Felicitation to CA. Ramachandra Reddy K, Chairman, Hyd Branch at Orientation Programme for MC Members of Branches of SIRC of ICAI held on 25th & 26th April, 2016 at Tirupati
Orientation Programme for MC Members of Branches of SIRC of ICAI held on 25th & 26th April, 2016 at Tirupati

Hyderabad MC Members along with CA. M. Devaraja Reddy, President, ICAI & other Central Council Members of ICAI

Seminar on Ind AS for Students Held on 06.04.2016 at Hyderabad

Dignitaries on the Dias standing for Motto Song of the ICAI

Cross Section of the Students
Warm Greetings!

I hope, the members are relieved from their hectic audit schedule of bank branch audits and after successful completion of the bank branch audits, I am sure many of us are in the midst of the statutory audits.

I convey my best wishes on the occasion of May Day 2016, which is celebrated on 1st May of every year in the spirit of workers around the world. 1st May is also popularly known as the International Workers’ Day or the International Labour Day. Thomas Edison says “there is no substitute for hard work”.

I am sure the students have prepared well for their examinations and writing the same with confidence. I wish all the best to them and I am confident that they will come out with flying colours.

CPE Programmes Held

During April, 2016, Hyderabad Branch has organized CPE Programmes on various important topics for better implementation of the same in their day to day professional career. The topics covered during the month were – Issues in Taxation of Salaries, Analysis of ST-3 Returns & Issues, Central Excise Implications on Jewellery and Readymade Garments, Cloud Computing, ECB Regulations under FEMA, VAT, Registration Procedure for NGO’s, Trusts, Societies-Taxation of Educational Institutions, Auditors Responsibilities u/s 141 to 144 of Companies Act, 2013, Internal Financial Controls, NRI Taxation & TDS on NRI Payments and Credit Information Professional Development Opportunities. These topics were addressed by versatile speakers and enriched the members.

Hyderabad Branch is always committed to provide better service to the members, accordingly, planning to organise 3 hours, 4 hours and One/Two Days Seminars on various important topics of professional interest for providing latest information and update the members on various technicalities of the same through eminent speakers. The members may suggest the areas of interest which need to be covered for the benefit of the members and will be useful for their professional career.

Renewal of Membership

I would like to remind the members to renew their Membership and Certificate of Practice for the year 2016-17 by remitting requisite fee at the earliest. Even though, we are all are aware that the last date of renewal is 30th September, 2016, it is better to take timely action to avoid the process of removal and restoration.

Students

Seminars for CA Students: Hyderabad Branch of SIRC of ICAI and SICASA of Hyderabad Branch are planning to organise more and more student perspective seminars in the near future for the benefit of the students. These seminars would help the students to learn many new areas through eminent speakers which they can use in their examinations effectively.

Crash Course for CPT: SICASA of Hyderabad Branch is going to conduct Crash Course for CPT students from 12th May, 2016 and the details of the same will be hosted at Hyderabad Branch Website, www.icaihyd.org. The classes will be dealt by eminent faculty and since the classes are being conducted at a reasonable fee for the benefit of students, I advise the budding students to avail the opportunity and join the classes in large numbers.

Crash Courses for IPCC & Final Courses: SICASA of Hyderabad Branch have conducted crash courses for both IPCC & Final during the month of April, 2016 and a large number of students have taken the advantage of the same and gained good knowledge from the eminent faculty which would help the students in writing their examinations effectively.

Mock-Tests for IPCC and Final Courses: Hyderabad Branch has conducted two series of Mock-tests for both IPCC and Final Courses during the months of March & April, 2016. The students have attended the same in large number and witnessed their level of preparation for their examinations.

Mock-Test for CPT: Hyderabad Branch is organising a Mock-test for CPT students on 22nd May, 2016 and the students are advised to test their preparation levels for CPT examination. We may conduct one more Mock-Test immediately after the Crash Course Classes and the same will be intimated in due course.
Multiple Batches of GMCS, Orientation Programme (OP) and ITT Classes: The Branch has announced multiple batches of GMCS I & II, OP and ITT for the benefit of the students for which a large number of students have been registered. Keeping in view of the demand from the students, we are also planning few more batches of the same and will be announced shortly. The students are advised to take the advantage of the same to avoid delay in the registration of articlehip.

I would like to conclude my write up with a quote of Swami Vivekananda:

The will is not free - it is a phenomenon bound by cause and effect - but there is something behind the will which is free.

Yours Sincerely,

CA. Ramachandra Reddy K
Chairman
chairman.hyd@icai.in

Three Days CPE Residential Seminar

Organized by : SIRC of ICAI Hosted by : Hyderabad Branch of SIRC of ICAI & Belgaum Branch of SIRC of ICAI

Date: 3rd, 4th & 5th June, 2016, Venue: Bogamallo Beach Resort, Boggamallo, GOA

<table>
<thead>
<tr>
<th>TIME ACTIVITY</th>
<th>SPEAKER</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>03 June 2016 Day I</strong></td>
<td></td>
</tr>
<tr>
<td>10.30 a.m. Check-In</td>
<td></td>
</tr>
<tr>
<td>12 to 2.00p.m. Lunch</td>
<td></td>
</tr>
<tr>
<td>2.00 to 2.30 p.m.</td>
<td>Inaugural Session</td>
</tr>
<tr>
<td>2.30 p.m to 4.30 p.m.</td>
<td>Technical Session I</td>
</tr>
<tr>
<td>“Analysis of Recent Judgement under Income Tax”</td>
<td>CA Shrikrishna Kelkar</td>
</tr>
<tr>
<td>4.30 to 6.30 p.m.</td>
<td>Technical Session II</td>
</tr>
<tr>
<td>“Taxation of Trusts in light of Budget Amendments”</td>
<td>CA Phalgun Kumar</td>
</tr>
<tr>
<td>6.30 to 7.00 p.m.</td>
<td>High Tea</td>
</tr>
<tr>
<td>7.00 to 10.00 p.m.</td>
<td>Gala Night followed by Dinner</td>
</tr>
<tr>
<td><strong>04 June 2016 Day II</strong></td>
<td></td>
</tr>
<tr>
<td>6.30 to 8.00 a.m.</td>
<td>Spiritual Session</td>
</tr>
<tr>
<td>8.00 to 9.00 a.m.</td>
<td>Break fast</td>
</tr>
<tr>
<td>9.30 to 11.30 a.m.</td>
<td>Technical Session III</td>
</tr>
<tr>
<td>“CARO 2016 Internal Financial Control &amp; New Reporting requirements under Companies Act 2013”</td>
<td>CA Jomon K George</td>
</tr>
<tr>
<td><strong>05 June 2016 Day III</strong></td>
<td></td>
</tr>
<tr>
<td>11.45 to 1.45 p.m.</td>
<td>Technical Session IV</td>
</tr>
<tr>
<td>“Revised Accounting Standards”</td>
<td>CA Vinayak Asundi.</td>
</tr>
<tr>
<td>1.45 to 2.30 p.m.</td>
<td>Lunch</td>
</tr>
<tr>
<td>2.30 to 4.30 p.m.</td>
<td>Technical Session V</td>
</tr>
<tr>
<td>“Approach to TAX Audit”</td>
<td>CA P.R.Suresh</td>
</tr>
<tr>
<td>5.30 to 6.00 p.m.</td>
<td>High Tea</td>
</tr>
<tr>
<td>8.00 to 10.00 p.m.</td>
<td>Dinner</td>
</tr>
<tr>
<td>7.00 to 8.00 a.m.</td>
<td>Beach games Break</td>
</tr>
<tr>
<td>8.00 to 9.00 a.m.</td>
<td>Fast.</td>
</tr>
<tr>
<td>9.00 to 11.00 a.m.</td>
<td>Technical Session VI</td>
</tr>
<tr>
<td>“Annual Filings Under Companies Act”</td>
<td>CA. Ritesh Mittal</td>
</tr>
<tr>
<td>11.00 to 11.30 p.m.</td>
<td>Valedictory</td>
</tr>
<tr>
<td>12.00 to 12.30 p.m.</td>
<td>Lunch</td>
</tr>
<tr>
<td>12.30 p.m. Check out.</td>
<td></td>
</tr>
</tbody>
</table>

For Registration Contact: Hyderabad branch of SIRC of ICAI Phone No. 040-23317026, E-mail: hyderabad@icai.org  
Delegate Fee: Members: Rs.9000/-, Spouse: Rs.8500/- & Children(9-12yrs): Rs.3000/- (Upto 30th May, 2016) Members: Rs.9000/-, Spouse: Rs.8500/- & Children(9-12yrs): Rs.3000/- (After 30th May, 2016) Payable in cash or Cheque/DD drawn in favour of “Hyderabad Branch of SIRC of ICAI” or through online at www.icaihyd.org
Programmes for the Month of May, 2016

<table>
<thead>
<tr>
<th>Day &amp; Date</th>
<th>Name of the Programme</th>
<th>Speaker</th>
<th>Fee</th>
<th>CPE Hours</th>
<th>Venue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tuesday 03rd May, 2016 5.30 PM to 8.30 PM</td>
<td>Related Parties Transactions &amp; Issues in Related Parties Transactions under Companies Act, 2013</td>
<td>CA. Arun Luharuka</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
<tr>
<td>Thursday 05th May, 2016 5.30 PM to 8.30 PM</td>
<td>Project Finance</td>
<td>Shri. K. Satyanarayana</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
<tr>
<td>Monday 09th May, 2016 5.30 PM to 8.30 PM</td>
<td>Copy rights &amp; Trademark Registrations</td>
<td>Shri. Vijay, LLB</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
<tr>
<td>Tuesday 10th May, 2016 5.30 PM to 8.30 PM</td>
<td>TDS returns, online rectifications and 15CA &amp; 15CB</td>
<td>CA. Ritesh Mittal</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
<tr>
<td>Wednesday 11th May, 2016 5.30 PM to 8.30 PM</td>
<td>ICDS</td>
<td>CA. Madhusudhan Mantri</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
<tr>
<td>Thursday 12th May, 2016 5.30 PM to 8.30 PM</td>
<td>Domestic Transfer Pricing</td>
<td>Eminent Speaker</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
<tr>
<td>Friday 13th May, 2016 5.30 PM to 8.30 PM</td>
<td>Alternative Investments</td>
<td>CA. D. Rajesh</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
<tr>
<td>Monday 16th May, 2016 5.30 PM to 8.30 PM</td>
<td>Basic structure of Service Tax Law</td>
<td>CA. Sri Harsha Vardhan</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
<tr>
<td>Tuesday 17th May, 2016 5.30 PM to 8.30 PM</td>
<td>Key Difference between AS &amp; Ind AS</td>
<td>CA. Naga Durga Sudhakar</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
<tr>
<td>Wednesday 18th May, 2016 5.30 PM to 8.30 PM</td>
<td>Approach CIT(A) &amp; ITAT Appeals</td>
<td>CA. A.C. Gangaiah</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
<tr>
<td>Thursday 19th May, 2016 5.30 PM to 8.30 PM</td>
<td>Forensic Audit</td>
<td>Eminent Speaker</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
<tr>
<td>Friday 20th May, 2016 5.30 PM to 8.30 PM</td>
<td>The Income Declaration Scheme, 2016</td>
<td>CA. Hari Agarwal</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
<tr>
<td>Monday 23rd May, 2016 5.30 PM to 8.30 PM</td>
<td>Basics of FEMA, 1999</td>
<td>CA. Murali Krishna G</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
<tr>
<td>Tuesday 24th May, 2016 5.30 PM to 8.30 PM</td>
<td>Input Tax Credit Under VAT Act</td>
<td>CA. Ramachandra Murthy</td>
<td>₹.150/-</td>
<td>3 hrs</td>
<td>Branch Premises</td>
</tr>
</tbody>
</table>
### Announcements

**Series of Sessions on FEMA**

The Hyderabad Branch of SIRC of ICAI is organizing a Series of Sessions on FEMA.

The details of the same are given below:

**Time:** 5.30 PM to 8.30 PM | **CPE Hours:** 3 CPE hours for Each Session

**Venue:** Parvataneni Brahmayya Memorial Hall, Hyderabad Branch of SIRC of ICAI

**Fee:** Rs. 150/- for each Session

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Title</th>
<th>Day and Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Basics of FEMA, 1999</td>
<td>Monday, 23rd May, 2016</td>
</tr>
<tr>
<td>2</td>
<td>FEMA – Types of Deposit accounts – Residents and Non Residents</td>
<td>Thursday, 23rd June, 2016</td>
</tr>
<tr>
<td>3</td>
<td>FEMA – FDI Regulations</td>
<td>Saturday, 23rd July, 2016</td>
</tr>
<tr>
<td>4</td>
<td>FEMA – ODI Regulations</td>
<td>Tuesday, 23rd August, 2016</td>
</tr>
<tr>
<td>5</td>
<td>FEMA – Rules for Cross Border Trade and Services</td>
<td>Monday, 12th September, 2016</td>
</tr>
<tr>
<td>6</td>
<td>FEMA – Rules for Establishing Offices in India and Abroad</td>
<td>Monday, 24th October, 2016</td>
</tr>
<tr>
<td>7</td>
<td>FEMA – Rules for Acquisition and Transfer of Immovable Properties</td>
<td>Wednesday, 23rd November, 2016</td>
</tr>
<tr>
<td>8</td>
<td>FEMA – Lending and Borrowing Regulations</td>
<td>Friday, 23rd December, 2016</td>
</tr>
<tr>
<td>9</td>
<td>FEMA – Facilities for Residents and Non-Residents</td>
<td>Monday, 23rd January, 2017</td>
</tr>
</tbody>
</table>

Note: CPE Hours on Attendance Basis
May, 2016

Announcements

Series of Sessions on Service Tax

The Hyderabad Branch of SIRC of ICAI is organizing a Series of Sessions on Service Tax.

The details of the same are given below:

**Dates of the Sessions:** Two days in a month

**Time:** 5.30 PM to 8.30 PM | **CPE Hours:** 3 CPE hours for Each Session

**Venue:** Parvataneni Brahmayya Memorial Hall, Hyderabad Branch of SIRC of ICAI

| Fee: Rs. 150/- for each Session |

**Series of Sessions on Service Tax**

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Particulars of Session</th>
<th>Topics Covered</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Basic structure of Service Tax Law</td>
<td>Positive List vs Negative List, overview of definition of ‘service’, declared services, negative list and exemptions</td>
</tr>
<tr>
<td>2</td>
<td>Service &amp; Declared Services</td>
<td>Detailed discussion of the definition of ‘service’, entries in the ‘declared services’</td>
</tr>
<tr>
<td>3</td>
<td>Negative List</td>
<td>Detailed discussion on the entries of ‘negative list’</td>
</tr>
<tr>
<td>4</td>
<td>Mega Exemption Notification</td>
<td>Important Entries in Mega Exemption Notification</td>
</tr>
<tr>
<td>5</td>
<td>Mega Exemption Notification</td>
<td>Important Entries in Mega Exemption Notification</td>
</tr>
<tr>
<td>6</td>
<td>Service Tax Rules, 1994</td>
<td>Coverage of Important Rules</td>
</tr>
<tr>
<td>7</td>
<td>Service Tax (Determination of Value) Rules, 2006</td>
<td>Coverage of Important Rules</td>
</tr>
<tr>
<td>8</td>
<td>Point of Taxation Rules, 2011</td>
<td>Coverage of Important Rules</td>
</tr>
<tr>
<td>9</td>
<td>Place of Provision of Service Rules, 2012</td>
<td>Coverage of Important Rules</td>
</tr>
<tr>
<td>10</td>
<td>Cenvat Credit Rules, 2004</td>
<td>Coverage of Important Rules</td>
</tr>
<tr>
<td>11</td>
<td>Reverse &amp; Joint Charge Mechanism</td>
<td>Detailed discussion on reverse &amp; joint charge mechanism</td>
</tr>
<tr>
<td>12</td>
<td>Audits &amp; Appellate Procedure</td>
<td>Detailed discussion on audits under service tax law and appellate procedure</td>
</tr>
</tbody>
</table>

Note: CPE Hours on Attendance Basis

For the benefit of Members and Students, the Hyderabad Branch of SIRC of ICAI has allocated the contact numbers pertaining to various activities at Branch. Members and Students can avail the Facility.

<table>
<thead>
<tr>
<th>S No</th>
<th>Description of Service</th>
<th>Contact Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Students General queries of CPT, IPCC, Articles, Final Course, Regular/Crash Course, Queries pertaining to the Study Material, Publications of ICAI etc...</td>
<td>23393182, 23393200</td>
</tr>
<tr>
<td>2</td>
<td>Members queries, CPE Program related queries, Post Qualification Courses and Certification Courses</td>
<td>23317026</td>
</tr>
<tr>
<td>3</td>
<td>GMCS, Orientation Programme, ITT and Advanced ITT Programmes Registration and related queries</td>
<td>23317028</td>
</tr>
<tr>
<td>4</td>
<td>For Coaching Class at Hyderabad Branch</td>
<td>23317025</td>
</tr>
</tbody>
</table>
Introduction: Companies (Auditor’s Report) order 2015 has been issued under sec 143(ii) of Companies Act 2013 superseding the order of 2003 issued under 227(4A) of the Companies Act 1956. Now a fresh order has been issued on 29th March 2016 in supersession of the said order with some additions, modification and deletions. A brief discussion is made on the order in the Article.

Applicability: The order is applicable to all companies including a foreign company but does not apply to a) banking company b) Insurance Company c) a company registered under sec 8 of the Companies Act d) One person company and a small company and e) a private limited company which is not a subsidiary or holding company of a public company, its paid up capital and reserves and surplus does not exceed rupees one crore as on the date of Balance sheet and the total borrowings from a bank or financial institution does not exceed rupees one crore at any point of time during the year and total revenue as per the financial statements does not exceed rupees ten crore for the year.

Additions: a) Fixed Assets: The auditor has to report whether the title deeds of immovable properties are held in the name of the company. Otherwise he has to mention the details in the report.

b) Loans, Guarantees etc.: If the company advances any loan, makes any investments, provides any guarantee or security the auditor has to comment on the compliance of Sec. 185 regarding loans, guarantee or security to certain related parties and compliance of Sec. 186 regarding the loans and investments made and also guarantees and securities provided by the company in total to others including related parties.

c) Managerial Remuneration: In case of a Public Company the remuneration to the Managerial personnel has to be paid within the limits prescribed in Sec. 197 read with schedule V of the companies Act 2013. In case of any violation the auditor has to mention in the report regarding the steps taken by the company to recover from the person concerned.

d) Nidhi Companies: It has to be mentioned in the report whether the company has complied with Net owned funds to deposits in the ratio of 1:20 to the liability and whether the company is maintaining 10 % of its funds in unencumbered term deposits as specified in Nidhi rules 2014.

e) Related Parties: In case of transactions with related parties whether they are in compliance with Sec. 177 and 199 of the Companies Act 2013 wherever applicable and disclosed the details in the financial statements as required by the Accounting Standards concerned.

f) Utilization of funds: If the company has made a preferential allotment or private placement of shares, fully or partly convertible debentures, whether the company has complied with the provisions of Sec. 42 of the companies Act 2013 regarding the utilization of funds for the purpose for which the same were raised. The report shall give details of noncompliance and the amount involved in the same.

g) Non-cash transaction: In case the company has entered into any non-cash transactions with directors or other parties it shall be mentioned in the report on the compliance of sec. 192 of the Companies Act 2013.

h) Registrations: In case of Non-Banking Finance Company whether the company has been registered with Reserve Bank of India under Sec. 45IA of the Reserve Bank of India Act 1934.

Modifications: a) Inventories: Matter regarding physical verification, maintenance of records, accounting of discrepancies of Inventories have been clubbed and inserted as a singleitem.

b) Default of Loans: In modification of the existing item, the details regarding default in repayment of loans to a financial institution, bank, Government or dues to debenture holders, the period and amount of default to be mentioned in the report. In addition lender wise details has to be provided in case of defaults to banks, financial institutions and Government.

c) Utilization of funds: In case of partial modification of utilization of funds, in addition to term loans, funds from initial public offer, further public offer has been added.

Omission: a) Internal Control: Comment on the adequacy of internal control for purchases fixed
assets, sales and services has been withdrawn since the auditor has to comment on the internal financial controls regarding the financial statements in the main audit report separately.

b) Investor Education and protection fund: The comment regarding transfer of amount to Investor Education and Protection Fund has been removed since the auditor has to report on the same matter in the main audit report itself.

Note: The above two points have been removed from the order to avoid duplication of reporting.

c) Accumulation losses: In case of a company registered for more than five years, the comment on accumulated loss and cash loss incurred during the period of audit and in the immediate preceding period has been withdrawn.

VI) Analysis: The authorities have increased the responsibilities of the auditor in case of loans, guarantees and security provided by the company. According to Sec. 185 a holding company can do any such act to its company wholly owned subsidiary and a Private Company can do such acts provided three conditions are satisfied:

1. No body corporate is a member in the company
2. The borrowing from banks or financial institution or anybody corporate is less than twice of its paid up capital or fifty crore rupees whichever is lower
3. The company has not made any default in repayment such borrowings. Further a company whose business is mainly providing loans or giving guarantee or security to others can do such acts without any restriction. So the auditor shall exercise reasonable care in analyzing the transactions covered under Sec 185 of the Act before coming to a conclusion that the transactions have been executed in compliance of the Act.

Section 186 of the Act contains the provisions regarding limits of investments, loans and guarantees by the companies. The auditor shall analyse that necessary procedures have been followed by the company to comply with the Act.

The auditor of a public limited company has to mention whether managerial remuneration paid is within the limits prescribed under Sec. 197 read with Schedule V of the Act. It may be on profits or effective capital of the company. In certain cases prior approval of the Central Government is necessary.

Regarding related party transactions, the auditor has to see the compliance of Sec. 188 of the Act and confirm that Board Resolution or Special resolution has been passed. He shall also see about the exemption regarding the transactions in the usual course of business and is at arm's length price. The auditor has to make a thorough analysis on the non-cash transactions with directors and other parties since restriction has been placed under Sec 192 of the Act and the auditor has comment on the effect of such transactions in the main report itself. The auditor shall also pay special attention to the allotment of shares and debentures through preferential allotment or private placement and see whether the funds raised has been utilized for the purpose or not.

In case of public companies if any funds are raised through initial public offer or further public offer the auditor has to comment on the utilization of funds on par with term loans.

VII) Conclusion: The Government has amended the order to have more transparent opinion of auditor on financial statements and a thorough scrutiny of certain items by the auditor to protect the interest of the company, its members, investors, lenders and also the public. So the auditor has to be more cautious in planning, conducting and monitoring the audit and also make proper risk assessment before coming to a conclusion on the report to be submitted as per law.

Impact of Central Excise on Jewelers

Central Excise duty @ 1% is imposed on all the Jewellery articles except silver Jewellery not studded with diamonds, ruby, emerald or sapphire.

As expected once again there has been lots of agitation and protest from trade to withdraw excise duty. This time Modi government did not step back. Finally the Jewellers have called off their strike and returned to the market. Now it is appropriate to understand implications of Central Excise on jewellery industry. From the compliance perspective in respect of Jewellery sector, an exception, various relaxations are made to see to it that they are given comfort to enter into
Central Excise universe.

To consider whether levy of Central Excise Duty is attracted, one has to fulfill the following four conditions:

(a) There should be Manufacture; (b) Manufacture should be of Goods (Movable and Marketable); (c) Such goods manufactured should be Excisable Goods (set out in I or II Schedule to Central Excise Tariff Act, 1985 as subject to Duty); (d) Manufacture should happen in India;

The term ‘manufacture’ is understood to be any process which changes the article processed as to name, character or use as is known in the market. In addition to this there is a concept of deemed manufacture defined under Section 2(f) of Central Excise Act, 1944 wherein certain processes are deemed to be manufacture though it is not considered as manufacture in the common understanding as explained above. It is important to note that liability to pay duty is on the person who manufactures the goods irrespective of the fact whether he is the owner of the goods or not.

As per chapter notes to chapter 71, it is prescribed that for the purposes of heading 7113, the processes of affixing or embossing trade name or brand name on articles of jewellery of precious metal or of metal clad with precious metal, shall amount to ‘manufacture’.

The following are not treated as brand name;

(a) Hallmarking of the jewellery. (b) ‘house mark’, (c) a manufacturer, say “S Jewellers”, getting jewellery or other articles manufactured on his behalf from goldsmiths/ job workers who put a mark/sign/initials, etc. on the jewellery/article. (d) “S Jewellers”, when it sells articles of jewellery to customers, puts a distinctive sign/mark/initials etc. on the jewellery very often a simple acronym of his name e.g. S.

Person Liable to pay Duty:

As a general rule the person liable to pay duty is the person who does the manufacture, however as an exception in case of Jewellery, the person liable to pay duty shall be the person who gets the jewellery manufactured by supplying the inputs to the jobworker (i.e. manufacturer). However of the there no supply of inputs and the manufacturing has been done on his own then such manufacturer is itself require to pay the duty.

Registration:

Every person liable to pay duty of excise is required to take registration within 30 days of becoming liable to pay duty of excise. In case of jewellery sector, CBEC has issued Circular No. 1026/14/2016CX dated 23rd April, 2016 by which time limit for taking central excise registration of an establishment by a jeweller has been extended up to 01.07.2016. Though the liability for payment of central excise duty will be with effect from 1st March, 2016, the assessee jewelers may make the payment of excise duty for the months of March, 2016; April, 2016 and May, 2016 along with the payment of excise duty for the month of June, 2016.

Manufacturer has the option to take Centralised Registration if he is having another place or more than one place, there is an option to register the place where centralised accounting or billing system is maintained and in such place accounts/records showing receipts of raw materials and finished goods manufactured is kept and the said place could be showroom of jeweller.

Rate of Duty - Taxability:

The rate of duty on the jewellery are as follows:

- 1% on transaction value - No credit on inputs and capital goods except input services or
- 12.5% with Cenvat credit of inputs, input services and capital goods.

Issues to be clarified / needs clarification under 1% option:

To avail concessional rate of duty of 1%, the articles of jewellery shall be manufactured from inputs or capital goods on which appropriate duty of excise has been paid. Appropriate duty includes nil duty also. On failing to prove it, the duty @ 12.5% shall apply. The following queries would arise;

- How to prove the duty paid on inputs used in the manufacture of articles of jewellery?
- Onus to prove lies on whom?

There are certain judicial decisions which suggest a way out for this situation.


Taxability of stock as on 29.02.2016:

It has been clarified by the department that the goods manufactured on or before 29.2.2016 but lying in stock at the place of manufacture as on 29.2.2016 are liable to excise duty upon clearance. If the goods were already cleared from the place of manufacture and are lying in stock in any other place like showroom, warehouse, stocking place, etc., are not liable for duty as goods were already cleared form the place of manufacture. This provision gets sanity by applying the analogy given by Hon’ble Supreme Court in case of Wallace Flour Mills vs. C.C.EX. [(1989) 44-ELT-598 (SC)].

SSI Exemption:

Similarly if the domestic value of clearance has not crossed 12 (all goods manufactured including silver Jewellery) crores in the financial year 2015-16, for the financial year 2016-17, exemption up to 6 crores of value of clearances can be availed (The benefit for March 2016 is 50 lakhs). The conditions
SSI exemption calculation could be understood with the help of following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Turnover (in Rs.)</th>
<th>Previous T/o Less than Rs. 12cr</th>
<th>Exemption (in Rs.)</th>
<th>Dutiable (in Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>I(2015 - 2016)</td>
<td>75 Lakhs in march 2016. Entire year - 5 crores</td>
<td>Yes</td>
<td>50 Lakhs</td>
<td>25 Lakhs</td>
</tr>
<tr>
<td>II (2016-17)</td>
<td>8 Crores</td>
<td>Yes</td>
<td>6 Crores</td>
<td>2 Crores</td>
</tr>
<tr>
<td>III</td>
<td>13 Crores</td>
<td>Yes</td>
<td>6 Crores</td>
<td>7 Crores</td>
</tr>
<tr>
<td>IV</td>
<td>4 Crores</td>
<td>No</td>
<td>Nil</td>
<td>4 Crores</td>
</tr>
<tr>
<td>V</td>
<td>10 Crores</td>
<td>Yes</td>
<td>6 Crores</td>
<td>4 Crores</td>
</tr>
</tbody>
</table>

**Valuation:**
Valuation is one of the most crucial aspects for a manufacturer engaged in manufacturing of jewellery considering high value transactions and frequent fluctuation in prices leave little margin for error. The government has come out with circular no. 1021/9/2016-CX dated 21.3.2016 clarifying inter alia that payment of excise duty shall be based on first sale invoice value. What is the meaning of first sale invoice is not clear but in the view of presenter, this could be considered first sale invoice for the day.

**Invoice:**
The goods need to be removed from the place of manufacture based on excise invoice/document issued under Rule 11 of the Central Excise Rules. It should be clearly mentioned on the invoice is assessable value is actual transaction value or normal transaction value. Goods may be sold to customer from showroom based on commercial invoice (not excise invoice). However in such cases it becomes difficult to collect tax from the customers.

**Records:**
Following are the some of the important records to be maintained;
(i) Finished Goods Register (Daily Stock Account/RG – 1), (ii) Store ledger as to inputs, (iii) Input service credit register if credit availed, (iv) Job-work register and challan, (v) Intimate the records maintained to department etc.

**Payment of Duty:**
Payment can be made online or manually (through Bank). Duty needs to be paid on monthly basis on or before 6th of the succeeding month. In case of month of March, duty needs to be paid by 31st March. SSI units are permitted to make payment on quarterly basis.

**Excise Returns:**
When Duty Paid @ 12.5 % - ER-1 (monthly for non SSI assessee) or ER-3 (quarterly for SSI assessee)
When Duty paid at 1% - ER-8 return needs to be filed quarterly. The procedure for filing the return would be same as ER-1/ER-3.
Voluntary offer of income in order to buy peace and avoid litigation before taking up assessment by the AO de hors any material with the AO cannot amount to concealment;

(5). SMT. PRAMILA D. ASHKETAR & ORS. vs. INCOME TAX OFFICER

(2013) 154 TTJ 0046 (UO) : (2014) 61 SOT 0113 (Pune) ((URO))

Where the returned income filed in response to notice u/s. 153A and income assessed were the same, no penalty can be levied u/s 271(1)(c).

(6). MAHAVEER JAIN vs. DEPUTY COMMISSIONER OF INCOME TAX

(2013) 37 CCH 0503 JodhTrib, (2013) 157 TTJ (Jd) 0743

Penalty under s. 271(1)(c) was not leviable on account of wrong claim made by assessee, in his original return of income, which was corrected in the return of income filed under section 153A.

(7). MARVEL TEA ESTATE (I) LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX


Penalty proceeding and assessment proceedings are two distinct proceedings and there can be many reasons for making surrender but surrender itself is not conclusive proof of concealment of income or furnishing of inaccurate particulars of income for levying penalty.

VAT COURT

- Compiled by CA. Satish Saraf
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Rate of tax on Bread Rusk:
The basic form for a Rusk is bread, as per the standards prescribed by the India Standards Institute also, for the said reasons, the Tribunal held that the “SUJI RUSK” which is a bread made rusk is falling within the category of “Branded Bread” under Entry 158 of Schedule – IV(4/5%) and does not fall within the miscellaneous items under Schedule – V (12.5/14.5%).

Britannia Industries Limited Vs. State of Telangana – (20016) 28 TTR 48 – TVATAT

ITC on division wise:
The Tribunal held that “We find that the action of the assessing authority in restricting the Input Tax Credit division wise is not mandated by the law as held by the Hon’ble High Court in the case of the dealer (TREVC No: 286/2009, Dt: 13-11-2014).


Inter – Division transfers among Government Departments:
The materials, spare parts or any other goods used in the works contract and remain so even after the completion of the works contract. This is because both the appellant company and India Air Force are two arms of the same Government of India and there was, therefore no transfer of property in goods during the execution of works contract.


ADVANCE RULINGS

CTD Order No: AR 7, Dt: 17-03-2016:
The dealer seeking clarification “Whether pasting powder, corrugation powder and dext gum powders manufactured covered by HSN Code. 3505 10 90 are covered by Sub-Entry 203 under entry 100 in Schedule-IV to the Act?” The same is clarified as “The matter has been examined with reference to the provisions of TVAT Act under Schedule-IV Entry 100. It relates to Industrial Inputs under Serial No. 203, Heading No. 3505, describing goods as Dextrins and other modified Starches (for example pregelatinised or esterified starches). In view of the above provisions of TVAT Act, it is clarified that the product dealt by the applicant is liable to tax @ 5%”.

CTD Order No: AR8, Dt: 17-03-2016:
The dealer seeking advance ruling on “Rate of tax on Baggage wrapping services at Airport.” The Authority for advance ruling and clarification held that “the goods of film and labels used for packing of baggage by the applicant are liable to tax @ 5%. If the dealer does not opt for composition he is liable to pay tax @ 5%. If the goods are purchased from local registered dealers of the State, he is eligible for input tax @ 70% of the value of the goods. If the above goods are purchased from either out of country or out of the State the applicant is not eligible for claim of input tax credit. If he opts for composition, he is liable to pay tax @ 5% but he is not eligible to claim ITC”.

CTD Order No: AR9, Dt: 30-03-2016:
The Dealer sought clarification on “Rate of tax on a product made of PVC (a hybrid material composed of polymer fiber and additives such as calcium carbonate and other chemicals) which is 100% recyclable.” It was held by the authority that “It is a composite PVC material in the form of sheets with thinness of about 15 mm and in white color which is not fit in any entry of under Schedule-IV of the TVAT Act, 2005. Therefore, it is liable to be taxed under Schedule-V at the applicable rateof 14.5%.”
1. **For the purpose of computation of continuous stay for determining permanent establishment, actual stay of employees has to be considered and not the entire contract period**

The Mumbai Bench of the Income-tax Appellate Tribunal (‘ITAT’) in the case of Rheinbraun Engineering Und Wasser GmbH (‘Assessee’), held that for computing continuous stay for Permanent Establishment (‘PE’) under Article 5(2)(i) of the India-Germany Double Taxation Avoidance Agreement (‘India – Germany DTAA’), actual stay of employees has to be considered and not the entire contract period.

- The Assessee, a company registered in Germany, is engaged in the field of consulting services for exploration, mining and extraction. During the relevant assessment year (‘AY’), the Assessee entered into contract with several Indian mining companies and earned income which was offered to tax as Fees for technical Services (‘FTS’) under Article 12 of the India – Germany DTAA.

- The Assessing Officer (‘AO’) observed that the Assessee rendered various services to the Indian companies, including supervisory services in the nature of installation or assembly project. Further, the projects undertaken lasted more than six months.

- As per Article 5(2)(i) of India – Germany DTAA, the term “permanent establishment” (‘PE’) includes a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities continue for a period exceeding six months.

- Therefore, the AO held that the Assessee has supervisory permanent establishment in India as per Article 5(2)(i) of India – Germany DTAA and applied higher rate of tax. The order of the AO was upheld by the Commissioner of Income-tax (Appeals) [CIT(A)].

- Aggrieved by the order of the CIT(A), the Assessee preferred an appeal before the ITAT.

- The Assessee submitted that the supervisory services lasted for less than six months period and also that only one employee had visited India whose stay in India was only for 64 days. Therefore, it cannot be said to have a PE in India. Whereas, the AO submitted that since the Assessee rendered supervisory services in connection with mining projects which are for more than 6 months period, Article 5(2)(i) of the India – Germany DTAA was triggered.

- The ITAT held as below:
  - The ITAT relied on the decision of Mumbai ITAT in the case of J Ray McDermott Eastern Hemisphere Ltd, wherein it was held that the period of stay in India for a non-resident entity has to be counted from the actual date of commencement and completion of the contract, the date on which the invoices are raised is not a decisive factor to decide the existence of PE.
  - Therefore, the ITAT held that for the purpose of computation of continuous stay for determining PE actual stay of employees has to be considered and not the entire contract period.
  - If the Assessee has rendered services in India for more than six months continuously, it has to be held that it had a PE in India. However, the Assessee had deputed one of its employees to India, and he had not stayed in India for more than 180 days. Thus, PE is not created in India and the amount received by the Assessee are to be taxed @ 10% under the Article 12(2) of the India – Germany DTAA.

2. **TDS is applicable to year-end expense provisions only if income accrues to the payee. Tax liability does not arise if the provision is reversed subsequently.**

The Bangalore Bench of the Income-tax Appellate Tribunal (‘ITAT’) in the case of Bosch Limited (‘Assessee’) held that tax withholding liability does not arise on year-end provision for expenses which got reversed on first day of the following Financial Year (‘FY’). Further, the ITAT also held that the Assessee cannot be treated as an ‘assessee in default’ u/s 201(1) of the Income-tax Act, 1961 (‘Act’) for not deducting tax on such year-end provisions.

- The Assessee is a limited company engaged in the business of manufacture and sale of injection equipment, auto electric items, portable electric power tools etc.

- During the relevant FY, the Assessee made provision for expenses amounting to Rs. 1,96,84,115 in accordance with Accounting Standard – 29 issued by the Institute.

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1. M/s Rheinbraun Engineering und Wasser GmbH vs. DDIT (Int. Taxation) [ITA no. 2353 & 2138/ Mum/2006]
2. DCIT vs. J. Ray McDermott Eastern Hemisphere Ltd (2012) 54 SOT 363 (Mumbai ITAT)
3. Bosch Limited vs. ITO [ITA No. 1593/ Bang/ 2014]
of Chartered Accountants of India. Out of the said provision an amount of Rs. 1,79,36,713 was reversed in the beginning of the following FY as no invoices were received.

- Accordingly, in the return filed for FY, the Assessee made suo-moto disallowances u/s 40(a)(i) and 40(a)(ia) of the Act in respect of the provisions on which tax was not withheld.

- However, the Assessing Officer (‘AO’) held that tax should have been deducted on the amount of provision and therefore, treated the Assessee as an ‘assessee in default’ u/s 201(1) of the Act.

- The order of the AO was upheld by the Commissioner of Income-tax (Appeals). On appeal by the Assessee before the ITAT, the ITAT held as follows:
  
  • Having regard to the scheme of tax deducted at source, under Chapter-XVII-B of the Act, the liability to deduct tax at source arises only when there is accrual of income in the hands of the payee.
  
  • The ITAT observed the Hon’ble Supreme Court (‘SC’) ruling in the case of GE India Technology Centre P. Ltd.4 wherein it was held that if payment was not assessable to tax then there is no question of tax being deducted.
  
  • The ITAT further held that no income had accrued in the hands of the payee considering the fact that the provisions made at year-end were reversed in the beginning of the next FY.
  
  • The ITAT also placed reliance on Hon’bleSC ruling in the case of Shoorji Vallabhdas & Co.5 wherein it was held that mere entries in the books of accounts does not establish the accrual of income in the hands of the payee.
  
  • Therefore, there was no liability in the hands of the Assessee to deduct tax merely on the provisions made at the year end. Hence, the Assessee cannot be treated as an ‘assessee in default’ under section 201(1) of the Act for not deducting tax at source.

- However, it pertinent to note that recently the Bangalore bench of ITAT in the case of IBM India Private Limited6 has held that an assessee is liable to deduct tax on provision for expenses created in the books of accounts.

3. Tested party should be selected with reference to the entity which has undertaken the transaction. Interest rate on borrowings should be market determined and currency in which loan is borrowed / repaid for determining the arm’s length price.

**Background**

The Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal), in the case of India Debt Management Pvt. Ltd.7 (the taxpayer), held that selection of tested party shall be done with reference to the entity which has undertaken the transaction. Further, the Tribunal held that the interest rate on borrowings should be market determined and should be applicable to the currency in which loan is borrowed/repaid, to be considered at arm’s length.

**Facts of the case**

- The taxpayer is a non-banking finance company (NBFC) registered in India and a subsidiary of Mauritius Debt Management Ltd., which holds 75 per cent of equity share capital of the taxpayer. The taxpayer is engaged in the business of identifying investment opportunities in financially distressed companies which otherwise have an inherently feasible business proposition and had a low credit rating of BBB(-). These investments were funded through intra-group “financing, wherein taxpayer raises money through debt instruments i.e. Compulsory Convertible Debentures (CCDs) from group companies.

- The CCDs issued by taxpayer falls under two categories, CCD issued prior to June 2007 with a fixed rate of interest at 7% and CCD issued after June 2007 with an annual resettable interest rate ranging from 9.75% to 14%. For the year under consideration, the average interest rate paid by taxpayer was 11.30%.

- In the Transfer Pricing Study report (TP study), in order to benchmark the Arm’s Length Price (ALP) of the interest rate on the CCDs, the taxpayer selected Comparable Uncontrolled Price (CUP) method as Most Appropriate Method (MAM). Since there was no internal CUP available, the taxpayer analysed the External Market Data.

- The taxpayer carried out a search for identifying comparable transactions from Thomson Reuters’ DealScan and Bloomberg databases. The said search has not yielded any comparable transactions for India region with INR denominated loans/bonds. The search was further expanded to include other geographical regions and currencies. Based on adjustments for

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4. GE India Technology Centre P. Ltd. vs. CIT [2010] 327 ITR 456 (SC)
5. CIT vs. Shoorji Vallabhdas & Co. [1962] 46 ITR 144 (SC)
6. IBM India Private Limited vs. ITO (ITA No. 749 to 752/Bang/2012 & 1588 to 1591/Bang/2012)
7. ITA No. 2115/Mum/2015
differences in comparables risk profiles, 14 comparable transactions were selected with arm’s length interest rate of 14.50% as against interest rate of 11.30% paid by the taxpayer.

• The taxpayer has also undertaken alternative analysis by conducting a corroborative search process using Bombay Stock Exchange (‘BSE’) data on INR denominated debts, taking into consideration the credit rating of the borrower and the time of issuance, two comparable transactions were identified and after making a tenor adjustment, the average margin of 15.01% was arrived.

• Further, in its TP study, in order to justify its interest payment of 11.30%, the rates quoted by various public sector banks on their websites, for loans taken from lenders in the Indian market, whereby the average rate offered to BBB rated entities or below with a loan amount of more than 10 crores was reflected at 14.96% as on May 2013. Since pre-dated data in the websites was not available, the taxpayer made a tenor adjustment and arrived at an average interest rate of 12.13%. Therefore, the taxpayer contended that its average interest rate of 11.30% is arm’s length.

• During the assessment proceedings, the Transfer Pricing Officer (TPO) rejected the entire methodology adopted by the taxpayer, on the ground that it did not point out anywhere in its TP study, whether it has taken the taxpayer or the AE as a ‘tested party’.

• As regards the reliance on data available from BSE site for identifying the comparable transactions which had issued debt instruments in INR, the TPO observed that, there were hardly any company which had a credit rating below ‘A’ and no data for two comparables identified by the taxpayer, were available on the website for FY 2009-10.

• Further, the TPO noted that if the taxpayer was treated as the tested party, then interest benchmarking should have been done by using LIBOR rate. Hence, the TPO held that ALP of interest should be 8.5% based on the RBI circular for External Commercial Borrowings (ECBs) of maturity of 5 years and data from newspapers.

• If AE was treated as the tested party, the TPO held that AE would have earned interest based on USD Corporate Bond Financial Year (FY) 2009-10 and made a TP Adjustment of INR48.53 crores after adopting arm’s length interest rate of 5.68%.

Taxpayer’s Contentions

• The taxpayer placed reliance on OECD guidelines as well as UN TP Manual and contended that the concept of ‘tested party’ will apply only when Cost Plus Method (CPM) or Resale Price Method (RPM) or Transactional Net Margin Method (TNMM) is applied. It also submitted that under the CUP method, only the transactions has to be seen and not who is the tested party.

• The taxpayer, relying on the decision of Delhi High Court in the case of Cotton Naturals India (P) Ltd9 argued that the benchmarking analysis of the TPO based on ECB rate and US Corporate bond rate is erroneous as such data had no nexus to India, especially when interest payment by an Indian borrower is on the basis of INR denominated debt and hence, the INR lending data to an Indian borrower having same or similar credit rating shall be considered.

• The taxpayer submitted that, without prejudice to its search on external databases, its benchmarking by analysing the BSE listed companies should be accepted.

• The taxpayer further filed a copy of the public issue of secured and non-secured debentures issued by Shriram Transport Finance Co. Ltd. and Tata Capital Ltd. in the year 2009, wherein for AA and AA+ credit rating, the range of average yield of interest was from 11 per cent to 12 per cent. Thus, the taxpayer contended that it being BBB (−), the average interest rate of 11.30 per cent is within the arm’s length range and hence, no TP adjustment shall be made.

Tax Department’s Contentions

• The tax department observed that there is a huge
difference of interest rate in the same financial year itself from 9.75 per cent to 14 per cent i.e. an increase of around 43 per cent in one year and contended that under TP analysis, one has to see whether in the third party situation such a huge increase and variation could have been justified or not.

- The tax department submitted that under the CUP method, strict comparability, and least adjustments are required and that the taxpayer’s benchmarking of the comparables based on 2013 year data cannot be accepted.

**Tribunal’s Ruling**

- The Tribunal stated that the foremost issue under consideration was the necessity to identify ‘tested part,’ while applying the CUP method.

- The Tribunal observed that although, Indian TP regulations do not lay down any specific procedure or guidelines for choice of ‘tested party’, however, OECD guidelines provide that, tested party should be the one to which TP method can be applied in most reliable manner and for which most reliable comparables can be found. Therefore, the Tribunal noted that the tested party ought to be the enterprise that offers the high degree of comparability and requires least amount of adjustment i.e. the one that has least complex functional analysis.

- The Tribunal observed that under CUP method, the price at which a controlled transaction is carried out shall be compared to the price obtained in a comparable uncontrolled transaction under similar conditions.

- The Tribunal noted that the transaction to be benchmarked was interest payment by the taxpayer to its AE i.e. transaction undertaken by the taxpayer and not vice-versa. It observed that if the transaction was undertaken by AE, then similar transaction by AE with the third party or independent similar transaction in the place of AE could have been analysed to arrive at an ALP.

- The Tribunal observed that there is no premise for the conclusion arrived by the TPO as well as by the DRP in holding that entire benchmarking analysis done by the taxpayer is vitiated, simply because the taxpayer has not identified the ‘tested party’.

- Regarding the benchmarking analysis done by the taxpayer, the Tribunal held as under:
  - The search based on external data using Thomson Reuters’ DealScan and Bloomberg Database is not correct as there was no INR denominated debt issuance available on such databases and in the absence of such data, the taxpayer made huge adjustments on account of country risk, currency risk and tenor risk.
  - The search undertaken for comparable debt issuances in BSE used data for the year 2013 with minor tenor adjustment in the absence of such data for FY 2009-10 to arrive at a mean rate of 15.01 per cent. The Tribunal held that if such a data were not available, then such a minor tenor adjustment for considering time period can be made to eliminate the material effect under CUP, if it has been made quite accurately taking into account the material factors relating to time of the transaction affecting the price, although a high degree of comparability is required under CUP method.

- As regards the 2 comparable transactions for the year 2009 wherein, for credit rating of AA or AA (+) Enterprises, the interest rate per annum is between 11...
per cent to 12 per cent for a tenor of 60 months, then in the case of the taxpayer with BBB (-) credit rating, 11.30 per cent interest paid to its AE is much within the arm’s length rate.

- Based on the above, the Tribunal held that 11.30 per cent interest rate is at ALP and thus, deleted the TP adjustment.

4. Turnover filter considered at 10 times; Comparables with RPTs up to 15 percent accepted; standard deduction of +/- 5 percent benefit under the erstwhile provisions of Income tax Act confirmed

**Background**

The Bangalore Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of McAfee Software (India) Pvt Ltd (the taxpayer) has ruled on the comparability parameters for selection of companies - functional similarity, Related Party Transactions (RPTs) upto 15 percent, turnover filter ranging from one-tenth of the taxpayer’s turnover and upto ten times as the upper limit. Further, the Tribunal also upheld the allowance of a standard deduction of +/- 5 percent.

**Facts of the case**

- The taxpayer, part of the McAfee Group, renders software development services to its Associated Enterprise (AE) McAfee Ireland Holdings Ltd. The taxpayer is remunerated on a cost plus 15 percent basis for the services rendered.
- During the Financial Year (FY) 2004-05, the taxpayer earned 15 percent margin on the total operating cost. The taxpayer selected Transactional Net Margin Method as the most appropriate method in its Transfer Pricing (TP) study and selected nine comparable companies to justify the arm’s length.
- The Transfer Pricing Officer (TPO) rejected the TP study, used various filters and selected 17 comparables with an unadjusted arithmetic mean of 26.59 percent and adjusted the arithmetic mean of 23.74 percent (working capital adjustment).
- Based on the above, the TPO arrived at a shortfall in profits and made an adjustment of INR 5.11 crore.
- On appeal by the taxpayer, the Commissioner of Income-tax (Appeals) [CIT (A)] partly allowed the appeal by excluding 10 comparables selected by the TPO by applying a zero percent RPT filter, and four more comparables for functional dissimilarity, resulting in a final selection of three comparables and computed an adjustment of INR 3.94 crore. Further, the CIT(A) also allowed a standard deduction of +/- 5 percent as provided in the proviso to Section 92C(2) of the Income-tax Act, 1961 (the Act).

**Taxpayer’s contentions**

- The taxpayer contented that companies who are functionally not similar, having an RPT of more than 15 percent and are high turnover cases require reconsideration.
- However, during the course of the proceedings, the taxpayer admitted that it will not contest the RPT and turnover filters issue and restricted the arguments to the comparability of companies based on functionality.
- Further, the taxpayer also contended that the amendments to the proviso to Section 92C(2) were applicable only for cases pending as on 1 October 2009. The order of the taxpayer was passed by the Assessing Officer (AO) prior to that date. Hence, the standard deduction of +/- 5 percent granted by the CIT(A) was correct.
- References were drawn from principles laid down in SAP Labs India Pvt Ltd. and Synopsis India P. Ltd.

**Revenue’s contentions**

- Revenue was mainly aggrieved on the RPT filter adopted by the CIT(A) at zero percent whereas the Co-ordinate Benches have been accepting it up to 15 percent and in some orders even up to 25 percent.
- Further, the Revenue also contended that the standard deduction of +/- 5 percent as provided under the proviso to Section 92C(2) is not permissible consequent to the amendment made to the proviso. Reliance was placed on the decision of the co-ordinate Bench in the case of Sunquest Information Systems (India) Private Limited.

**Tribunal’s ruling**

- The Bangalore Tribunal held that, as part of the Functions Assets Risks analysis, various filters are required to be adopted in selecting a company as a comparable.
- The Tribunal held that various filters were required to be adopted in selecting a company as a comparable.
as part of the FAR analysis. Drawing reference to the decision of the coordinate Bench in the case of Sunquest Information Systems (India) Private Limited which has followed the other decisions on the issue, the Tribunal held that companies having related party transactions up to 15 percent of total revenues could be considered as comparables.

- The Tribunal held that the turnover filter is adopted to avoid selection of high-end companies (big companies) with that of ‘minnows’ in a similar line of business. But the range of turnover cannot be fixed, as the facts differ from case to case. A high turnover company cannot be rejected merely because it exceeds the upper limit of turnover criteria applied by the taxpayer. In this regard, the Tribunal held that one has to consider the turnover of the taxpayer and the range of the upper limit at ten times as well as the lower limit at ten times i.e. one-tenth with a margin of variation.

- Drawing references from various judicial pronouncements, the Tribunal ruled on the comparability of companies selected by the TPO. The Tribunal directed to exclude the following companies on the ground that these companies were functionally dis-similar i.e. the companies were involved in sale of software licenses, provision of specialised embedded software development, holding intangibles, undertaking research & development activities, existence of extraordinary events like amalgamation etc., - Bodhtree Consulting Ltd., Exensys Software Solutions Ltd, Sankhya InfoTech Ltd., Four Soft Ltd., Thirdware Solution Ltd., Geometric Software Solutions Company Ltd., Tata Elxsi Ltd., Flextronics Software Systems Ltd., Infosys Technologies Ltd. Further the Tribunal directed to exclude Satyam Computer Services Ltd. as a comparable due to unreliability of its financial statements.

- However, the Tribunal directed to include Lanco Global Systems Ltd., Sasken Network Systems Ltd, R S Software (India) Ltd, Visualsoft Technologies Ltd., Sasken Communication Technologies Ltd., Igate Global Solutions Ltd and L&T InfoTech Ltd selected by the TPO, as the taxpayer did not press the issues on turnover filters applied.

- Placing reliance on the analysis undertaken by the Co-ordinate Bench in the case of SAP Labs India Pvt. Ltd. and drawing reference to the CBDT Circular 5/2010, the Tribunal held that the standard deduction permitted by the CIT (A) was in accordance with the provisions since the amendment to the proviso is applicable from Assessment Year (AY) 2009-10 onwards and hence the pre-amended proviso shall apply.

- The Tribunal additionally observed that the explanation brought in by the Finance Act, 2014 also specifies that the provisions of the second proviso shall also be applicable to all assessments or reassessment proceedings, pending before the AO as on the first day of October 2009. Considering that the present proceedings were concluded before that day, the Tribunal held that the second proviso did not apply, and granted the standard deduction of +/-5 percent.

12. DCITv. Synopsis India P. Ltd [IT(TP)A No 1107 & 1093/Bang/2011
Program on Examination Tips and Techniques held on 14.04.2016 at Hyderabad

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Valedictories

34th GMCS-1 Batch  
161st GMCS-1 Batch  
132nd GMCS-1 Batch  
133rd GMCS-1 Batch  
255th Orientation Batch  
285th Orientation Batch

277th Orientation Batch  
274th Orientation Batch  

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