GLIMPSES AT FELICITATION PROGRAMME (Dated on:- 13th April, 2013)

[Images of people being felicitated]

WIRC OFFICE BEARER- 2013

[Images of WIRC office bearers]

REGIONAL COUNCIL MEMBERS

[Images of regional council members]

Out Going Managing Committee Members Felicitated with Gracious Hands

[Images of people being felicitated]

GLIMPSES at CA CAREER COUNSELING PROGRAMME (DATED ON:- 6th & 7th April, 2013)

[Images of people at the counseling program]

ORIENTATION PROGRAMME FOR MANAGING COMMITTEE MEMBERS ORGANISED BY WIRC

(DATED ON 12th & 13th APRIL, 2013)

[Images of people attending the orientation program]

SEMINAR ON DEVELOPING EXCELLENCE & MASTERING SUCCESS (DATED ON :- 13th APRIL, 2013)

[Images of people at the seminar]

CPE Study Circle

<table>
<thead>
<tr>
<th>Bhayandar CA CPE Study Circle</th>
<th>Vasai - Virar CA CPE Study Circle</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) CA. Deepak Banskal (Convenor) - 9320981019</td>
<td>1) CA. Xavier Ragan (Convenor) - 9371200027</td>
</tr>
<tr>
<td>2) CA. Sandeep Jain (Deputy Convenor) - 9930608040</td>
<td>2) CA. Jagadeesh Devadiga (Co-Convenor) - 9422475945</td>
</tr>
<tr>
<td>3) CA. Anadi Bhave (Co-Convenor) - 9880121996</td>
<td>3) CA. Pratik Singh (Speaker)</td>
</tr>
</tbody>
</table>
2) GTA service provider is not required to furnish evidence of genuine intention on the part of assessee unless it is found to be of duty, availment of CENVAT Credit, etc. Any provision of services in relation to conducting a repair of immovable property service or under Business Auxiliary Service.

3) The provision of services in relation to conducting a repair of immovable property service or under Business Auxiliary Service.

4) Unconditional stay - Recovery in view of 35C (2 A) - Whether on expiry of six months from the date of stay order, the appeal is required to be filed application for extension of stay - Held that:-- For period subsequent to the insertion of the Second proviso the Tribunal should, as a matter of practice, specify the time period during which the stay shall operate after exercising its judicial discretion. The period may be limited or could be co-terminous with disposal of appeal - on consideration of all relevant factors in a case. Any clarification issued by the Board is binding to the assessee.

5) No merit in the contention of the revenue that the job workers cannot prefer to pay excise duty in spite of having exemption notification bearing No. 214/69 exempting the job workers from paying duty in view of the mandatory provision of Section 37A(A) of the Act. - Decided in favor of assessee and against the revenue.

6) Any clarification issued by the Board is binding to the Central Excise Officers who are duty-bound to observe and follow such circulars. Whether Section 37B is applicable or not.

7) Where a writ petition seeks enforcement of fundamental right to carry on trade or business without discrimination in a manner which is not the nature of mainstay of the trade and which is not maintained despite the fact that there is a remedy of appeal available under the provision of the relevant law.

8) Refund claim of the respondents on which credit was allowed under Rule 29(2) of the VAT Rules, 1994 in respect of the registered dealer Act. - Quashed in so far as it seeks to withhold the benefits of Chapter VII in relation to assessment of tax.

9) Discharge of duty liability after consumption of job worked goods, it is held that the said notification exempts the goods manufactured on job work on the behalf of the job worker. The job worker is therefore entitled to claim CENVAT Credit on inputs and capital goods.

10) It is a settled law that when a job worker is functioning under Notification No. 214/66-C.E. and if the ultimate principal manufacturer is discharging Central Excise duty liability after consumption of job worked goods, it is held that the said notification does not exempt the goods manufactured on job work on the behalf of the job worker.

Dear Professional Colleagues,

On the Special occasion of my first communication as chairman of Vasai branch, the most vibrant branch of WIRC, I would like to thank all Vasai Branch members who showed confidence & applaud in my work & elected me as committee member in 2013 branch elections and I am extremely thankful to my Committee members for reposing the assurance and elected me as a Chairman of our beloved Branch. It’s indeed a privilege to hold the reverential position and lead the branch under the defining guidance and the powerful inspiration of all my members. I envision and wish to secure my attempts to multiply the glory of the branch while holding theassets which we have in us in the branch.

All attempts aim to engross success. The field has enormous potential to empower the young professionals and make them thrive in the field vibrantly. It’s all about LEARN-EARN-RETURN. Learn the concepts and apply them to earn efficiently. We being the responsible citizens of India need to return to our society. I believe it is fully possible under able guidance of mentors, consultants and leaders of our fraternity.

In an ever increasing competitive world, CAREER DEVELOPMENT is utmost priority for every student. By keeping this in mind branch had participated in Sanjeevani Education & Development in May, 2013. We have also organised Crash Course for IPCC , Career Oriented Sectors.

In an ever increasing competitive world, CAREER DEVELOPMENT is utmost priority for every student. By keeping this in mind branch had participated in Sanjeevani Education & Development in May, 2013. We have also organised Crash Course for IPCC, Career Oriented Sectors.

I give my Best wishes to the upcoming team of Vasai-Virar and Bhayandar Study Circle and humbly appeal to them to start student oriented programmes which will be more beneficial to the students.

As CA Exams fever is going on & I take this opportunity to wish Best of Luck for Success to all who are appearing in these Exams.

Best of Luck...!
no turnover constituting in the amount of Rs.1866448/- for the purposes of computing the liability of assessment to get the accounts audited U/s 44AB. Thus, the penalty U/s 271B imposed by the AO was wadicated.

3) Branch Manager, UCO Bank vs. ACIT (ITAT Cuttack)

Section 272A(2)(k): Delay in filing TDS Return through NSDL.Is a technical breach?

The AO imposed penalty U/s 272A(2)(k) for delay in filing the TDS Return for the financial year 2003-04. The assessee argued that the delay was due to a shortage of staff was rejected on the ground that the same was not unreasonable. The CIT(A) confirmed the penalty on appeal of the assessee against the decision. The appeal was allowed in favor of the assessee on the following grounds:

The penalty was levied by the Department in a mechanical manner. The assessee would have filed the hard-copy of the quarterly statements but this is not accepted by the Department. The computer has to generate a number for acknowledging receipt of such statements. The number is not generated until the computer tallies the PAN and the information available AP-26. The late filing is caused by a mechanical glitch. The delay occurs because the assessees deductors are not independently dependent on information deposit from the sub-treasury of the Department and the filing of the e-return through the designated service provider of the income-tax Department. As a result, deductors have no technical competency to File the Return by themselves without external aid. They are also not competent to do so by themselves as per Rule 37B and “Filing of Return of Tax deducted at source” scheme 2003, which requires the submission of quarterly statement through NSDL or other approved agencies which are third parties and not under the control of the assesses. Penalty U/s 272A(2)(k) cannot be levied in a routine manner. The late filing of TDS Return cannot be said to be intentional or willful. It is solely a technical or verbal breach.

OTHER RECENT AMENDMENTS/DEVELOPMENTS

1) Section 194A: CBDT notifies ‘National Skill Development Fund’

Notification No. 4(2) 2013 [F.No. 275/28/2012-IT(B)] Dated 24.01.2013.

In exercise of the powers conferred by sub-clause (f) of clause (ii) of section 194A of the Income-tax Act, 1961, the Central Government hereby notifies the National Skill Development Fund (PAN: AARNT5924G) for the purpose of sub-clause (f) of clause (iii) of section 194A.

2) Delhi HC quashes Circular imposing higher rate of Service tax:

DELHI CHARTERED ACCOUNTANTS SOCIETY (REGD.) VERSUS OTHERS (HIGH COURT)

The issue was that what would be the rate of Service tax where the service is provided by the Chartered Accountants on or before the 01.04.2012 and for which the assessment was due on or before 31.03.2012 but the assessment is not completed before 01.04.2012?

It was held that the dated tax would be 10% and not 12%.

3) CBDT circular clarifies issues relating to Export of Computer Software:

The CBDT has issued a comprehensive Circular No.01/2013 dated 17/01/2013 in which it has provided clarifications on various issues relating to the export of computer software and the allowance of deduction under sections 10A, 10AA and 10B of the Income-tax Act, 1961. The clarifications seek to address and resolve the several disputes that have arisen between the software industry and the Income-tax Department.

4) ITAT specifies Procedure & Guidelines for hearing Appeals under Video Conferencing:

The decision taken in March, 2012 to set up e-Tribunal for hearing appeals under Video Conferencing which is being implemented on the E-Tribunal on the model described in the said Circular. The detailed Guidelines on the subject have been formulated by the CBDT.

The e-Tribunal will be launched on 10th December, 2012 at Delhi, Mumbai, Nagpur & Ahmedabad. It will soon be extended to other centres.

The ITAT Bar Association congratulates the Hon’ble Members of the Tribunal and the officials involved for the speedy implementation of the E-Tribunal as this will not only lead to a speedy disposal of cases but will also result in considerable cost savings for the Government and the taxpayers. We wish the E-Tribunal great success!

5) Control on count of Tax Audits:

Goverment has put the facility for CAS to upload form 3CA, 3CB, 3CD etc also if uploaded these forms are not complacent (it seems so) from AY 2013-14 by making appropriate rules under IT Rules, 1962, then we will be able to track on how many reports are filed with the Department in our name.

6) CBDT Scheme for processing of TDS & adjustment of Refunds:

With a view to addressing the numerous problems being faced by taxpayers due to faulty processing of TDS claims, the CBDT has formulated the ‘Centralised Processing of Statements of Tax Deducted at Source Scheme, 2013’. The Scheme provides for the manner in which TDS correction statements will be filed, their processing, rectification of mistakes etc. In particular, it is provided that an adjustment of refunds against a pending tax demand can be done after 01.04.2015 by the taxpayer. An appeal can also be filed against the actions of the CFC. (Effective from 15th January, 2013)

The Scheme is a step to go effect to the directions of the Delhi High Court in Court On Its Own Motion vs. CIT where the numerous hardship faced by the assessees were noticed.

7) e-Filed Returns in CPC can be reviewed in AIS:

DGT has issued a notification, Ground Floor, E-2, A.A.R. Centre (h) handwarien Extn. New Delhi- 110055

Tel:- 23537002, Fax:- 23593267 (F.No.17/8/2012-MIS-DOMS/Div.1)

As it was brought to the notice of the DGT (Logistics) by the field for malpractices the e- Filed returns were sent vituals to the concerned Assessing Officers.

The matter was taken up with DGT (Systems) who has informed that the following information can be accessed on the system by the AO with regards to e-Filed Return of the jurisdiction (ward: circle):

1) The e-File Return is transferred from CPC to AST for processing can be reviewed by the AO (Range: Circular)

2) The AO can view the e-Filed Returns that are pending for processing at his end (Range: Circular)

3) The AO can view the e-Filed Return under his jurisdiction with details of number of Returns received with the digital signature and number with/without ITV-R.

4) The e-Filed return summary report for any period is also available to the AO.

5) The e-Filed Return detailed report for any period is also available to the AO.
The Institute of Chartered Accountants of India Vasai Branch of WIRC Newsletter

RECENT COURT DECISIONS

Validity of Reopening based on retrospective amendment:

The Assessing Officer has to show as recorded by the respondent, is that in view of the retrospective Finance Act, 2008 inserted clause (h) of Explanation 1 to section 147 and U/s 154 are not mutually exclusive, there could be some overlap lapping, and so long as the conditions for the applicability of the sections are not satisfied, the assessment taken a reference to be validised and it is no answer to say that action should be taken under another section. Under this principle, it is held that one of the reasons for reopening in the present case being the retrospective amendment, the assessment is unsustainable.

RECENT TRIBUNAL DECISIONS

1) Development Credit Bank Ltd vs. DCIT (TAT Mumbai):

The assessee, a Bank, bought assets from its customers and leased it back to them (“sale and lease back”). It also purchased assets identified by its customers and leased them to them; (“finance lease”). The assessee claimed depreciation on the leased assets on the ground that it was the owner and had used the assets for business purposes. The AO, relying on MidEast Portfolio Management (ITT 537 [Mumbai]) and Indus Bank 135 [165 (Mumbai)], disallowed the depreciation on the ground that the transactions were “eye-wash” and “colourable device”. The CIT(A) partly confirmed the disallowance. On appeal by the assessee to the Tribunal, the Tribunal allowed the claim based on the following grounds:

- The issuer of whether the lease is entitled to claim depreciation in the case of a “sale and lease back” transaction as well as in a “finance lease” transaction.
- Whether the consideration for the assets is less than the actual cost of the assets, and whether the lease is merely a device to get back the assets involved.
- Whether there was any element of ‘turnover’ in such activity is the bone of contention.
- Whether there was any physical delivery of the goods involved.
- Whether the transaction satisfies the legal definition of ‘sale’.

2) Banwari Sitaram Pasari v. ACIT (HUF) (PUNE Tribunal-B):

The issue of whether the lessor is entitled to claim depreciation in the case of a “sale and lease back” transaction as well as in a “finance lease” transaction. The lessor in the present case had engaged in the speculation transaction of sale and purchase of units in a Portfolio Management account. The assessee was engaged in the business of on-line trading of commodities and in this activity, there was no physical delivery of commodity. The Tribunal held that the activity carried out by the assessee was not a sale or ‘turnover’ effectuated within the meaning of section 44AB.

Validity of Reopening based on retrospective amendment:

The original assessment was made on 30/11/2006 under section 143(3). The Finance Act, 2008 inserted clause (h) of Explanation 1 to section 147 and U/s 154 are not mutually exclusive, there could be some overlap lapping, and so long as the conditions for the applicability of the sections are not satisfied, the assessment taken a reference to be validised and it is no answer to say that action should be taken under another section. Under this principle, it is held that one of the reasons for reopening in the present case being the retrospective amendment, the assessment is unsustainable.
RECENT DEVELOPMENTS

The Institute of Chartered Accountants of India Vasai Branch of WIRC Newsletter

EXECUTING AGENCY AND COMPLETED A PORT. THE GOVERNMENT

LAND PENDING EXECUTION OF CONVEYANCE DEEDS AND

MATTER: ACCOUNTING FOR PAYMENTS MADE IN RESPECT OF

IN GOVERNMENT SECURITIES WILL NOW BE TREATED AT PAR WITH

MATTER, THE IRDA HAS STATED THAT REVERSE REPO TRANSACTIONS

TRANSACTIONS IN CORPORATE BONDS AND GOVERNMENT

TRANSACTIONS IN GOVERNMENT SECURITIES

IRDA REMOVES 10% INVESTMENT LIMIT ON REVERSE REPO

DOWNLOADED FROM ICAI WEBSITE.

ISSUED AS THE FINANCE ACT, 2012 HAS MADE SIGNIFICANT

1961 (TRANSFER PRICING). THE REvised EDITION HAS BEEN

THE SECURITIES PREMIUM ACCOUNT, WHICH ARE INCONSISTENT

THE COMPANIES ACT, 1956 ALLOWS VARIOUS ADJUSTMENTS IN

ARRIVING AT EARNINGS FOR COMPUTING EPS. AS SECTION 78 OF

• DEDUCTING PREFERENCE DIVIDENDS AND ANY ATTRIBUTABLE

INTEREST RELATING TO THE PERIOD AFTER TAKING POSSESSION OF THE

THE Amount OF Rs. 14.89 crore paid by SPT towards taking possession of the land and Rs. 10.00 crore paid for acquisition of land in earlier years is capitalised during this year.

Whether the Company should charge the Interest of Rs. 16.51 crore paid to SPT to its profit and loss account of the Company? The amount so determined is in substance interest relating to the period after taking possession of the land. The amount so determined is in substance interest relating to the period after taking possession of the land.

AFTER NEARLY 6 YEARS, VIZ., IN THE FINANCIAL YEAR 2007-08, THE GOVERNMENT OF INDIA AND THE SOUTH PORT TRUST (SPT) HANDED OVER THE COMPLETED PORT TO ABC LIMITED (HEREAFTER REFERRED TO AS “THE COMPANY”) WHICH WAS CONSIDERED TO BE AN EXECUTING AGENCY AND COMPLETED A PORT. THE GOVERNMENT OF INDIA AND WAS INCORPORATED WITH THE SPECIFIC OBJECTIVE OF TRANSFER PRICING, 1962 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE USING PROFIT SPLIT METHOD (214 TAXMAN (1ST) 37)

1. THE COMPANY SHOULD CAPITALISE THE TOTAL AMOUNT OF RS. 41.40 CRORE (RS. 14.89 CRORE + RS. 10.00 CRORE) IN THE FINANCIAL YEAR 2010-11, WITH A SUITABLE DISCLOSURE IN THE NOTES TO ACCOUNTS AS PERDING NOTICE OF ORDELS OF ALLERIATION OF TITLE, THE CONSIDERATION OF RS. 41.40 CRORE PAID FOR ACQUISITION OF LAND IN EARLIER YEARS IS CAPITALISED DURING THIS YEAR.

2. WHETHER THE COMPANY SHOULD CHARGE THE INTEREST OF RS. 16.51 CRORE PAID TO SPT TO ITS PROFIT AND LOSS ACCOUNT OF THE COMPANY? THE AMOUNT SO DETERMINED IS IN SUBSTANCE INTEREST RELATING TO THE PERIOD AFTER TAKING POSSESSION OF THE LAND.

3. IF THE ANSWER TO THE ABOVE QUESTIONS ARE NEGATIVE, WHAT KIND OF DISCLOSURE WOULD BE APPROPRIATE?

4. IF THE ANSWER TO THE ABOVE QUESTIONS ARE POSITIVE, WHAT KIND OF DISCLOSURE WOULD BE APPROPRIATE?

5. APPLICATION OF PROFIT SPLIT METHOD REQUIRES INFORMATION MAINLY IN RESPECT OF THE FOLLOWING FACTORS:

6. DEPENDING UPON FACTS AND CIRCUMSTANCES OF THE CASE, TPO MAY CONSIDER TNMM OR CUP METHOD AS APPROPRIATE METHOD BY SELECTING COMPARABLES ENGAGED IN DEVELOPMENT OF INTANGIBLES. IN SOME CASES, A COMPETING R&D ACTIVITY MAY RESULT IN INTEREST RELATING TO THE PERIOD AFTER TAKING POSSESSION OF THE LAND.

SECTION 92C OF INCOME TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE THROUGH PROFIT SPLIT

SECTIONS 92C OF INCOME TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE THROUGH PROFIT SPLIT

DIRECT TAXES - Law Update

SELECTING COMPARABLES ENGAGED IN DEVELOPMENT OF INTANGIBLES. IN SOME CASES, A COMPETING R&D ACTIVITY MAY RESULT IN INTEREST RELATING TO THE PERIOD AFTER TAKING POSSESSION OF THE LAND.
The Institute of Chartered Accountants of India Vasai Branch of WIRC Newsletter

The ICAI has issued this exposure draft of Accounting Standard 20 Earnings Per Share for the purpose of gathering comments on the revised standard. The comments received are intended to be considered by the Accounting Standards Board (ASB) of the ICAI for the purpose of finalising the standard.

RECENT DEVELOPMENTS

1. The Government has made reference to a rate of 26% for the corporate income tax under section 114 of the Income Tax Act, 1961. This rate applies to companies whose turnover does not exceed Rs. 1 crore. The rate of 26% was reduced to 25% with effect from the financial year 2011-12.

2. The Agreement between the Government of Republic of India and the Government of the People’s Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed on 10.02.2002 and entered into force on 11.08.2002.

3. The ICAI has issued this exposure draft of Accounting Standard 84, as amended, to provide guidance on the accounting for international transactions involving transfer of unique intangibles. The exposure draft seeks to address the following issues:

   (a) The method of determining the value of intangible assets
   (b) The treatment of intangible assets in the income statement
   (c) The disclosure requirements

4. The ICAI has issued this exposure draft of Accounting Standard 84, as amended, to provide guidance on the accounting for international transactions involving transfer of unique intangibles. The exposure draft seeks to address the following issues:

   (a) The method of determining the value of intangible assets
   (b) The treatment of intangible assets in the income statement
   (c) The disclosure requirements

5. The ICAI has issued this exposure draft of Accounting Standard 84, as amended, to provide guidance on the accounting for international transactions involving transfer of unique intangibles. The exposure draft seeks to address the following issues:

   (a) The method of determining the value of intangible assets
   (b) The treatment of intangible assets in the income statement
   (c) The disclosure requirements

DIRECTIONS —

1. The ICAI has issued this exposure draft of Accounting Standard 20 Earnings Per Share for the purpose of gathering comments on the revised standard. The comments received are intended to be considered by the Accounting Standards Board (ASB) of the ICAI for the purpose of finalising the standard.

2. The Government has made reference to a rate of 26% for the corporate income tax under section 114 of the Income Tax Act, 1961. This rate applies to companies whose turnover does not exceed Rs. 1 crore. The rate of 26% was reduced to 25% with effect from the financial year 2011-12.

3. The Agreement between the Government of Republic of India and the Government of the People’s Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed on 10.02.2002 and entered into force on 11.08.2002.

4. The ICAI has issued this exposure draft of Accounting Standard 84, as amended, to provide guidance on the accounting for international transactions involving transfer of unique intangibles. The exposure draft seeks to address the following issues:

   (a) The method of determining the value of intangible assets
   (b) The treatment of intangible assets in the income statement
   (c) The disclosure requirements

5. The ICAI has issued this exposure draft of Accounting Standard 84, as amended, to provide guidance on the accounting for international transactions involving transfer of unique intangibles. The exposure draft seeks to address the following issues:

   (a) The method of determining the value of intangible assets
   (b) The treatment of intangible assets in the income statement
   (c) The disclosure requirements

For more information, please visit the ICAI website.
The Institute of Chartered Accountants of India Vasai Branch of WIRC Newsletter

FORTHCOMING PROGRAMMES

Date | Seminar on | Timings | Venue | Speakers | Co-ordinators | Fees
--- | --- | --- | --- | --- | --- | ---
29th May, 2013 | National Sports Complex | 9.00 a.m. | Chorunde | CA. Ramanand Gupta, CA. Anadi Bhase | CA. Ramanand Gupta | Rs. 4000/-
29th May, 2013 | Seminar on Speculation Trading | 2.00 p.m. | Vasai | CA. Sumeet Doshi, CA. Preksha Jain, CA. Pramod Dhamankar | CA. Kishor Vaishnav | Rs. 4000/-
2nd June, 2013 | Seminar on Income Tax Sites Related to Income Tax Returns & TDS | 7.00 p.m. | Vasai | CA. Kalpesh Shah | CA. Anadi Bhase | Rs. 4000/-
4th June, 2013 | Seminar on New Retirement Benefits | 7.00 p.m. | Vasai | CA. Rajesh Shah | CA. Anadi Bhase | Rs. 4000/-
10th June, 2013 | Seminar on Speculation Trading | 7.00 p.m. | Vasai | CA. Sumeet Doshi, CA. Preksha Jain, CA. Pramod Dhamankar | CA. Kishor Vaishnav | Rs. 4000/-
18th June, 2013 | Seminar on Speculation Trading | 7.00 p.m. | Vasai | CA. Sumeet Doshi, CA. Preksha Jain, CA. Pramod Dhamankar | CA. Kishor Vaishnav | Rs. 4000/-

RECENT CASE LAWS & OTHER DEVELOPMENT/AMENDMENTS

1) UTI Mutual Fund vs. ITO Question No. 2 (Bombay High Court)

The order of the Karnataka High Court in CIT vs. UTI India Ltd. cannot be said to mean that consideration of whether an assessee has made out a strong prima facie case for stay of enforcement of a demand is irrelevant. Nor is it to the effect that a case of financial hardship, no stay on the recovery of a demand can be granted even though a strong prima facie case is made out. In considering whether a day of stay is deserving, the Court is duty bound to consider not merely the issue of financial hardship, if any, but also whether a strong prima facie case raising a serious issue has been raised which would warrant a dispensation of deposit.

2) Ester Industries Ltd. v. Union of India (Delhi High Court)

Certainty in tax administration is of cardinal importance and its suspension would itself be a matter of hardship. Also the manner in which the demand has been raised which would warrant a dispensation of deposit.

Where a strong prima facie case has been made out, calling upon the party to deposit the amount which prima facie is not liable to deposit would be a matter of hardship. Also the manner in which the demand has been raised which would warrant a dispensation of deposit.

The issue of whether the lessor is entitled to claim depreciation in the matter of exercise of discretion as calling on the party has made out a strong prima facie case, that by itself would be a strong ground in the matter of exercise of discretion. The Tribunal should not have drawn any inference from the fact that an assessment has been made for the assessment year 2001-02 for the same issue, as a reason to disallow the claim of depreciation for 2001-02.

The issue of whether the lessor is entitled to claim depreciation in the matter of exercise of discretion as calling on the party has made out a strong prima facie case, that by itself would be a strong ground in the matter of exercise of discretion. The Tribunal should not have drawn any inference from the fact that an assessment has been made for the assessment year 2001-02 for the same issue, as a reason to disallow the claim of depreciation for 2001-02.

Validity of Reopening based on retrospective amendment:

The original assessment was made on 30/11/2006 (U/s 143(3)). The Finance Act, 2008 inserted clause (ii) of Explanation 5 to section 115B retrospectively from 01/04/2001. The effect of this clause is to reallocate the basic profit by the amount of deferred tax, and the provision thereof. It is not in dispute that one of the reasons to believe, as recorded by the respondent, is that in view of the retrospective amendment, the said liability for which a provision had been made in the accounts, to be added back to the book profit. The assessment was reopened within four years from the end of the relevant assessment year. The Assessing Officer (AO) has to show some “tangible material” which could form the basis for his belief that the aforesaid charge has escaped assessment. That material is the retrospective legislative amendment. Under the pre-1989 law of reassessment, information as to whether the aforesaid charge would form a valid basis for reopening the assessment: Mahat Ratan Kumar Kamal Singh v. CIT [1991] 135 ITR 15 (SC). A retrospective amendment of the law can even permit action for rectification of the assessment on the ground of mistake apparent from the record. The issue of the validity of an amendment to the Income Tax Act has been considered by the Bombay High Court in Bombay Dyeing & Manufacturing Co. Ltd. [1958] 34 ITR 145 (SC). But just because action for rectification is permissible, it does not follow that no action can be taken for reopening, for, the powers of U/s 147 and U/s 154 are not mutually exclusive, there could be some overlap-lapping, and so long as the conditions for the applicability of the sections were not satisfied, the assessment taken was to be validated and it is no answer to say that action should be taken under another section. Under this principle, it is held that once the reasons for reopening in the present case being the retrospective amendment, cannot be valid.
We would like to contribute in our best to achieve the vision of our Visionary Leader.

1) Section 272AA(2): Delay in filing TDS Return through NSDL shall be treated as technical breach.

The AO imposed penalty u/s 272AA(2) for delay in filing the TDS Return u/s 200(3). The assessee argued that the delay was due to shortage of staff was rejected on the ground that the same was not non-assignable. The CIT(A) confirmed the penalty. On appeal by the assessee to the ITAT, the appeal was allowed to the assessee on the following grounds:

The penalty was levied by the Department in a mechanical manner. The assessee would have filed the hard-copy of the quarterly statements but this is not accepted by the Department. The computer has to generate a number for acknowledging receipt of such statements. The number is not generated till the computer tallies the PAN and the information available at A-S. The filing of return is caused by an administrative glitch. The delay occurs because the assessee deductors are dependent on information received deposit from the sub-treasury of the Government and the filing of the e-return through the designated service provider of the income-tax Department. The assessee deductors have no technical competency to file the return by themselves without external aid. They are also not competent to do so by themselves as per Rule 37B and “Filling of Return of Tax deducted at source scheme”, 2003, which requires the submission of quarterly statement through NSDL or other approved agencies which are third parties and not under the control of the assessee. Penalty u/s 272AA(2) cannot be levied in a routine manner. The filing of TDS Return cannot be avoided or willful. It is a technical or verbal breach.

RECENT OTHER AMENDMENTS/DEVELOPMENTS:

1) Section 194A: CBDT notifies ‘National Skill Development Fund’ Notification No. 4/2013 [F.NO.275/28/2012-IT(B)], Dated 05/03/2013. In exercise of the powers conferred by sub-clause (f) of clause (iii) of sub-section (3) of section 194A of the Income-tax Act, 1961, the Central Government has notified a National Skill Development Fund (PAN: AABTN5824G) for the purpose of sub-clause (f) of clause (iii) of sub-section (3) of section 194A

2) Delhi HC quashes circular imposing higher rate of Service tax: DELHI CHARTERED ACCOUNTANTS SOCIETY (REGD.) v. UNION OF INDIA & OTHERS (HIGH COURT)

The issue was that what would be the rate of Service tax where the service is provided by the Chartered Accountants prior to 01/04/2012 and the Circular dated 13 June, 2012.

The issue was that what would be the rate of Service tax where the service is provided by the Chartered Accountants prior to 01/04/2012 and the Circular dated 13 June, 2012.

3) CBDT circular clarifies issues relating to Export of Computer Software:

The CBDT has issued a comprehensive circular No.01/2013 dated 17/01/2013 in which it has tried to clarify various issues relating to the export of computer software and the allowance of deduction under sections 10A, 10AA and 10B of the income-tax Act, 1961. The clarifications seek to address and resolve the several disputes that have arisen between the software industry and the Income-tax Department.

4) ITAT specifies Procedure & Guidelines for hearing Appeals

The decision taken in March, 2012 to set up e-Tribunal for hearing of appeals, which had been pending for a long time, has finally seen the light of day. The detailed Guidelines on the subject have been formulated by the Tribunal.

5) Control on amount of tax Audits

The CBDT has issued a comprehensive Circular No.01/2013 dated 17/01/2013 in which it has tried to clarify various issues relating to the export of computer software and the allowance of deduction under sections 10A, 10AA and 10B of the income-tax Act, 1961.

Deducted at Source Scheme, 2013

The CBDT Scheme for processing of TDS & adjustment of Refunds:

The CBDT has issued a comprehensive Circular No.01/2013 dated 17/01/2013 in which it has tried to clarify various issues relating to the export of computer software and the allowance of deduction under sections 10A, 10AA and 10B of the income-tax Act, 1961.

1) Section 194A: CBDT notifies ‘National Skill Development Fund’ Notification No. 4/2013 [F.NO.275/28/2012-IT(B)], Dated 05/03/2013.

The CBDT has issued a comprehensive Circular No.01/2013 dated 17/01/2013 in which it has tried to clarify various issues relating to the export of computer software and the allowance of deduction under sections 10A, 10AA and 10B of the income-tax Act, 1961. The clarifications seek to address and resolve the several disputes that have arisen between the software industry and the Income-tax Department.

Tribunal.

The ITAT Bar Association congratulates the Hon'ble Members of the Tribunal and the officials involved for the speedy implementation of the e-Tribunal as this will not only lead to a speedy disposal of cases but will also result in considerable cost savings for the Government and the taxpayers. We wish the e-Tribunal great success!

Adv. Shashi Kumar Sood, Senior Advocate, is associated with some of the important cases including the case of Mr. Ramalingam and Shri Narayan Goyal vs. CIT, Calcutta High Court (2012) 421 Taxman (Delhi) 101.

The CBDT has issued a comprehensive Circular No.01/2013 dated 17/01/2013 in which it has tried to clarify various issues relating to the export of computer software and the allowance of deduction under sections 10A, 10AA and 10B of the income-tax Act, 1961. The clarifications seek to address and resolve the several disputes that have arisen between the software industry and the Income-tax Department.
1. It is a settled law that if a Job worker is functioning
fide intention on the part of assessee unless it is found
cannot be reasoned that the deficiency was due to mala
shortcomings noticed during the course of Audit, itself
an assessee is to ascertain the correctness of payment
AHMEDABAD
Cenvat Credit on inputs and capital goods
it has to be held that the said notification does not
under Notification No. 214/86-C.E. and if the ultimate
受益 of Notification No. 32/2004-ST in as much as
CESTAT CHENNAI
only for the period after registration is rejected.
SHAMIANA would attract the levy of service tax because
embedded in the cost of food recovered from the
construction service, works contract
BOT basis is not leviable to service tax

2. GTS service provider is not required to furnish evidence of
preceding scheme to qualify the benefit of Notification No. 32/2004-ST in as much as there is no such conditions in the notification for making declaration on each consignment note.

3. The provisions of service in relation to conducting a civil business is not a taxable service for the purposes of section 65B(44) of the Finance Act, 1994 and therefore the assessee is not entitled to availing the benefit of Notification No. 32/2004-ST dated 20.06.2012 in so far as it seeks to subject the activities of a civil business fund companies to service tax to the extent of 70/0 of the consideration received for the services.


5. Non filing of Service Tax Return on misguidance by CESTAT New Delhi.

6. Refund claim of the respondents on which credit was allowed pursuant to the notification with the department is allowed. The contention of the department that the Assessee had not availed the benefit of Notification No. 32/2004-ST in the whole of the period for which refund was claimed is unjustified. CESTAT NEW DELHI

7. Services provided by way of erection of Pandal or Shamiana would attract the levy of service tax because this is not a transaction involving “transfer of right to carry on business” or “works contract”. CESTAT NEW DELHI dated 20.06.2012

8. Where a writ petition seeks enforcement of the writ, the same is quashed in so far as it seeks to restrain the Central Excise Officers who are duty bound to observe law.

9. Where the seller is to be held that the said notification does not empower the authority to revoke the input tax credit availed on a plea that the selling dealer has not produced certified copy of the registration certificate when it was not in force. Input tax credit can’t be denied whatever benefits that has accrued to the purchaser based on valid documents in the course of business.

10. It is settled law that a Job worker is functioning under Notification No. 214/86-C.E. and if the employer has paid the tax on their behalf, the same will not be deductible. MADRAS HIGH COURT

Dear Professional Colleagues,

On the special occasion of my first communication as chairman of Vasai branch, the most vibrant branch of WIRC, I would like to thank all Vasai branch members who helped me in my work & elected me as committee member in 2013 branch elections and I am also extremely thankful to my Committee members for the assuage and electing me as a Chairman of our beloved Branch. It’s indeed a privilege to hold the retenual position and lead the branch under the defining guidance and the powerful inspiration of all my members. I envision and wish to secure my efforts to multiply the joy of the branch while holding the assets which we have in us in the branch.

All attempts aim to engross success. The field has enormous potential to empower the young professionals and make them thrive in the field vibrantly. It’s all about LEARN-EARN-RETURN. Learn the concepts and apply them to earn efficiently. We are the responsible citizens of India need to return to our society. I believe it is fully possible under able guidance of mentors, consultants and leaders of our fraternity.

In an ever increasing competitive world, CAREER DEVELOPMENT is utmost priority for every student. By keeping this in mind branch had participated at Sanjeevani Education & Career Fair wherein more than 600 students shown their keen interest towards Chartered Accountant as career. Where Dr. Sanjeev Naik Member of Parliament-Thanne, Mr. Gilbert Mundancia M.L.A-Mira Bhayander, Mr. Dhruv Khator Pitrí Mira-Bhayander Corporator and various other dignitaries attended the programme and we also felicitated with Certificate of Appreciation by gracious hands of Member of Parliament Dr. Sanjeev Naik. The aims of these events at fostering a healthy and fruitful interaction between students, parents, Education and Career Oriented Students.

With the vision to further cheer the students & to appraise their preparation for the examination, the Branch had conducted Mock Test Papers Series I & II for IPC & Final Course students to evaluate their preparation for the main examination to be held in May, 2013. We have also organised Crash Course for IPC, wherein large number of students took benefit.

We have Felicitated New WIRC Office-Bearer CA Mangement Kinare as Chairman, CA Parag Raval as Vice Chairman, CA Neel Majhija as Secretary and CA Priti Savla as Treasurer and

FROM CHAIRMAN’S DESK

CA Sandeep Jain as WIRC Nominee & Regional Council Members at the Seminar on Developing Excellence and Mastering Success by eminent speaker CA Pratik Singh held on 12th April, 2013, whereas more than 250 Members participated and grazed the occasion. We have also felicitated our last Managing Committee Member under the Leadership of CA Shweta Jain for achieving the Best Branch Award & Highly commendable Performance Certificate for Students activities from WIRC under large category and Highly commendable Performance Certificate from ICAI. I congratulate her for the successful completion of her tenure.

We are organizing a Residential Refresher Course at Alibaug for 3 days-2 nights starting from 3rd June. A place of serene town renowned for its many beaches, clean waters, and terrific atmosphere - a popular gateway destination for Mumbaikars. It is used to be the headquarters of the great Maratha Admiral, Kanhoji Angre and has the famous Kolaba fort in the sea. I request to each one of you and your family to participate and enjoy this WIRC.

I give my Best wishes to the upcoming team of Vasai-Virar and Bhayandar Study Circle and humbly appeal to them to start student oriented programmes which will be more beneficial to students.

As CA Exams fever is going on & I take this opportunity to wish Best of Luck for Success to all who are appearing in these Exams. Best of Luck...!!

I can ensure that the journey of 2013 will besplendid and will seek your whole-hearted co-operation to consummate our objective to enhance the status of professional excellence.

To Conclude I would like to quote George Bernard Shaw “Imagination is the beginning of creation. You imagine what you desire; you will what you imagine; and at last you create what you will”. So let’s start imagine first & achieve the success which we were always working with sincerely coupled with detachment.

With Warm Regards,

CA Ramanand Gupta
Chairman
GLIMPSES AT FELICITATION PROGRAMME (Dated on:- 13th April, 2013)

Out Going Managing Committee Members Felicitated with Gracious Hands
CA. Mangesh Kinare, Chairman-WIRC
CA. Umesh Mestry (Secretary-Vasai Br.), CA. K. B. Kothari (Treasurer-Vasai Br.), CA. Parag Raval (Vice-Chairman-WIRC), CA. Sandeep Jain (WIRC-Nominee)

CA. Umesh Mestry (Secretary-Vasai Br.), CA. K. B. Kothari (Treasurer-Vasai Br.), CA. Rangesh (Vice-Chairman-WIRC), CA. Mangesh Kinare (Chairman-WIRC) CA. Ramanand Gupta (Chairman-Vasai Br.), CA. Neel Majithia (Secretary-WIRC), CA. Priti Savla (Treasurer-WIRC)

CA. Ramanand Gupta (Chairman-WIRC), CA. Sandeep Jain (WIRC-Nominee)

CA. Ramanand Gupta (Chairman-WIRC), CA. Vimal Agrawal (Vice-Chairman-WIRC), CA. Rangesh (Vice-Chairman-WIRC), CA. Mangesh Kinare (Chairman-WIRC), CA. Ramanand Gupta (Chairman-Vasai Br.), CA. Neel Majithia (Secretary-WIRC), CA. Priti Savla (Treasurer-WIRC), CA. Sandeep Jain (WIRC-Nominee)

GLIMPSES at CA CAREER COUNSELING PROGRAMME (DATED ON:- 6th & 7th April, 2013)

Managing Committee Members presenting Floral welcome to Mr. Gilbert Heriantra (M.U.A, Mira-Bhayander) at CA. Career Counseling Stall
Managing Committee Members presenting Floral welcome to Dr. Sanjeev Naik (Member of Parliament) at CA. Career Counseling Stall
Managing Committee Members presenting Floral welcome to Dr. Onkar Kohar Patil (MLA, Mira-Bhayander) at CA. Career Counseling Stall

REGIONAL COUNCIL MEMBERS

CA. Dayaram Paliwal (Past Chairman)
CA. Kishor Vaishnav (Committee Member)
CA. D. P. Revawala (Ex-Office Member)
CA. Rakesh Soni (Ex-Committee Member)
CA. Shweta Jain (Immediate Past Chairperson)
CA. Ramanand Gupta (Vice-Chairman)
CA. Umesh Narvekar (Past Chairman)
CA. Talat Bajaj (Past Chairman)
CA. Pratik Singhi (Speaker)
CA. Pratik Singhi (Speaker)

CA. Pratik Singhi (Speaker)
CA. Rajesh Kote (Chairperson-WIRC)
CA. Girish Kulkarni (RCH)
CA. Deepak Banerjee (Convenor-Bhayandar Study Circle) CA. Suyash Yoga (RCH)

CA. Pratik Singhi (Speaker) Presenting Memento to CA. Pratik Singhi (Speaker)

CPE Study Circle
Bhayandar CA CPE Study Circle
1) CA. Deepak Banerjee (Convenor) - 9320981019
2) CA. Sandeep Jain (Deputy Convener) - 9930608040

Vasai - Virar CA CPE Study Circle
1) CA. Xavier Rajan (Convener) - 937120027
2) CA. Jagadeesh Dewadiga (Co-Convener) - 9422475945
3) CA. Anandi Bhave (Co-Convener) - 9880121996

CA. Ramanand Gupta (Chairman) & Managing Committee Members addressing at Orientation Programme

Photo Taken at Orientation Programme in the presence of WIRC Office Bearer

Participants at Seminar

Managing Committee Members presenting Floral welcome to Mr. Gilbert Heriantra (M.U.A, Mira-Bhayander) at CA. Career Counseling Stall

Group photo taken at Stall in the presence of Mr. Dhruv Kishor Patil (Mira-Bhayander, Corporator)

Photo Taken at Orientation Programme in the presence of WIRC Office Bearer

Participants at Seminar

Managing Committee Members presenting Floral welcome to Dr. Onkar Kohar Patil (MLA, Mira-Bhayander) at CA. Career Counseling Stall