and were availing the benefit of 67% abatement under the Abatement Notification. Notification No. 4/2005-ST dated March 01, 2005 had added an explanation to the Abatement Notification which provided that the expression 'gross amount charged' would include "the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service.

The issue before the Division Bench of Tribunal was with respect to inclusion of value of FOC goods supplied by a service recipient to provider of taxable construction service, in the taxable value or gross amount charged, for levy of service tax under the Abatement Notification. There were two previous conflicting judgments on the matter as discussed above in case of *Cemex Engineers* and *Jaihind Projects Ltd*. Hence the matter was referred to the larger Bench for consideration.

The Tribunal examined the scope of section 67 of the Finance Act, 1994 in both pre & post amendment situation. After the amendment, which substitutes Section 67 with effect from 18-04-2006, where service tax is chargeable on any taxable service with reference to its value then such value shall, in a case when the provision of service is for consideration in money, be the gross amount charged by the service provider for such service [sub-clause (i)]. Where provision of service is for a consideration not wholly or partly consisting of money, the value shall be such amount in money as, with the addition of service tax charged, is equivalent to the consideration [sub clause (ii)]; and where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

Revenue has contended that the value of "free supplies" to a construction service provider ought to be included in the value of taxable services for determination of the liability to tax under Section 67 of the Act in view of sub-clause (ii) of section 67(1). Sub-clause (ii) applies where a taxable service is provided for a consideration which is not either wholly or partly, for money. Therefore the non-monetary consideration must still be a consideration accruing to the benefit of the service provider, from the service recipient and for the service provided.

Section 67 of the Act deals with valuation of taxable services and intends to define what constitutes the value received by the service provider as "consideration" from the service recipient for the service provided. Implicit in this legislative architecture is the concept that any consideration whether monetary or otherwise should have flown or should flow from the service recipient to the service provider and should accrue to the benefit of the later. "Free supplies", incorporated into construction (cement or steel for instance), even on an extravagant inference, would not constitute a non-monetary consideration remitted by the service recipient to the service provider for providing a service, particularly since no part of the goods and materials so supplied accrues to or is retained by the service provider. Wherever a monetary consideration is charged for providing the taxable service and no non-monetary consideration forms part of the agreement between the parties, it is clause (i) that applies and the value of the taxable service would in such case be the gross amount charged by the service provider and paid by the service recipient.

In the light of the clear Legislative text, the unambiguous provisions of sections 66 and 67 of the Act and in the light of the judgment of Delhi High Court in *Intercontinental Consultants and Technocrats Pvt. Ltd.*, the conclusion is compelling and inviolable that the value "free supplies" by a construction services recipient, for incorporation in the constructions would not constitute a non-monetary consideration to the service provider nor form part of the gross amount charged for the services provided. It was also argued that since value of the goods incorporated being sale of goods would be liable to sales tax, an area within the legislative competence of State, the value of goods sold would thus be beyond the legislative competence of Parliament for levy of tax on such sale; consequently could not also constitute the value of taxable services. Reliance was placed on the judgment in *M/s Gannon Dunkerley and Co. and Others vs. State of Rajasthan and Others; and State of Andhra Pradesh and Others vs. Larsen & Toubro Limited and Others*, to buttress this contention.

Since Section 67 of the Act, as currently structured does not, require inclusion of free supplies in the gross value charged, for computation of the value of taxable services; and as this is the only issue presented (on Section 67 of the Act); the tribunal find no justification for a wider analysis of a speculative theatre, of potential conflict.

From the several aids to interpretation, referred to (supra) it was concluded that goods and materials, supplied/ provided/ used by the service provider for incorporation in the construction, which belong to the provider and for which the service recipient is charged towards the value of such supply/ provision / use and the corresponding value whereof was received by the service provider, to accrue to his benefit, whether independently specified as attributable to the specific material/ goods incorporated or otherwise, would alone constitute the gross amount charged. This is not to say that an exemption Notification

"Happiness can be found even in the darkest of times if one only remembers to turn on the light" cannot enjoin a condition that the value of free supplies must also go into the gross amount charged for valuation of the taxable service. If such intention is to be effectuated the phraseology must be specific and denuded of ambiguity.

In conclusion the Tribunal answered the reference as follows:

(a) The value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider, would be outside the taxable value or the gross amount charged, within the meaning of the later expression in Section 67 of the Finance Act, 1994; and

(b) Value of free supplies by service recipient do not comprise the gross amount charged under Notification No. 15/2004-ST, including the Explanation thereto as introduced by Notification No. 4/2005-ST.

Author's Comments:

The above judgment delivered in context of pre-negative list era will surely help in settling the most unsettled issue in construction industry. The long pending controversy is now answered in favour of the assessee. Since the said judgment is delivered by the Larger Bench, it would apply to all disputes on the issue, pending at the various Benches. However it is really difficult to examine the applicability of this judgment in the present negative list regime. Let us test the same.

Applicability of judgment in present scenario

The Service Tax Valuation Rules for works contract under the present scheme of law (i.e rule 2A of the Service Tax Valuation Rules) provides for inclusion of fair market value of all goods supplied in relation to a works contract. Thus on this basis the tax department is demanding service tax even on the value of free supply of goods & material by service recipient to the service provider. However it is pertinent to know that rule 2A of Service Tax Valuation Rules are subject to section 67 of the Finance Act. Thus in author's view the inclusion of value of FOC materials supplied by the service recipient for the valuation of works contract service may be challenged in the light of the instant decision of the larger bench.

Further notification no: 26/2012-ST dated 20.07.2012, providing for abatement to construction service specifically provides for inclusion of fair market value of all goods and services provided by the service recipient to the provider, in the value of taxable services. Thus it needs to be examined whether this judgment would apply to the abatement notification in the present regime also.

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happy diwali

May you all attain full inner illumination! May the supreme light of lights enlighten your understanding! May you all attain the inexhaustible spiritual wealth of the Self! May you all prosper gloriously on the material as well as spiritual planes!

आओ फिर से दिया जलाएँ
भरी दुपहरी में अँधियारा
सूरज परछाईं से हारा
अंतरतम का नेह निचोड़ें-
बुझी हुई बाती सुलगाएँ।
आओ फिर से दिया जलाएँ
हम पड़ाव को समझे मंज़िल
लक्ष्य हुआ आँखों से ओझल
वर्तमान के मोहजाल में-
आने वाला कल न भुलाएँ।
आओ फिर से दिया जलाएँ।
आहुति बाकी यज्ञ अधूरा
अपनों के विघ्नों ने घेरा
अंतिम जय का वज्र बनाने-
नव दधीचि हड्डियाँ गलाएँ।
आओ फिर से दिया जलाएँ

-अटल बिहारी वाजपेयी

"As we work to create light for others, we naturally light our own way" - Mary Anne Radmacher

THE FAMOUS / INFAMOUS DECISION - 2013–TIOL–46-SC-CT-LB

CA. SHIVANI SHAH
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This article seeks to throw some light on the judgment delivered by the Larger Bench of the Apex Court in the case of Larsen & Toubro Ltd. - 2013–TIOL–46-SC-CT-LB

The crux of the issue was whether the transaction of sale of incomplete flat/unit is a 'works contract' and thus subject to Value Added Tax.

Way back in 2005, the Apex Court in the case of K Raheja Development Corporation (2005-TIOL-77-SC-CT) had upheld the charge of the VAT on a contract for building and subsequent sale of immovable property. Subsequently, in 2008 validity of the K Raheja's case (supra) was doubted in the case of Larsen and Toubro Ltd (2008-TIOL-186-SC-CT) and hence the decision of Raheja Development was referred to Larger Bench.

Facts of the case

L&T had entered into development agreements with land owners (to develop and share constructed flats). Out of their share, L&T had entered into agreements of sale with purchasers, wherein on completion of construction, the flats would be handed over to purchasers who will also get undivided interest in land. Karnataka HC upheld the demand of sales tax on amounts collected by L&T from purchasers of flats treating it to be works contract turnover. L&T had appealed to SC against this ruling.

The two member bench of SC in Larsen and Toubro Limited and Another v State of Karnataka (SLP(C) No 17741 of 2007) ("L&T case") had observed that if the ratio of Raheja Development is to be accepted, then there would be no difference between works contract and contract for sale as chattel. An agreement to sell entered between developer and prospective purchaser could be for future sale of flat (and not for undertaking construction on behalf of purchaser). The Bench hence referred the Raheja Development case to the Chief Justice with a recommendation for reference to the larger bench for re-consideration.

Appeals from Maharashtra arise from the judgment of the Division Bench of Bombay HC in the case of Maharashtra Chamber Of Housing Industry vs State Of Maharashtra And Ors (2012-51-VST-168-Bom) ("Maharashtra Chambers"), wherein it was held that works contract have numerous variations and it is not possible to accept the contention that contract for works in the course of which title is transferred to the flat purchaser would cease to be works contract. The Bombay HC had hence upheld the amendment to Section 2(24) of Maharashtra Value Added Tax Act ("MVAT Act") and Rules 58 and 58(1A) of Maharashtra Value Added Tax Rules ("MVAT Rules"). This ruling of the HC was contended before the SC and the constitutional validity of the expanded Section 2(24) of the MVAT Act as well as Rule 58(1), Rule 58 (1A) of the MVAT Rules was challenged.

The current bench heard and decided on both the above matters

Plea of the Petitioner

The intention of Article 366(29A)(b) of the Constitution of India is to tax the transfer of property in goods (whether as goods or 'in some other form'). 'In some other form' would not mean as an immovable property.

Main intention of developer to sell fully constructed flat only. Even, by applying the test of enforceability, common parlance test (view of the reasonable man), test of substance of the contract and assignment test one can infer that the contract is to purchase flat (and not a contract for 'works contract').

Developer does not construct at the behest of the flat purchaser as on various occasions the flat is constructed without there being any booking for the said flat. Ownership in the material used in the construction remains with the promoter/developer and the said ownership passes to the flat purchaser only on the eventual conveyance of the flat.

Goods/materials are purchased from the dealers registered under the Act levying VAT again as 'works contract' would amount to double taxation.

State has been levying stamp duty on agreement of sale under Entry 25 and not under Entry 63 and hence the State does not consider an agreement for sale to be a works contract.

Assuming without admitting, if the aforesaid activity is a works contract then the same would be a works contract only from the stage when the developer enters into a contract with the flat purchaser and not anytime before.

Contention of the Revenue

The entire intention behind insertion of Article 366(29A)(b) in the Constitution of India is to make the materials used in the building activity liable to sales tax. The taxable event is deemed sale. All that is required to be enquired into is as to whether the goods were involved in the execution of the works.

The ambit of the expression "works" is wide and nothing in Article 366(29A)(b) restricts its meaning. Thus, construction of flat is one of the species of 'works contract'.

There is no question of ascertaining the dominant intention of the contract now since the sale of goods element is a deemed sale under Article 366(29A)(b) and can be taxed separately.

Different aspects of the same transaction can involve more than one taxable event. There is nothing to prevent the taxation of different aspects of the same transaction as separate taxable events.

View taken in Raheja Development is correct and needs no reconsideration – both on merits as well as on the basis of binding precedents.

Even in case of flats/ unit sold post completion, VAT is leviable as the building was intended for sale and is in fact sold.

Ratio of Judgment

46th Amendment and Article 366(29A)

The Apex Court observed that as a result of clause Article 366(29A), it is open to the States to divide the works contract into two separate contracts by legal fiction. In view of this deeming legal fiction, it is not necessary to ascertain what the dominant intention of the contract is.

"Those who fear the darkness have no idea what the light can do" - Katasai Rakshasa

Further, the Apex Court observed that its earlier decision in the case of Rainbow Colour Lab [2002-TIOL-373-SC-CT] (that the division of the contract after 46th Amendment can be made only if the works contract involved a dominant intention to transfer the property in goods and not in contracts where the transfer of property takes place as an incident of contract of service) is no longer good law.

Meaning of the term 'in some other form'

The Apex Court observed that in the aforesaid deeming fiction the emphasis is on the 'transfer of property in goods whether as goods or in some other form'.

The Apex Court held that the expression "in some other form" is of utmost significance as by this expression the ordinary understanding of the term 'goods' has been enlarged by bringing within its fold goods in a form other than goods. In other words, goods which have by incorporation become part of immovable property are deemed as goods (i.e. 'In some other form' would also mean in the form of immovable property).

Works contract – Meaning thereof

To differentiate between a 'works contract' and a contract for 'sale' of goods the Apex Court referred to its earlier observations in the case of Kone Elevators (2005-TIOL-30-SC-CT-LB) wherein it was held that ' Another test often to be applied is: when and how the property of the dealer in such a transaction passes to the customer: is it by transfer at the time of delivery of the finished article as a chattel or by accession during the procession of work on fusion to the movable property of the customer? If it is the former, it is a "sale"; if it is the latter, it is a "works contract".

Further, the Apex Court observed that the term 'works contract' is amply wide and it encompasses a wide range and many varieties of contract and it takes within its fold all genres of works contract and is not restricted to one species of contract to provide for labour and services alone.

Whether sale of flat is a 'works contract'?

The question before the Apex Court was 'Whether taxing sale of goods in an agreement for sale of flat which is to be constructed by the developer/promoter is permissible under the Constitution?'

In this regard, the Apex Court stated that 'It is obvious that such transaction involves the activity of construction in as much as it is only when the flat is constructed then it can be conveyed. Such activity of construction has all the characteristics or elements of works contract. The ultimate transaction between the parties may be sale of flat but it cannot be said that the characteristics of works contract are not involved in that transaction. In a contract to build a flat there will necessarily be a sale of goods element. Works contracts also include building contracts. Effectively and defacto it is the developer who constructs the building for the flat purchaser.

Valuation

As regard valuation the Apex Court held that the value of the goods has to be the value of the goods at the time of incorporation of the goods in works even though property passes as between the developer and the flat purchaser after incorporation of goods.

Apex Court also clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government.

Summary

On the basis of the aforesaid discussion, the Apex Court approved its earlier decision in the case of K Raheja Development Corporation (2005-TIOL-77-SC-CT) and held as under:

Sale of a completed flat / unit would not be works contract.

Sale of in-complete flat / unit would be works contract. However, the activity would be a 'Works Contract' only from the stage the Developer enters into a contract with the flat purchaser

Remarks

It is pertinent to note that though the above judgement was delivered in context of VAT laws, it may have its fair share of implications for service tax as well.

Case Law on TDS Credit

TDS Credit must be given even if TDS Certificate is not available/ entry is not shown in Form 26AS

The assessee claimed credit for TDS which was denied by the AO on the ground that the claim did not match the entries shown in Form No. 26AS and that there was a discrepancy. On appeal, the CIT(A) held that the assessee would be entitled to credit to the extent shown in the computer system of the department. On further appeal by the assessee to the Tribunal HELD:

The AO is not justified in denying credit for TDS on the ground that the TDS is not reflected in the computer generated Form 26AS. In **Yashpal Sahwney** 293 ITR 539 the Bombay High Court has noted the difficulty faced by taxpayers in the matter of credit of TDS and held that even if the deductor had not issued a TDS certificate, still the claim of the assessee has to be considered on the basis of the evidence produced for deduction of tax at source. The Revenue is empowered to recover tax from the person responsible if he had not deducted tax at source or after deducting failed to deposit with Central Government. The Delhi High Court has in Court On Its Own Motion Vs. CIT 352 ITR 273 directed the department to ensure that credit is given to the assessee even where the deductor had failed to upload the correct details in Form 26AS on the basis of evidence produced before the department. Therefore, the department is required to give credit for TDS once valid TDS certificate had been produced or even where the deductor had not issued TDS certificates on the basis of evidence produced by assessee regarding deduction of tax at source and on the basis of indemnity bond.

Note: See also **3i Infotech Limited** where it was held "*merely because the Department's system does not indicate the TDS refund, it cannot be held that the assessee should be compelled to deposit the amount once again. It is for the Department to check the error in its system or point out fallacy in the assessee's claim. There can be no question of penalizing the assessee for no fault committed by it*".

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Members' Update

Direct Tax Updates

➢ CBDT Directive On Issue Of Refunds Without Adjustment Of Demand

The Directorate of Income-tax (Systems) has issued a letter dated 22.10.2013 stating that pursuant to the decision of the full Board the process has been initiated to issue refunds without adjustment of demand as an interim measure in certain cases. The AOs have been requested to carry out necessary verification following the procedure prescribed in s. 245 of the Act. For details refer:

http://www.itatonline.org/info/index.php/cbdt-directive-on-issue-of-refunds-without-adjustment-of-demand/

➢ CBDT Directive Regarding Defective Returns For AY 2013-14

The Directorate of Income-tax (Systems) has issued a letter dated 22.10.2013 stating that about 1.46 lakh returns have been submitted for AY 2013-14 where the self-assessment tax was unpaid. It is stated that these returns are deemed defective under the law. The AOs have been requested to issue notices to the concerned assessees and follow-up to ensure that the unpaid self-assessment tax is deposited at the earliest.

http://www.itatonline.org/info/index.php/cbdt-directive-regarding-defective-returns-for-ay-2013-14/

➢ No Need to submit "Nil TDS Return" after 01.10.2013

With effect from 01.10.2013 new version of FVU i.e. 4.00 is published by the TIN-NSDL in place of FVU 3.7 with latest new key features. The latest FVU Ver. 4.00 contains "NIL" TDS/TCS Return but while generating validation through FVU Ver. 4.00, TDS/TCS statement can'not be filed without quoting any valid Challan or deductee row. It means that NIL TDS Return no needs to submit TDS/TCS Return.

Contributed by:
CA. V.M.V.S.RAO
Member - IT Committee of SIRC of ICAI

VAT and Local Tax Updates

➢ Decrease in Rate of E Tax in Assam

Rate to Tax of on Plastic Granules has been reduced to 1% w.e.f 13th Sep 2013 under The Assam Entry Tax Act 2008 w.e.f 14th Aug 2013. For details visit:

http://tax.assam.gov.in/agriculture/agri/aet/notification/LGL_109_2008_53.pdf

➢ Clarifications by Commissioner of Tax, Assam

Set up Box used in Cable/Direct to Home & Encoder not Taxable under The AET Act 2008. For details visit:

http://tax.assam.gov.in/CstClarification/cstclarification/clarifications/sl_266.pdf

Elastic Tape is Taxable @ 14.5% under the Assam Value Added Tax, 2003. For details visit:

http://tax.assam.gov.in/CstClarification/cstclarification/clarifications/sl_265.pdf

VAT Is not payable on materials supplied free of cost against warranty commitment, but entry tax is applicable on materials replaced for warranty commitment if procured from outside the state of Assam. For details visit:

http://tax.assam.gov.in/CstClarification/cstclarification/clarifications/sl_270.pdf

➢ Entertainment Tax on DTH (Direct to Home) Imposed in Mizoram

Direct to home (DTH) service shall be liable to pay entertainment tax at the rate of twenty rupees per subscriber per month (Sec-6 of The Mizoram Entertainment Tax of 2013)

➢ Recent Landmark Supreme Court Judgment on VAT

Larger Bench of Hon'ble Supreme Court had upheld the earlier decision taken by the Division bench in the case of Raheja Development in the case of ***M/S Larsen & Toubro Limited & Anr. vs State Of Karnataka & Anr. on 26 September, 2013.***

In the Judgment the Supreme Court has observed that "**construction work carried out by the developer is for and on behalf of purchaser and not for himself or for the land owner."**

However the hon'ble Court has specifically clarified that ***"activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser"***

For full Judgment refer http://www.indiankanoon.org/doc/155272316/

Also refer to analysis of the case by CA. Shivani Shah at page 5.

Compiled by:
CA. Bikash Agarwala
Past Chairman, Guwahati Branch

ICAI Updates

➢ Information Systems Audit (ISA) Course, Assessment Test :

In pursuance of Regulation 204 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify that the Information Systems Audit (ISA) Course Assessment Test (which is open to the members of the Institute) will be held on 30th November, 2013 (Saturday) from 10.30 AM to 2.30 PM. **Guwahati** is also one of the centres for the test. The online application for the ISA, AT exams has started. Last date for applying for the same is 12th November 2013. For details visit:

http://220.227.161.86/31080exam21158.pdf

➢ Penal provisions for the members of the Institute who had not complied with their CPE Hours requirements:

In order to function the system of mandatory CPE effective, the Council of the Institute of Chartered Accountants of India has decided that the members who fail to comply with their CPE Hours requirement for the current block of 3 years (1-1-2011 to 31-12-2013) are appropriately sanctioned. For details visit:

http://www.icai.org/new_post.html?post_id=9971&c_id=219

➢ Draft Bank Branch Auditors Panel 2013-14:

The Draft Bank Branch Auditors Panel 2013-14 has been hoisted and is available till November 6, 2013 at www.meficai.org.

➢ ICAI International Conference at Kolkata:

We are delighted to inform you that "The Institute of Chartered Accountants of India" (ICAI) is organizing International Conference "**Accountancy Profession: Emerging Frontiers of Future Growth**" from **21st to 23rd November, 2013** at Science City Auditorium, Kolkata for the first time in the Eastern Region. The Conference will be inaugurated by **H.E. President of India, Shri Pranab Mukherjee.**

For details please visit:

http://220.227.161.86/30422ICkolkata-details.pdf

Contributed by:
CA. Pankaj Jain

"The bigger the darkness, the easier it is to spot your little light"

Branch Activities

Seminar on Companies Act 2013 organized

CA. Vikash K Jain, Chairman, CPE Committee, Mr. G C Yadav, ROC, Shillong, CA. Kaberi Bhuyan, Chairperson & CA. (Dr.) Debashis Mitra, Speaker

A 6 hour CPE Programme on Companies Act 2013 was organized by Guwahati Branch on 26th of October 2013 at the Branch Premises. The programme was initiated by CPE committee Chairman CA. Vikash Jain, followed by welcome speech by the Branch Chairperson, who also briefed about the functioning of the branch and programme scheduled for the near future.

The first session was chaired by ROC, Shillong, Mr. G C Yadav where CA. (Dr.) Debashis Mitra delivered his address on the topic "Provisions relating to accounts, audit and CSR".

Thereafter in the second technical session initiated by branch Vice-Chairman CA. K P Sarda, a deliberation on the topic "Directors meeting and other provisions" was made by CA. Manoj Banthia from Kolkata. This session was chaired by CA. Sunil Sharma from Guwahati.

CA. Manoj Banthia, Kolkata, Speaker

The morning session was made mesmerizing by the deliberations of the learned speaker CA. (Dr.) Debashis Mitra, while the other legend of corporate law CA. Manoj Banthia took over the proceedings in the latter half of the seminar, thereby making the whole seminar a memorable one.

CA. Sunil Sharma, Chairman, 2nd Technical Session

During the seminar, smile spread across the faces of our Chairperson and other lady members present when learned speakers were focusing on the strengthening of women contributions through Board Room.

Chartered Accountants from the region participated in this seminar in good numbers and enthusiastically took part in the interactive sessions. Branch managing committee members CA. Rakesh Agarwala, CA. Mahabir Agarwala, CA. Dhiraj Jain and CA. Rohit Agarwal were also present.

ISA Eligibility Test

We have successfully conducted ISA Eligibility Test (ET) on Saturday, the 19th October 2013 at ICAI Bhawan, Guwahati. As many as 16 CAs appeared for the said test. It was conducted in a very professional manner under an extremely conducive and comfortable ambience.

ISA PT Classes

ISA PT Classes were also held at the Branch Premises from 20th to 31st of October 2013, with a Batch of 39 Members. The faculties for the said classes were CA. Piyali Basu, Mr. I. P. Singh and CA. Dipankar Nandi.

Teleconferencing Programme

In addition to this, arrangements were also made for viewing of teleconferencing programmeon the following dates –

Date/Day	Topic	Faculty
04/10/2013 (Monday)	Understanding Domestic Trasfer Pricing	CA. Gaurav Garg
18/10/2013 (Monday)	Concurrent Bank Audit Planning and case studies	CA. Nayan R Kothari
	Stock and Recievables Audit	CA. Bharat Gajjar
30/10/2013 (Saturday)	Business process re-engineering	Mr. Prakash Sahasrabuddhe
	Computation of Arm length price in specified domestic transactions	CA. Rajiv Jain

EICASA, GUWAHATI BRANCH ACTIVITIES

- A Dandiya Programme was organized for the Students and Members on 9th October, 2013 at Hotel Rajmahal to celebrate the Navaratra Festival. CA. Rakesh Agarwal, Secretary, Guwahati Branch and Past Chairman, EICASA, Guwahati Branch inaugurated the Festival by lighting of the lamp. More than 200 Students and Members participated in the celebration.
- Two Educational Tours were also organized to the State Bank Learning Centre and Srimanta Sankaradev Kalakshetra, Guwahati on the 25th & 30th day of October 2013 respectively. Both the tours was attended by large number of Students from across the city.
- A Career Counseling programe was also organized at Faculty School, Amingaon on 30th October 2013, wherein almost 65 students of the School attended the programme. Detail curriculum of CA Course as well as benefits and career opportunities was briefed by CA. Manoj Agarwalla.

Forthcoming Events

- A 6 CPE hours Info Tech Workshop (Practical) is scheduled to be organized on Saturday 9th November, 2013 at the ICAI Bhawan from 10.00 AM to 5.00 PM. CA Anil Kumar Agarwala and CA. Vivek Kr Jain are the speakers for the workshop.
- National Conference **"Sarathi - Marching Ahead"** is going to be organized on **13th & 14th December 2013 (Friday & Saturday)**. The members are requested to freeze-up these two days in their calendars for the mega event to gain from the experience of the galaxy of speakers from around the nation.

"Look at how a single candle can both defy and define the darkness" - Anne Frank

Take a Break !!

"Being happy doesn't mean you are perfect, it just means you have decided to look beyond the imperfections"

Happiness — it's what we all strive to find and keep, even when it's as elusive as ever. Nobody is happy all the time, but some people are definitely more fulfilled than others. Happiness doesn't appear by magic. It's not even something that happens to you. **It's something you can cultivate.** We can learn how to be happy — or at least happier. We each have a baseline level of happiness. No matter what happens, good or bad, the effect on our happiness is temporary, and we tend to revert to our baseline level. So let us get an idea on how to have persistent happiness in our lives.

- **Be optimistic.** Happiness is largely influenced by *how you think.* Add up all the little happy things that happen to you during the day- getting the newspaper in the morning while still in bed without asking for it, helping an old lady cross the road, a lunch with your colleague, an evening walk with your pet along- all these added together account to one big happiness. Always look to the positive side of everything. Look at the glass half filled rather than half empty. It is therefore said that "**Positive attitude may not solve all the problems but it will annoy enough people to make it worth the effort**".
- **Follow your gut and heart**. When you are to make a decision, and you are down to two or three options, just pick the one that feels right and go with it. Never regret the decisions you made. You need to make a choice to take a chance, or your life will never change.
- **Treat your body like it deserves to be happy.** Brain is not the only organ in our body that deserves to be happy. People who are physically active have higher incidences of enthusiasm and excitement. Researches reveal that exercises, eating healthy diets, getting regular sleep are key factors in growing more happy and staying that way.
- **Stay close to family and friends.** Our relationships with friends and family have a far greater impact on happiness. Being close to our loved ones ultimately make us feel mentally secure and happy. If relationships are non-existent or unhealthy, you are bent to move to a location where you can compensate for the loss of happiness.

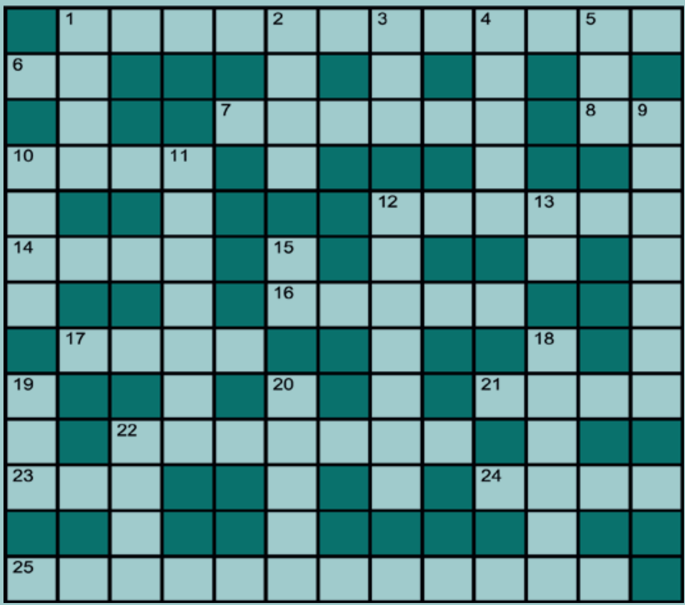
How to be Happy.......

- **Be compassionate.** Compassion is all about doing something kind for someone in need, or someone who is less privileged than you. A brain-imaging study revealed that people gained as much happiness from watching others give to charity as they do receiving money themselves. To make you feel happier, make others feel happy.
- **Have deep meaningful conversations.** Having meaningful conversations with someone you can open up and trust, ends up in finding a person you can share your problems with and getting solutions to your problems.
- **Find happiness in whatever you do.** Many people expect the right thing, or the right kind of job to come their way to dramatically change their level of happiness. But the truth is your level of optimism and quality of relationships eclipse the satisfaction gained from the work/job we do. If you have a positive outlook, you will make the best of any job; and if you have good relationships, you won't depend on your job for a sense of meaning. You will automatically find meaning in interactions with the people you care about.
- **Practice Smiling.** When we smile, whether you are happy or not, your mood is elevated. Smiling is like a feedback loop. Smiling reinforces happiness just as happiness causes smiling. People who smile during painful procedures reported less pain than those who kept their facial expressions neutral. Smiling itself can make us feel better; but it is more effective when we back it up with positive thoughts.
- **Forgive.** Forgiveness can bring unexpected happiness. It heals the heart. Grievances are forgotten. It definitely lowers the perception of stress.
- **Make friends.** People who are social tend to remain happier than the ones who are not. Make friends with people who share common interests. When we interact with people who share our interests, we feel happier due to sensations of reward and well being.
- **Plan a trip.** Planning a vacation or just a break from work can improve our happiness. A study published in the journal, Applied Research in Quality of Life showed that the highest spike in happiness came during the planning stage of a vacation as people enjoyed the sense of anticipation. In the study, the effect of vacation anticipation boosted happiness for eight weeks. After the vacation, happiness quickly dropped back to baseline levels for most people.
- **Make enough money to meet basic needs.** Money cannot buy happiness, but it can make you awfully comfortable while you are being miserable. Jane Austen had once remarked "A large income is the best recipe for happiness I ever heard of."

To end with, happiness is a matter of one's inner self, what one feels at a point of time. Joy can spring like a flower even from the cliffs of despair. What matters is the enthusiasm to remain happy. Stay blessed, Stay happy.

Compiled by: CA. Dinesh Kumar Mour

CROSSWORD # 08



QUICK CLUES

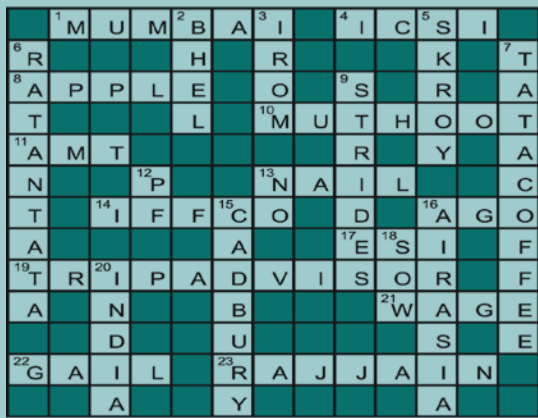
Across:

1 Expert Speaker at Seminar on Companies Act at Guwahati (12)
6 Like ...... Other : Sony Tagline (2)
7 Sells "Magic" prepaid cards (6)
8 This invention won Jack Kilby the 2000 Nobel Prize in Physics (2)
10 A Digital Signature has a pair of these (4)
12 "If we provide people with an occasion & an excuse to shop, they will come", he says. (with 22 across) (6)
14 Urges you to "Explore Beyond Limits" (4)
16 Shillong ROC's first Name (5)
17 The car that gives you "Fun on the Run" (4)
21 Thread is a type of this (4)
22 See 12 across (7)
23 India's premier business association (3)
24 Sumerian goddess depicted with the head of a dog (4)
25 APJ Abdul Kalam book dedicated to Snehal Thakkar (12)

Down:

1 Family Store owned by Kumar Mangalam Birla (4)
2 Present residence of Lalu, Raja, Amar Singh, Kalmadi et al. (4)
3 A bill after the President's assent (3)
4 "Power of Simplicity" (5)
5 GSLV-.......: ISRO launch vehicle currently under development (3)
9 "......... Came First": Ambani QSR Chain to take on 19 down (7)
10 .... from the epiglotiss! (4)
11 Upcoming National Conference at Guwahati (7)
12 Dabur acquired "Babool" brand from this company (7)
13 In the year of the Lord (2)
15 Unit of weight (2)
18 Singur lost Nano to this place (6)
19 Fried 9 down is its chief business (3)
20 Chandrasekhar Bhaskar .... : SEBI Chairman (5)
22 Insulated Chamber used to harden objects made from clay (4)

SOLUTION CROSSWORD # 07



Congratulations to **CA. Deepak Jain** for submitting correct solution to crossword # 07

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

Designation	Name	Contact No.	E-mail
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Secretary	CA. Rakesh Agarwala	9864020068	rakeshagrl_ca@yahoo.com
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चलते चलते.....