guwahati@icai

E-Newsletter of the Guwahati Branch of EIRC of ICAI

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Editorial Board

Write to Editor

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

Chairman's Message ...

Dear Colleagues and Student Friends,

hello!

"All work and no play makes Jack a dull boy"

Of course, the warning in this proverb seems clear enough.......that if you do not release yourself from the pressures of work from time to time, you will become dull, boring, uninteresting, and unexciting. You will also probably find yourself completely bored with your life over time, as work becomes your sole focus day in and day out. No time for hobbies, family, friends, exercise, watching sports, reading, or just plain vegging. That doesn't sound like much fun to me. A balanced education is needed to produce creative and productive people.

After a hectic bank audit schedule, we thought it was time to relax and rejuvenate ourselves with family and friends and also get some educational gains. Keeping these in mind, we organized an international study tour to UAE. We succeeded in our first attempt when we interacted with the members of ICAI, Dubai Chapter, and participated in the International Conference attended by around 1100 CAs of Dubai & neighbouring countries. We also involved ourselves in various fun-filled activities, and updated ourselves with the economic scenario of and future prospects for our members in, that region.

Hearing the tales of the growth of CA fraternity in the city was not new for us, but we got the chance to have some great conversations about how they were managing the growth and the vital role that they see, of higher education playing in the future of their country as they realize that oil-wealth is a limited time windfall. It was the perfect time to visit the city as the colours of Indian Premier League was painted all over the place. We felt that we were somewhere in our own country. The Abu Dhabi City tour was immensely thrilling, the city famous for its skyscrapers and glittering glass facades dotting the skyline. We also visited various famous places like the Sheikh Zayed Mosque, Ferrari World, Iceland Water Park, Dubai Dolphinarium, Snow Park, Desert Safari, Burj Khalifa, Miracle Garden & many more.

We are always told – try harder and everything will get better. But what if you are trying harder at things that are not working? Then they will just not work that much more. So, trying harder is not always the way to go - sometimes you need to do something else - something different! Both Hard Work & Smart Work have a place of their own. Only hard work cannot make things perfect and smartness alone cannot get a person to do everything. In today's world if both get together, man can achieve anything.

Those who missed out on this international study tour, we have some good news for them. They can join us in our next endeavour in the form of a residential programme at Kaziranga from 6th of June 2014 to 8th of June 2014. The programme is offering a combination of loads of fun along with Continuing Professional Education of 12 hours amidst the natural beauty of this world heritage site.

Apart from this, we would like to very gently remind you to revert back with your duly filled up Members' Updation form for the successful release of Members' Directory 2014 on CA Day.

We look forward to your active participation to encourage us to come up with even newer ideas and take our branch to hitherto untouched heights both nationally & internationally.

– CA. K P Sarda

REGISTRATION CERTIFICATE – PROCEDURES FOR SURRENDER AND CANCELLATION

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A lot of disputes often arise on the procedure of surrender of the registration certificate under service tax. This happens due to lack of knowledge, fear of litigation, departmental pressures etc. Hence a comprehensive understanding of the procedure is very important. The provisions of sub rules (7) and (8) to Rule 4 of the Service Tax Rules, 1994 (herein after referred to as 'Rules') provides for surrender of the registration certificate in case of an assessee who ceases to provide taxable service for which it is registered. The Superintendent of Central excise after ensuring that the assessee has paid all the dues may cancel the registration certificate.

This article is in light of the Trade notice no. 18/2013-ST dated 19/12/2013 issued by the Mumbai Commissionerate.

Trade notice 03/2007-ST dated 30/03/2007 explaining the modalities of surrender of registration certificate was issued by the Commissionerate. It was noticed that out of more than one lakh registered assesses, only around 40-45% were active and the rest not for the pendency of surrender applications.

Hence fresh guidelines are issued. By and large, the application for surrender / cancellation is made for one of the following reasons:

a) Turnover is below the threshold limit

b) Change in constitution of assesse

c) Death of proprietor

d) Closure of business

e) Opting for centralized registration

f) Change is jurisdiction of office

Any person wishing to surrender its registration certificate will apply for surrender on to www.aces.gov.in and submit the hard copies of the documents as mentioned in para 5 along with the application to jurisdictional Group Superintendent or Superintendents of Centralised Surrender Cell in the concerned division office.

In case the assessee has not filed its return for the reason of turnover being below the threshold limit, the assessee can apply for waiver of penalty under Rule 7C of the Rules. Instructions have been issued to that extent. However, the fact of non filing of returns should be clearly mentioned in the undertaking.

Further in case of assesses who have taken registration prior to 01/04/2010 and have not migrated to ACES, need not necessarily migrate to ACES for the purpose of surrender of the certificate. Manual surrender will be allowed to them. The intimation for cancellation, in such cases, will be sent by post to the assesses.

In case of assesses who have misplaced the User ID and password for the transaction with ACES, may apply to the Help Desk of the respective division along with filled in application form thus generating the Tpin.

Editor's Desk...

Dear Professional Colleagues,

"Every April, God rewrites the book of Genesis."

No one relaxes in March, that month of winds and taxes. The winds will presently disappear; the taxes would last all the year. Having been relieved of the *burden* of Statutory Bank Audit assignments you must have enjoyed the well-deserved Bihu Holidays. You were, I am sure, compelled by the sweet melody of Bihu songs and the nimble Bihu dancers clad in ethnic attire, to dance in tune with them. The blooming orchids, the resounding tunes of *dhol* and the *pepa*, the sweetness of *Pitthas* and *Doi Chira* and sharing of *Bihuwan* must have brought with it the "breath of fresh air" you had been looking for from the just past busiest-days-of-the-year.

Our members took off for Dubai on the branch's first-ever International Study Tour and they have returned with thrilling experiences and lasting memories. With this new benchmark set, the floodgates have now opened for many more such tours in the coming years.

We also look forward to the Branch's first ever residential CPE program at World Heritage site Kaziranga at "IORA-The Retreat" in the first week of June. Learning with fun and family will be our objective and we are sure that the event will be an extra ordinary one.

The parliament elections are concluded and we eagerly await the results (which are most likely to be announced before this piece is published). An expectation of a *change for the better* is there in the air and we await with bated breath the day on which the fate of the country will be decided. We all are carrying with pride that indelible mark on our left hand finger with the full-knowledge that we have had an equal hand in the results.

Friends, the success of a newsletter depends on its contents. The contents might be your views, your innovative ideas, your analysis, your imaginations or anything else. Do not stop the ideas from germinating. Cultivate them and pen them down to blossom as contents of this newsletter. This newsletter is yours and feel free to have your say.

Anticipating your positive response and wishing you my best.

– CA. Sharad Agarwalla

readers write

Dear Editor,

When an "Auditor" becomes 'Editor' means he volunteers himself for scrutiny of other fellow Chartered Accountant and you have succeeded in your endeavour. "Congratulation".

I know it is very easy to give suggestion but difficult to implement until and unless member at large involve themselves. How to involve member is a million dollars question and you can have answer from members only.

Guwahati Branch I think geographically is one of the biggest branch of Eastern India with many Chapters. So at least you can ask convener of each Chapter to send news, views, photograph and articles from such Chapters.

With Best Wishes
CA. N C Karnany - Jorhat

SERVING OF FOOD IN RESTAURANT – LIABLE TO VAT OR SERVICE TAX?

By: CA. MANOJ NAHATA*

There has been a long debate on levy of service tax on restaurant service since its introduction. The author draws attention of readers on his article published in the E-Newsletter for the month of July'2013 wherein this matter was discussed. It was the Kerala High Court which took the view that the Centre has no jurisdiction to levy Service Tax on sale of food in restaurant. It is only the State's domain to levy tax on the sale of food. There after the Bombay High Court in a different case rejected Kerala High Court's single judge judgment &took the contrary view that Service Tax can be levied on sale of food in the restaurant. Now, in a more recent judgment this jurisdictional dispute between Centre & State was again raised. The Hon'ble Uttarakhand High Court tested the matter on the touchstone of VAT law in its judgment dated: 10.04.2014. The Hon'ble High Court took the view that since service tax is levied on 40% of the billed value in restaurant, no VAT can be imposed on such portion. This has made the author to again give a fresh look to the whole matter in the light of various judicial pronouncements.

Constitutional Provisions:

Article 246delineates the power of the Union and the state to enact laws. It reads as under:

> ***246**. Subject-matter of laws made by Parliament and by the Legislatures of States—*
>
> *(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List').*
>
> *(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List').*
>
> *(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').*
>
> *(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List.*

Service tax was originally introduced by the Parliament in exercise of the residuary power under Entry 97 of List I. Though Entry 92-C has been introduced by the eighty-eighth amendment to List I of the 7th schedule which enables the Union to levy "Taxes on Services", the said entry has not come into effect as it has not yet been notified by the Government.

The relevant entries of List I and II of the seventh schedule reads as under:

> *List I -- Union List*
>
> *97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.*
>
> *List II -- State List*
>
> *54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I.*

Article 366(29A) of Constitution of India defines a tax on sale or purchase of goods: Sub-clause (f) of the definition is of our interest as it deals with the subject under discussion.

> ***366.** Definitions.--In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –*
>
> *(29-A) 'tax on the sale or purchase of goods' includes—*
>
> *(a) a tax on transfer of …………………*
>
> *(b)…………………*
>
> *(c)…………………*
>
> *(d)*
>
> *(e)*
>
> *(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;*

Provisions of Chapter V of the Finance Act, 1994:

W.e.f. 01.06.2012 the term "service" has been defined in section 65B(44) of the Finance Act 1994 which means any activity carried out by a person for another for consideration. "Service" includes "declared service" which is defined in section 65B (22) of the Act. However, "service" excludes a transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of article 366(29A) of the Constitution.

Now the supply of food and drinks, by way of or as part of any service, is included in article 366(29A)(f) of the Constitution. Therefore, this should mean that no service tax can be levied on a hotel or restaurant which supplied food or drinks, by way of or as part of service. But by virtue of insertion of section 66E(i) *the service portion* in activity wherein goods, being food or any other article for human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity has been treated as "declared service" for the purpose of levy of service tax.

Now let us have a look at the crux of the recent judgments:

Kerala High Court *-KERALA CLASSIFIED HOTELS AND RESORTS ASSOCIATION:*

It can be seen from Article 366(29-A)(f) that 'service' is also included in the sale of goods. If the constitution permits sale of goods during service as taxable necessarily Entry 54 has to be read giving the meaning of sale of goods as stated in the Constitution. If read in that fashion, necessarily service forms part of sale of goods and State Government alone will have the legislative competence to enact the law imposing a tax on the service element forming part of sale of goods as well, which they have apparently imposed. This view was taken in the light of the Constitution Bench judgment in ***K. Damodarasamy*** Naidu's case.

Bombay High Court*-INDIAN HOTELS AND RESTAURANT ASSOCIATION:*

The Hon'ble Bombay High Court in Writ petition no.2159 of 2011

rejects Kerala HC's single Judge ruling in ***Kerala Classified Hotels and Resorts Association*** for want of categorical finding that tax in question is covered by State List. The Court accepts Revenue's reliance on Supreme Court's ruling in ***Tamil Nadu Kalyana Mandapam*** pertaining to catering services. The Honorable Supreme Court, with respect, held that the concept of catering admittedly includes a concept of rendering service. The fact that the tax on sale of goods involved in the said service can be levied does not mean that the service tax cannot be levied on the service aspect of catering. With respect, this means that when a restaurant renders to any person a service, the tax on sale of goods involved in the said service can be levied. That does not mean that service tax cannot be levied on the act of serving food at a restaurant. That is the tax in this case imposed by the Parliament. There could be a sale during the course of rendering of service at a restaurant and therefore, sales tax could be imposed by the State Legislature. So long as there is no prohibition against imposition of service tax on the services rendered, then it must be held that the Parliament is competent to impose a service tax in question. The Court further held that just because assessee is liable to pay Value Added Tax on sale involved in supply of goods at canteen, it cannot be held that it is not liable to payment of service tax.

Uttarakhand High Court- *VALLEY HOTEL & RESORTS VS. COMMISSIONER COMMERCIAL TAX, DEHRADUN*:

The Uttarakhand High Court in a revision petition filed by the party held that Value Added Tax can be imposed on sale of goods and not on service. Service can be taxed by Service Tax Laws. The authority competent to impose service tax has also assumed competence to declare what is service. The State has not challenged the same. Therefore, where element of service has been so declared and brought under the Service Tax vide Government of India notification dated 06.06.2012, i.e. 40% of bill amount to the customers having food or beverage in the restaurant was made liable to service tax, no Value Added Tax can be imposed thereon.

Author's Comments:

On going through the above three judgments, it appears that the views taken by Kerala High Court is completely rejected by the Bombay High Court and it has made clear that Centre can levy Service Tax in absence of any prohibition in the Constitution. The Uttarakhand High Court went a step further and put a bar on the power of State to encroach into the area of Centre's domain. It took the view that State has no power to levy VAT on the portion which is subjected to Service Tax by the Central Government. The issue of double taxation thus seems to have been addressed and now no VAT can be charged on that portion of restaurant bill which has already suffered service tax.

The taxability of sale of food in restaurants was a bone of contention since very long. Prior to the 46th Constitutional amendments several Courts took the view that the transaction between an hotelier and a visitor to his hotel was essentially of service in the performance of which and as part of the amenities incidental to that service, the hotelier serves meals. The revenue was not entitled to split up the transaction into two parts, one of service and the order of sale of foodstuffs or to split up the bill raised by the hotelier as consisting of charges for lodging and charges for food stuffs served by him with a view to bring the hotel within the ambit of the levy of tax on the food supplied to guests. The Supreme Court in ***Northern India Caterers (India) Ltd Vs. Lt. Governor of Delhi 42 STC 386*** held that the service of meals to visitors in the restaurant was not taxable under local taxation law.

After the 46th Constitutional amendments article 366(29A) was amended so that the tax on the sale or purchase of goods included "a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption…". The validity of the levy was upheld by the Apex Court in ***K. Damodarasamy Naidu & Bros. Vs. State of Tamil Nadu and another 117 STC 1.*** One of the contentions urged before the Court was that the tax on food served in restaurants could not be levied on the sum total of the price charged to the customer as the restaurant provided services in addition to food, and these had to be accounted for. It was therefore contended that the bill had to be split up between what was charged for such service and what was charged for the food. The court did not accept the contention (pl. refer to para 9 of the decision). The court held that the tax was on the supply of food or drink and it was not relevant that the supply was by way of a service or as part of a service. The price that the customer pays for the supply of food in a restaurant cannot be split up as suggested by the petitioners.

In the case of ***Tamil Nadu Kalyana Mandapam Association Vs. Union of India135 STC 480***, it was contended that the Parliament cannot impose tax on sale of food items, drinks etc. in view of the 46th amendment to article 366(29A)(f) of the Constitution and the decision of the Court in ***K. Damodarasamy Naidu & Bros***., was relied upon. The court held that Article 366(29A)(f) only permitted the State to impose a tax on the supply of food and drink by whatever mode it may be made. It does not include the supply of services within the definition of sale and purchase of goods. It is only the supply of food and drinks and other articles for human consumption that is deemed to be a sale or purchase of goods. It was further held that the concept of catering included the concept of rendering service. The fact that tax on the sale of the goods involved in the same service can be levied does not mean that a service tax cannot be levied on the service aspect of catering. The Apex court has categorically held that the State legislatures can levy tax on the supply of food and drinks only.

In ***Tamil Nadu Kalyana Mandapam Association*** case, the apex Court did not specifically refer to para 9 of the decision in ***K. Damodarasamy Naidu & Bros***. case before coming to the conclusion that service tax can be levied on the service aspect of catering. In para 9 the Court had categorically held, after giving an example, that the tax had to be paid on the entire invoice value. But unfortunately in ***Tamil Nadu Kalyan Mandapam Association's*** case the Apex court did not lay down any guideline for ascertaining the turnover/value on which sales tax and/or service tax can be levied. Does it mean that both VAT as well as Service Tax can be levied for the one and the same transaction and for the same value?

In ***Indian Railways Catering and Tourism Corporation limited Vs. Government of NCT of Delhi 32 VST 162***a division bench of the Delhi High Court held that if the transaction between the parties was covered under article 366(29A) of the Constitution, it is permissible for the states to levy and collect sales tax/value added tax on the value of the goods involved in the execution of the transaction. It was not permissible to levy sales tax/value added tax in respect of service component of such composite transactions. This principle was also stated by the Karnataka High Court in ***Sky Gourmet Catering Private limited Vs. Assistant Commissioner of Commercial taxes, Bangalore 46 VST 35.*** The court in para 26 of the judgement held that the entire consideration cannot be the subject matter of service tax nor can it be the subject matter of sales tax. Otherwise, it will amount to double taxation.

And now the Uttarakhand High Court in***Valley Hotel &Resorts vs. Commissioner Commercial Tax, Dehradun*** has categorically held that Value Added Tax can be imposed on sale of goods and not on service.

In the light of above discussion, it is clear that there cannot be an overlapping inasmuch as same value should not suffer dual levy. But presently most assesses are paying VAT on full value. It will be interesting (and educating) to watch the move of the VAT assesses in other States in the light of Uttarakhand High Court judgment.

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FAQ's on ONE PERSON COMPANY

By CS. Mamta Binani
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What is a One Person Company (OPC)?

Section 2(62) of the Companies Act, 2013 defines OPC to mean a Company which has only one person as a member.

Could OPC be formed in the regime of the Companies Act, 1956?

OPC is a new concept introduced in the Companies Act, 2013. Therefore, OPC could not be formed under the earlier Acts.

What type of OPC can be formed/incorporated?

As per section 3(1) and (2), OPC can only be incorporated as a private limited company. Such a company may either be:

1. a company limited by shares; or
2. a company limited by guarantee; or
3. an unlimited company

Is it necessary to write the words "one person company" after the name of any such company?

Yes. Second Proviso to Sec 12(3) provides that the words ''One Person Company'' shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

Who can form or incorporate a OPC?

As per Rule 3(1) of the Companies (Incorporation) Rules 2014, only a natural person who is an Indian Citizen and resident in India shall be eligible to incorporate/form a OPC.

Who can become a nominee of a OPC?

As per Rule 3(1) of the Companies (Incorporation) Rules 2014, only a natural person who is an Indian Citizen and resident in India shall be a nominee for the sole member of a OPC.

Who is a resident of India for the purpose of the provisions laid down for OPC?

As per the explanation given to Rule 3(1), a resident of India for the purpose of the provisions governing OPC is a person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year.

Is there any number restriction on formation of OPC by a person?

As per Rule 3(2) of the Companies (Incorporation) Rules 2014, no person shall be eligible to incorporate more than one OPC.

Is there any number restriction on acting as a nominee of a person?

As per Rule 3(2) of the Companies (Incorporation) Rules 2014, no person shall be eligible to become a nominee in more than one OPC.

What is the concept of nominee in case of OPC?

As per the first proviso to section 3(1) of the Companies Act 2013, at the time of incorporation of OPC, the sole member of OPC is required to appoint another person as his nominee and his name shall have to be featured in the Memorandum of Association of the OPC.

The nominee so appointed shall:

a. in the event of the sole member's death; or
b. in the event of the sole member becoming incapacitated to contract;

become the member of OPC.

A nominee so appointed is required to give his written consent for the same. The said written consent will also have to be filed with the ROC at the time of incorporation of the OPC along with its MoA and AoA.

A nominee may also withdraw his consent if he so desires.

To re-iterate, only a natural person who is an Indian Citizen and resident in India is eligible to be a nominee as aforesaid.

Can the member of the OPC change the nominee?

As per the third proviso to section 3(1) of the Companies Act 2013, the member of the OPC may at any time change the name of the nominee by giving notice.

What is the procedure to be followed for Nomination by a Member or Subscriber of OPC?

As per Rule 4 of the Companies (Incorporation) Rules 2014:

1. Memorandum of OPC to indicate the name of nominee.
2. The above nomination indication shall be filed by the OPC subscriber with the Registrar in Form No. INC.2 along with fees prescribed
3. OPC subscriber also required to file the consent of his nominee in Form No. INC.3 along with fees prescribed
4. If the OPC subscriber/member dies or become incapacitated to contract, his nominee shall become the new member of OPC.
5. The new member as aforesaid in turn is required to appoint his nominee within 15 days of his becoming the new member of OPC
6. OPC to file with the Registrar within 30 days of change in membership:
   a. Form No INC.4 along with fees prescribed, the intimation of such cessation and nomination and
   b. Form No INC.3 along with the fees prescribed, the consent of the new nominee.

What is the procedure to be followed in case of withdrawal of consent by a nominee?

As per Rule 4(3) and (4) of the Companies (Incorporation) Rules 2014:

1. A nominee may withdraw his consent by giving a written notice to the OPC Member/Subscriber and to the OPC concerned.
2. The sole member/subscriber to nominate a new person as his nominee within 15 days of the notice of withdrawal.
3. The sole member/subscriber to intimate the OPC
   a. of such nomination in writing and
   b. of the written consent by sending Form No INC.3
4. OPC shall within 30 days of the receipt of notice of withdrawal as mentioned in clause 1 above, file:
   a. Form No INC.4 along with fees prescribed, the intimation of such withdrawal and new nomination and
   b. Form No INC.3 along with the fees prescribed, the consent of the new nominee.

What is the procedure to be followed for Change in Nomination by a Member or Subscriber of OPC?

As per Rule 4(5) of the Companies (Incorporation) Rules 2014:

1. The subscriber or member of OPC can change his nominee at any time or for any reason by giving a notice in writing to the OPC.
2. OPC subscriber to obtain prior consent of new nominee in Form No INC.3.
3. OPC to file with the Registrar within 30 days of receipt of intimation of change:

a. Form No INC.4 along with fees prescribed, the intimation of such cessation and new nomination and

b. Form No INC.3 along with the fees prescribed, the consent of the new nominee.

Who cannot become a Member of OPC or act as a nominee in OPC?

1. Minor (as per Rule 3(4) of the Companies (Incorporation) Rules 2014). A minor cannot even hold share with beneficial interest.
2. Foreign Citizen
3. Non Resident (see meaning of resident in India above and relate)
4. A person incapacitated to contract
5. Persons other than a Natural Person i.e. living human being

Can OPC engage in all business activities?

OPC needs to be formed for any lawful purpose. Such companies cannot engage in "Non Banking Financial Investment" activities including "investment" in securities of anybody corporate (as per Rule 3(6) of the Companies (Incorporation) Rules 2014).

Can OPC be incorporated or converted to a Section 8 Company (with Charitable Objectives or erstwhile Sec 25 Company of the Companies Act, 1956)?

As per Rule 3(5) of the Companies (Incorporation) Rules 2014, the answer is 'No'.

How many Directors can OPC appoint?

OPC can have one or more Directors on its board. No special mention has been made for the number of directors. As per the provisions of Sec 149 a OPC can have a maximum of 15 directors. It can, however appoint more than 15 directors after passing a special resolution.

Is OPC required to hold Board Meeting? How many Board Meetings are required to be held by a OPC?

As per section 173(5) of the Companies Act 2013, the answer is 'Yes', if there is more than one Director on the OPC Board. A OPC is required to hold at least one meeting of the Board in each half of a calendar year and the gap between the 2 meetings should not be less than 90 days.

How will the Board Meeting be conducted and its business transacted if there is only one Director on the OPC board?

As per section 122(4) of the Companies Act 2013, where there is only one Director on OPC Board, any business which is required to be transacted at the Board Meeting of OPC, it shall be sufficient if, in case of OPC, the resolution by such one Director is entered in the minutes book and signed and dated by such director and such date shall be deemed to be the date of the meeting of the OPC Board for all the purposes of the Companies Act, 2013.

Is OPC required to file Annual Return?

As per the proviso to section 92(1) of the Companies Act 2013, the answer is 'Yes'. The annual return in case of OPC shall be signed by the company secretary or where there is no company secretary, by the director of the OPC.

Is OPC required to hold AGM?

As per section 96(1) of the Companies Act 2013, the provision relating to holding of AGM is not mandatory for a OPC.

Can OPC voluntarily convert itself into any other kind of company?

As per Rule 3(7) of the Companies (Incorporation) Rules 2014, the answer is 'Yes', only if it has been in existence for more than 2 years.

When will a company cease to continue as OPC?

As per Rule 6(1) of the Companies (Incorporation) Rules 2014, OPC shall cease to be entitled to continue as a OPC if:

1. Its paid up capital exceeds Rs.50 lacs; or
2. Its average annual turnover during the relevant period i.e. immediately preceding 3 consecutive financial years exceeds Rs. 2 Crores

How will the OPC function on hitting the requirements mentioned in Rule 6(1)?

As per Rule 6(2) of the Companies (Incorporation) Rules 2014, OPC shall be mandatorily required to convert itself into either a private or a public company. Such conversion shall happen within 6 months from the:

1. date of increase of its paid up capital as mentioned in Rule 6(1), i.e. exceeding Rs.50 lacs; or
2. Last day of the relevant period during which its average annual turnover exceeds Rs.2 Crores.

As per Rule 6(2), (3) and (6) of the Companies (Incorporation) Rules 2014, OPC should ensure that the conversion shall happen in accordance with the provisions of Section 18 of the Companies Act, 2013 which provides for necessary alteration in memorandum and articles, read with section 122 of the Act. The other requirements of minimum capital, minimum number of directors and subscribers as the case may be need to be complied with at the time of any such conversion by OPC.

Is any intimation before conversion required to be given to the Registrar by the OPC?

As per Rule 6(4) of the Companies (Incorporation) Rules 2014, OPC shall within a period of 60 days from the date when it ceases its entitlement to continue as a OPC, shall give a notice to the Registrar in Form No. INC.5 informing:

1. that it has ceased to be a OPC and
2. that it is now required to convert itself into a private or a public company by virtue of its paid up capital or average annual turnover exceeding the threshold limit as mentioned above.

Can a Private Company convert itself into a OPC?

As per Rule 7(1) and (2) of the Companies (Incorporation) Rules 2014, a private company can convert itself into a OPC provided:

1. it is not a Section 8 (with charitable objects) company
2. its paid up capital is equal to or less than Rs.50 lacs
3. its average annual turnover is equal to or less than Rs.2 crores in the relevant period
4. it passes a special resolution in its general meeting for such conversion
5. it obtains a NOC in writing from its members and creditors* for such conversion prior to passing of the abovementioned special resolution.

*My observation: In the point 5 above, the word that has been used is just 'creditors' and not 'secured creditors'.

Is any intimation before conversion required to be given to the Registrar by the Private Company?

As per Rule 7(3) and (4) of the Companies (Incorporation) Rules 2014, the following intimation/filing is required before the Registrar grants the conversion certificate:

1. the converting private company* shall file a copy of the special resolution with the Registrar within 30 days of passing of such resolution in Form No. MGT. 14
2. the converting private company to file an application in Form No.INC.6 for conversion into OPC along with prescribed fees by attaching the following documents:
   a. declaration by way of an affidavit from the directors in the prescribed manner
   b. list of members and list of creditors
   c. latest audited balance sheet and profit and loss account and
   d. the copy of NOC letter of secured* creditors.

As per 7(5) of the Companies (Incorporation) Rules 2014, the ROC shall issue the Certificate.

Members' Section

*My observation: Rule 7(3) mentions that OPC shall file a copy which seems to be apparently incorrect as at this stage OPC has not come into existence and special resolution is required to be passed by the converting private company.

*My observation: Here the word 'secured' has been added, whereas in Rule 7(2) the word 'secured' has not been used.

What is the penalty prescribed for non compliance of any of the Rules?

Rule 6(5) of the Companies (Incorporation) Rules 2014: If OPC or any officer of OPC contravenes the provisions of the Companies (Incorporation) Rules 2014, then such OPC or any officer of the OPC shall be punishable with fine which may extend to Rs.10,000/- and with a further fine which may extend to Rs.1000/- for every day after the first day during which such contravention continues.

Which sections of Chapter VII (Management and Administration) of the Companies Act, 2013 are not applicable to OPC?

As per the provisions of Section 122 of the Companies Act 2013, following sections do not apply to OPC:

1.	Sec 98	Power of the Tribunal to call meetings of members
2.	Sec 100	Calling of EGM
3.	Sec 101	Notice of meetings
4.	Sec 102	Explanatory statement be annexed to notice
5.	Sec 103	Quorum for meetings
6.	Sec 104	Chairman of meetings
7.	Sec 105	Proxies
8.	Sec 106	Restriction on Voting Rights
9.	Sec 107	Voting by show of hands
10.	Sec 108	Voting through electronic means
11.	Sec 109	Demand for Poll
12.	Sec 110	Postal Ballot
13.	Sec 111	Circulation of members' resolution

The section on quorum of Board Meeting in case if there is only one Director on OPC Board is also not applicable to OPC (Section 174 of the Companies Act, 2013).

Is there any exemption to OPC pertaining to transaction of Ordinary & Special Resolutions at General Meetings?

Yes. As per Sec 122(3) of the Companies Act, 2013 any business which is required to be transacted at AGM or other general meetings of OPC by means of an ordinary or special resolution, it shall be sufficient if, in case of OPC, the resolution is communicated by the member to the company and entered in the minutes book and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes of the Companies Act, 2013.

What about contracts by OPC?

As per section 193(1) of the Companies Act 2013, where OPC limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the OPC shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract.

The proviso to this section mentions that the above shall not apply to contracts entered into by the company in the ordinary course of its business.

Does the OPC need to inform the ROC about the above mentioned contracts?

As per section 193(2) of the Companies Act 2013, the OPC shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under section 193(1). The said information will have to be given within a period of 15 days of the date of approval by the Board of Directors.

Who shall sign the financial statement of a OPC?

In terms of Section 134(1) of the Act, the financial statement of a OPC is required to be signed only by one director, for submission to the auditor for his report thereon.

In what manner is OPC required to prepare its report of Board?

In terms of Section 134(4) of the Act, the report of the Board of Directors to be attached to the financial statement shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

Members' Update

CBDT optimist on Standard Operating Procedure; Urges taxpayers to file rectification request for TDS mismatches

April 18, 2014

SECTION 139D OF THE INCOME-TAX ACT, 1961 - FILING OF RETURN IN ELECTRONIC FORM - EXTENSION OF FACILITY TO TAXPAYERS TO VERIFY IF DEMAND IN THEIR CASE IS DUE TO TAX CREDIT MISMATCH ON ACCOUNT OF INCORRECT FURNISHING OF SPECIFIED PARTICULARS AND SUBMIT RECTIFICATION REQUESTS WITH CORRECT PARTICULARS OF TDS/TAX CLAIMS FOR CORRECTION OF THESE DEMANDS

PRESS NOTE NO.402/92/2006-MC, DATED 17-4-2014

Detailed instructions have been issued by the CBDT to all the assessing officers laying down a Standard Operating Procedure (SOP) for verification and correction of demand by the AOs. As per this SOP, the taxpayers can get their outstanding tax demand reduced/deleted by applying for rectification along with the requisite documentary evidence of tax/demand already paid. The SOP also makes special provisions for dealing with the tax demand upto Rs. 1,00,000/- in the case of Individuals and HUFs in order to accommodate certain extraordinary situations. The SOP is expected to mitigate the long standing grievances of taxpayers by way of reduction/deletion of tax demands.

The CBDT has further noted that many taxpayers are committing mistakes while furnishing their tax credit claims in the return of income. Such mistakes include quoting of invalid/incorrect TAN; quoting of only one TAN against more than one TAN tax credit; furnishing information in wrong TDS Schedules in the Return Form; furnishing wrong challan particulars in respect of Advance tax, Self-assessment tax payments etc. As a result of these mistakes, the tax credit cannot be allowed to the taxpayers while processing returns despite the tax credit being there in 26AS statement. The CBDT, therefore, desires the taxpayers to verify if the demand in their case is due to tax credit mismatch on account of such incorrect particulars and submit rectification requests with correct particulars of TDS/tax claims for correction of these demands. The rectification requests have to be submitted to the jurisdictional assessing officer in case the return was processed by such officer, or the taxpayer is informed by CPC, Bangalore that such rectification is to be carried out by Jurisdictional assessing officer. In all other cases of processing by CPC, Bangalore, an online rectification request can be made by logging into e-filing website http://incometaxindiaefiling.gov.in as per the procedure given in detail in its Help Menu.

Branch Activities

WORKSHOP ON TDS & BIHU CELEBRATION

A 3 Hour CPE Workshop on **"Practical Issues on TDS"** was organized by the Guwahati Branch of the Institute of Chartered Accountants of India on Saturday, 12th April, 2014 at the Institute Auditorium at Manik Nagar, Guwahati. The event was initiated by CPE Committee Chairman

Branch Chairman CA. K P Sarda with Chief Guest Mr. Swapnanil Barua, IAS ; Key Note Speaker Mr. Asoke Kumar Dey, JCIT (TDS), Kolkata; other dignitaries & members of the branch

of the Branch CA. Rohit Agarwal while the Branch Chairman CA. K P Sarda updated the members about various branch activities and forthcoming programmes along with the introductory remarks about TDS before handing over the proceedings to the session chairman CA. Ashoke Kumar Jalan. Keynote speaker Mr. Asoke Kr. Dey, JCIT, TDS, having a strong hold on the topic was specially invited from Kolkata to speak on various pros and cons of the topic and made the members updated about various complex provisions of the same.

The workshop was followed by enthusiastic Rongali Bihu Celebrations with the members of the fraternity at the Branch Premises in the presence of Mr. Swapnanil Barua, IAS, Member, Assam Board of Revenue and Secretary, Cultural Affairs Department. The celebration included performances on Bihu songs & dances by various troops which was an unforgettable experience for every one present on the occasion.

Performance of Bihu Dance by a renowned dance troop at the branch auditorium

The event being the mixture of education and traditional festive celebration turned out to be a great success with the active participation of a large number of members.

CPE SEMINAR ON COMPANIES ACT, 2013

The Branch has come up with a 3 Hour CPE Seminar on Companies Act, 2013 at the Branch premises on Saturday, 26th April, 2014. The seminar aimed at discussion of recent provisions relating to Incorporation, Meetings, Directors etc under the New Companies Act, 2013. Young chartered accountants from the branch namely CA. Dhiraj Kumar Jain & CA. Prabesh Agarwal acted as the speakers for the seminar.

L to R: CA. Anil Kumar Agarwala, Past Chairman; CA. Rakesh Agarwala, Secretary; CA. Dhiraj Jain, Key Note Speaker; CA. Prabesh Agarwala; CA. Vikash K Jain, Vice-Chairman; CA. Rohit Agarwal, CPE Committee Chairman

Members of the Managing Committee, Past Chairmen, Senior Members along with other Chartered Accountants from the region participated in this Seminar in good numbers and enthusiastically took part in the interactive sessions.

INTERNATIONAL STUDY TOUR TO DUBAI & ABU DHABI

The dream of covering journey of thousands of miles has come true. This is the time to boast and say, YES! We have done it. We have undulated the flag of our institute in foreign country through the most awaited International Study Tour to Dubai & Abu Dhabi. The idea of such a tour was really an innovative one as our Branch being one participating in the International conference along with other countries is indeed an appreciable moment. The tour started on 26th April, 2014 when CA. P K Sharma, Past Central Council Member and CA. Santosh Kumar Jain, Past Chairman of the Branch

Flag off ceremony of International Study Tour to UAE at Gopinath Bordoloi International Airport, Guwahati

flagged off the 20 participating members of the tour including chairman of the Branch CA. K P Sarda to UAE from Gopinath

Proud members of International Study Tour at Miracle Garden, Dubai


Travel is the only thing you buy, that makes you richer

Branch Activities

Bordoloi International Airport in the presence of the members of the Branch Managing Committee.

Interaction with the members of Dubai Chapter of ICAI at Hotel Imperial Suite, Dubai

Fun along with educational gains is like icing on the cake and so was this International Study Tour. The 5-day long tour was a compound of thrilling and memorable experience of holidays with educational interaction with the counterpart members of Dubai Chapter. In

Branch Chairman CA.K P Sarda and Mrs. Kusum Sarda with CA. K Raghu, President, ICAI & CA. Manoj Fadnis, Vice-President, ICAI at the International Conference at Dubai Men's College.

these days, our branch members had an incredible experience of the attractions in Dubai like Ferrari World, Dubai Dolphinarium, Desert Safari, Burj Khalifa, Mosque and the markets of Dubai & Abu Dhabi. Moreover, the members had fun watching the exhilarating match between the Bangalore Royal Challengers Vs King's XI Punjab.

The success of the International Study Tour being an achievement of our own is another feather to the cap of Guwahati branch of ICAI.

TELECONFERENCING :

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

Date/ Day	Topic	Faculty
04/04/2014	CPE Teleconference on Issues on Capital Gains with special reference to Share & Real Estate	CA. (Dr.) Girish Ahuja
11/04/2014	National CPE Teleconference on How to face income tax assessment and survey proceedings? A threadbare analysis.	CA. Sunil Talati

FORTHCOMING PROGRAMMES

- A CPE Programme on Companies Act will be held on Saturday, 17th May 2014 at the branch premises.
- A Workshop on Information Technology will be organized for the members on Saturday, 24th May 2014 at the Branch auditorium.
- A Residential Programme to Kaziranga World Heritage Site for members with family is proposed to be organized from 4th June 2014 to 6th June 2014.
- The most awaited 36 CPE Hour Certificate Course on Concurrent Audit is proposed to be held at ICAI Bhawan on the Weekends of the Month of June starting from 14th – 15th June and concluding on 28th – 29th June.

EICASA, GUWAHATI BRANCH ACTIVITY

An educational tour was organized by Guwahati Branch of EICASA on 19th Day of April 2014. The students were taken to the Science Centre of Guwahati which is an activity driven education destination for all spectrums of population. Around 30 students attended the program.

Members' Update

Indirect Tax Updates

EXCISE DUTY

Hon'ble Supreme Court held, in the case of **Commnr. of Central Excise, Jaipur vs M/S. Super Synotex (India) Ltd. & ... on 28 February, 2014 ,** that VAT Remission is a part of assessable value for the purpose of levy of excise duty i.e Excise duty is payable on the value of VAT Remission (Part of VAT not Payable)

VAT Updates(Assam)

a) Iron Kadai- Taxable @ 14.5% since Iron Kadai is although utensil but not steel Utensil
http://tax.assam.gov.in/CstClarification/cstclarification/clarifications/sl_278.pdf

b) Condemned Tractors & Buldozers –Taxable @ 14.5%
http://tax.assam.gov.in/CstClarification/cstclarification/clarifications/sl_279.pdf

c) Amendment in Form-ET-4 & ET-5 to include payment of Tax by way of Bank Guarantee
http://tax.assam.gov.in/agriculture/agri/aet/notification/FTX.181-2003-Pt-200.pdf

VAT Updates(North Eastern States)

a) Nagaland Entry Tax Rules Notified
http://nagalandtax.nic.in/Nagaland%20Entry%20Tax%20Rules.asp

– Compiled by CA. Bikash Kr. Agarwala

Take a Break !!

MUSIC ∩ MEMORIES = SCIENCE

The term **"Music"** neither needs an introduction nor a formal definition. An element so intricately woven into the lives of humans since civilisations, its importance cannot be over emphasized. An art form to some, a way of connecting to their deity for others; an outlet for pent up emotions to some; a mode of expressing themselves to loved ones for innumerable souls, and for the rest, simply something to tap their feet to. Active or passive - in whatever form, music is an inseparable part of everyone's life.

THE PRESENCE FELT

In fact, so strong is the impact of music on humans, that more often than not, it

becomes difficult to overcome that random song playing in your mind, which you happened to catch while switching radio stations. Or, for that matter, the last song that played before turning off the music system refuses to leave you, no matter how hard you try to concentrate on something else. The chronic form of this condition has medically been termed the "earworm". According to a research by James Kellaris, member of American Psychological Society, 98% of individuals experience earworms. Women and men experience the phenomenon equally often, but earworms tend to last longer for women and irritate them more. People with obsessive–compulsive disorder (OCD) are more likely to suffer from earworm attacks.

However, there is a more intriguing characteristic to music than the medical condition mentioned above (and not many can claim to be untouched by this phenomenon) – **the ability to carry memories**. Good or bad alike. Songs from the past can stir powerful emotions and transport us back in time. A memory locked up in some corner of your subconscious self may bluntly deny resurfacing – no matter how hard you try to recall; aided by whatever prop of your choice – people, clothes, perfume, instances surrounding the event, etc. On the other hand, the same memory shall appear without any effort on your part, if some music related to the said event is played. And this time, it won't fade, even if you want it to.

THE SCIENCE

Scientific studies have revealed that there is indeed a connection between music and the human brain.

According to psychologists, amongst different kinds of memories, relevant for this discussion are two types - explicit and implicit memory. Explicit memory is a deliberate, conscious retrieval of the past, whereas implicit memory is more a reactive, unintentional form of memory. A large part of memory takes place in the unconscious mind. There are aspects of memory that are remembered outside of consciousness. Implicit memory systems involve different parts of the brain than explicit memory systems. Implicit memory is emotional as well as durable. Notably, memories stimulated by music often come from particular times in our lives. However, while music evokes emotion, it does not define feelings. A sad song could be associated with a happy time, a happy one with a sad one.

A series of studies have found that listening to music engages broad neural networks in the brain, including brain regions responsible for motor actions, **emotions**, and creativity. It has been established through brain mapping that while people listened to music, specific brain regions linked to autobiographical memories and emotions were found to be activated.

THE PATH AHEAD

With the aid of these studies, psychologists and neuroscientists have successfully revived memories of patients with brain damage through music. The technical term awarded to this treatment is "**music-evoked autobiographical memories**".

In fact, medical practitioners now see hope for patients with dementia or those suffering from Alzheimer's disease. It has been found that the hub that music activates in the brain is located in the medial prefrontal cortex region—right behind the forehead—and this is one of the last areas of the brain to atrophy over the course of Alzheimer's disease. Music is also being used to assist patients suffering from depression to recall difficult parts of their lives that were not necessarily as bad as they had thought. Hearing music, and remembering various experiences, can help them remember the more complex experiences.

"Music therapy" is also being used to help children with issues regarding communication, attention, and motivation, as well as with behavioural problems. It has also been recognized as a method for children with autism. Music engages the brain in both sub-coritcal and neo-cortical levels, which means it is not critical to 'think' while listening to music when hearing the notes and sounds. Music therapy, in the topic of austism's sensory interpretation, provides repetitive stimuli which aim to "teach" the brain other possible ways to respond that might be more useful as they grow older.

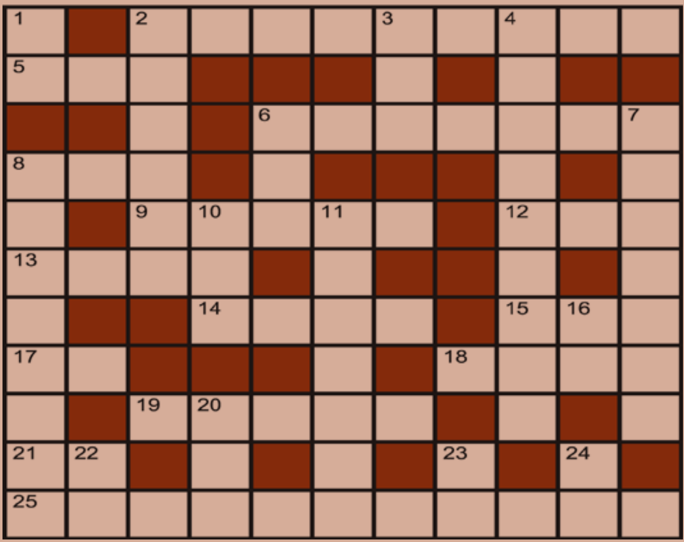
And there is more. Researchers have found compelling evidence that musical interventions can play a health-care role in settings ranging from operating rooms to family clinics. Listening to and playing music increase the body's production of the antibody immunoglobulin A and natural killer cells — the cells that attack invading viruses and boost the immune system's effectiveness. Music also reduces levels of the stress hormone cortisol.

Of course, music cannot cure, but it can certainly help heal.

Nevertheless, for many, that will just be music to their ears...

– Compiled by CA. Rashmi Bajaj

CROSSWORD # 13



QUICK CLUES

Across:

2 Mary Komwon Olympic Bronze under this category (9)
5 Informal document acknowledging debt (3)
6 British Architect. Designer of India Gate &Rashtrapati Bhawan (7)
8 A tributary of River Thames (3)
9 Country with highest number of net-surfers (5)
12 Mermaid albeit male (3)
13 Instrument for diagnosing and assessing autism (4)
14 What N D Tiwari does to Ujjwala Sharma on 15th May (4)
15 Rock from which metals can be extracted (3)
17 Country Code of world's smallest independent nation (2)
18 To run away (4)
19 Cricketer cum brand ambassador of BSF (5)
21 The IsanKone in Vastu (2)
25 Southernmost tip of India (6,5)

Down:

1 Approximately equals 22/7 (actually less) (2)
2 Armadillo-mascot of FIFA Cup 2014 (6)
3 Mode of fund transfer (3)
4 If oil is liquid gold, Tea is this (5,4)
6 Hawaiian flower necklace (3)
7 It's now clear, NaMo will head the ....th Loksabha (number) (7)
8 Politician who wrote under the pen name "Netra" (1,1,6)
10 Commercial edutainment website founded by Marshall Brain (3)
11 Satya ......: Microsoft CEO (7)
16 In the matter of (2)
20 Sash worn with the uniforms used by practitioners of Japanese martial arts (3)
22 A measure of width (half of EM) (2)
23 If you can dream it, you can .....it (Walt Disney) (2)
24 Not out (2)

SOLUTION CROSSWORD # 12

Congratulations to **CA. Mohammed Mandlaywala** for submitting correct solution to crossword # 12

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

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Secretary	CA. Rakesh Agarwala	9864020068	rakeshagrl_ca@yahoo.com
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चलते चलते.....

जब भी हाथ उठें है दुआ के लिये....
मेरे लबों पे, ICAI तेरा नाम आये॥