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From the Desk of the Chairman

It is now time to bid Adieu. I have had the opportunity of communicating with you through this monthly E-Newsletter since last one year. I have enjoyed this monthly endeavour. I hope the members have found the effort worthwhile.

Notice for Special General Meeting for Bhavnagar Branch Managing Committee Election for year 2013-16 is issued. The same is sent today to the members of the branch by mail and courier. My tenure as the Chairman will end on handing over the baton to the coming chairman in next month. I am conscious that I have left unfinished agenda like branch premises, ITT Centre for Students etc. for the new managing committee team. I wish all the best to the incoming managing committee and pledge to provide my services as member of the branch in future as and when required.

Bhavnagar Branch takes opportunity to congratulate all those who have qualified as CAs in last exam and becoming part of this noble profession. I request the members to convey known fresher CA to provide their contact details to the branch.

Bhavnagar Branch arranged CPE Meeting on 17th Jan. 2013 on Service Tax. I express thanks to Mukesh Parikh, CA Philip Fernandes and CA Hardik Maniar, speakers, all from Ahmedabad, for their time and sharing experience and knowledge.

Before I sign off, I heartily thank my colleagues in managing committee viz. CA Manoj Ganatra, CA Mehul Vora, CA Rajesh Langalia, CA Piyush Doshi and CA Raju Baxi for guidance, support and co-operation during my tenure as Chairman. I also express my thanks to CPE Committee members CA Ashwin Patel and CA Kaushik Jagad and E News Letter Committee Members CA Tejas Andharia, CA Rajesh Langalia and CA Paresh Bhatt and all the members of the branch for their support and co-operation.

With warm regards,

CA Jayesh Mehta
(Chairman)
Bhavnagar Branch of WIRC of ICAI
SECTION-A : TAXATION UPDATES

(This is compilation of updates from various websites)

Income Tax: Time Limit Extended To File ITR-V Forms for A.Y. 2010-11, A.Y. 2011-12 and A.Y. 2012-13


In exercise of its powers under clause (ii) of Para 14 read with clause (7) of Para 4 of the 'Centralized Processing of Returns Scheme, 2011', issued vide CBDT Notification No. SO 16(E), dated 4-1-2012, the Director General of Income Tax (System) hereby extends the time limit for filing ITR-V forms relating to Income Tax Returns filed electronically (without digital signature Certificate) for A.Y. 2010-11 [Filed during F.Y. 2011-12] and for ITRs of A.Y. 2011-12 [filed on or after 1-4-2011] till 28th February, 2013. In respect of returns filed for A.Y. 2012-13 for which ITR-V forms are yet to be received at CPC and time of 120 days has also elapsed, time limit for filing of ITR-V is extended upto 31st March, 2013 or 120 days from the date of uploading of the electronic return data, whichever is later.

This direction is issued to mitigate the hardship and grievance of the tax payers who have been prevented by reasonable causes to file the ITR-V in time.

Section 143(1) Intimation also cannot be reopened under section 147 of Income Tax Act, 1961 without “fresh material”

CIT vs. Orient Craft Ltd (Delhi High Court)

The assessee filed a ROI in which it claimed s. 80HHC deduction of Rs. 13.35 crores. The AO accepted the ROI u/s 143(1). He thereafter reopened the assessment u/s 147 on the ground that the sale proceeds of the quota was wrongly considered as export turnover and that it was business profits and 90% thereof had to be reduced u/s 80HHC. The assessee challenged the reopening on the ground that as there was no “fresh material”, the AO had no jurisdiction to reopen the s. 143(1) Intimation. This was upheld by the Tribunal (order attached) by relying on Kelvinator of India 320 ITR 561 (SC). On appeal by the department to the High Court, it dismissed the appeal and held as under.

S. 147 permits an assessment to be reopened if there is “reason to believe”. It makes no distinction between an order u/s 143(3) or an Intimation u/s 143(1). Accordingly, it is not permissible to adopt different standards while interpreting the words “reason to believe” vis-à-vis s. 143(1) and s. 143(3). The department’s argument that the same rigorous standards which are applicable in the interpretation of the
expression when it is applied to the reopening of a s. 143(3) assessment cannot apply to a s. 143(1) Intimation is not acceptable because it would place an assessee whose return is processed u/s 143(1) in a more vulnerable position than an assessee in whose case there is a full-fledged s. scrutiny assessment u/s 143(3). Whether the return is put to scrutiny or is accepted without demur is not a matter which is within the control of assessee. An interpretation which makes a distinction between the meaning and content of the expression “reason to believe” between a case where a s. 143(3) assessment is made and one where an Intimation u/s 143(1) is made may lead to unintended mischief, be discriminatory & lead to absurd results. In Kelvinator 320 ITR 561 (SC) it was held that the term “reason to believe” means that there is “tangible material” and not merely a “change of opinion” and this principle will apply even to s. 143(1) Intimations. On facts, the AO reached the belief that there was escapement of income “on going through the ROI” filed by the assessee. This is nothing but a review of the earlier proceedings and an abuse of power by the AO. There is no whisper in the reasons recorded of any tangible material which came to the possession of the AO subsequent to the issue of the Intimation. It reflects an arbitrary exercise of the powerconferred u/s 147 (Rajesh Jhaveri Stock Brokers 291 ITR 500 (SC) distinguished).

Section 271(1)(c) of Income Tax Act, 1961: No penalty if income was not offered to tax due to “bona fide mistake”

CIT vs. Sania Mirza (Andhra Pradesh High Court)

The assessee, a renowned professional international tennis player, received an award of Rs. 30 lakhs. This was disclosed in the statement of affairs filed with the ROI though not offered to tax. The AO accepted the ROI u/s 143(1). He later reopened the assessment u/s 147 at which stage the assessee offered the said amount to tax. The AO & CIT levied penalty u/s 271(1)(c) on the ground that the assessee had furnished inaccurate particulars of her income and concealed her income. However, the Tribunal cancelled the penalty on the ground that a “bona fide mistake” had been made on her behalf by her Advocate/Chartered Accountant and there was no concealment of income nor a furnishing of inaccurate particulars. On appeal by the department to the High Court, it dismissed the appeal and held as under.

There is nothing to suggest that the assessee acted in a manner such as to lead to the conclusion that she had concealed the particulars of her income or had furnished inaccurate particulars of income. As the amount of Rs.30,63,310 was shown by her in the return, it cannot be said that there was any concealment. As the amount was correctly mentioned, there is also nothing inaccurate in the particulars furnished by her. The only error that seems to have been committed was that it was not shown as a capital (sic) receipt. But as soon as this was pointed out, the error was accepted and the amount was surrendered to tax. This is not a fit case for imposition of penalty.

Section 271(1)(c) of Income Tax Act, 1961: Penalty proceedings can be stayed to await decision on quantum appeal so as to avoid multiplicity of proceedings & harassment to assessee

GE India Industrial Pvt. Ltd vs. CIT(A) (ITAT Ahmedabad)

In dealing with the assessee’s appeal, the CIT(A) enhanced the assessment by making a disallowance of Rs. 7.53 crores towards bad debts and an upward transfer pricing adjustment of Rs. 5.50 crores. The CIT(A)
also initiated s. 271(1)(c) proceedings for concealment of income. The assessee filed an appeal to challenge the CIT(A)’s order and also filed a stay application seeking to restrain him from proceeding with the section 271(1)(c) penalty proceedings. HELD by the Tribunal in dealing with the stay application:

U/s 275(1)(a), the AO cannot pass an order imposing penalty u/s 271(1)(c) if the relevant assessment is subject matter of appeal before the CIT(A). The same analogy will apply where the CIT(A) initiates penalty and the first appeal is pending before the Tribunal. Accordingly, the assessee’s request that the penalty proceedings should be stayed till the disposal of appeal by the Tribunal is not unreasonable. If the CIT(A) is allowed to proceed with the penalty proceedings, prejudice will be caused to the assessee as it will have to face multiplicity of proceedings. In case the assessee succeeds in the quantum appeal, the penalty order passed by the CIT(A) will have no legs to stand while if the assessee fails in the quantum appeal, the CIT(A) will get ample time of six months to dispose of the penalty proceedings. Therefore, to prevent multiplicity of proceedings and harassment to the assessee, the CIT(A) is directed to keep the penalty proceedings in abeyance till the disposal of quantum appeal by the Tribunal (CIT vs. Wander (Bom) referred).

Payment by post-dated cheque relates back to date of handing over of cheque

CIT vs. Raunaq Education Foundation (Supreme Court)

In the year ended 31.3.2002, the assessee, a charitable trust eligible for exemption u/s 11, received a post-dated cheque dated 22.4.2012 from Apollo Tyres Ltd for which it issued a receipt. The AO held that the post-dated cheque had been accepted by the assessee to do undue favour to Apollo Tyres, whose directors were trustees of the assessee and that there was a violation of s. 13(2)(d)(h), and that s. 11 exemption had to be denied. This was reversed by the Tribunal and the High Court on the ground that as the post dated cheque was given before 31.3.2002 and was duly honoured in April, 2002 when it was presented before the bank, the date of payment of the cheque should be treated as the date on which the cheque was received by the assessee. On appeal by the department to the Supreme Court, it dismissed the appeal and held as under.

Though the assessee trust issued a receipt in March 2002 when it received the cheque dated 22.4.2002, it was clearly stated in its record that the amount of donation was receivable in future and it was shown as donation receivable in the balance sheet as on 31.3.2002. Also Apollo Tyres Ltd did not avail any advantage of the said donation during the FY 2001-2002. When a post-dated cheque is issued, it will have to be presumed that the amount was paid on the date on which the cheque was given to the assessee and, therefore, it cannot be said that any undue favour was done by the assessee to Apollo Tyres Ltd. A cheque, unless dishonoured, is payment (Ogale Glass Works 25 ITR 529 (SC) followed).

Section 54EC of Income Tax Act, 1961: Limit of Rs. 50 Lakhs does not apply to the transaction but to the financial year. Cheque has to be issued within 6 months. Encashment of Cheque & Allottment of Bonds beyond 6 months is not relevant.

Vivek Jairazbhoy vs. DCIT (ITAT Bangalore)
In AY 2008-09, the assessee sold land on 14.12.2007 and computed capital gains of Rs. 1.57 crores. He invested Rs.50 lakhs on 3.3.2008 (FY 2007-08) in REC Bonds and Rs. 50 lakhs on 4.6.2008 (FY 2008-09) in NHAI Bonds and claimed a deduction of Rs. 1 crore u/s 54EC. The NHAI Bonds were allotted on 30.6.2008. The AO & CIT(A) restricted the assessee’s claim to Rs. 50 lakhs on the ground that (i) the Proviso to s. 54EC imposed a ceiling of Rs. 50 lakhs for the investment and (ii) the allotment of the NHAI Bonds was made beyond 6 months of the date of transfer. On appeal by the assessee, it allowed the appeal and held as under:

(i) In Aspi Ginwala (ITAT Ahmedabad) it was held that the Proviso to s. 54EC merely restricted the investment that can be made in one FY to Rs. 50 Lkhs but it did not restrict the exemption to Rs.50 lakhs. However, a contrary view was taken in Raj Kumar Jain & Sons (ITAT Jaipur) that the exemption u/s 54EC had to be restricted to Rs.50 lakhs. However, Circular no.3/2008 dated 12.3.2008 issued by the CBDT makes it clear that the Proviso only intended to restrict the investment in a particular financial year and did not intend to restrict the maximum amount of exemption permissible u/s 54EC. The fact that the Proviso uses the words “in a financial year” fortifies this interpretation. Accordingly, it has to be held that the assessee is entitled to total deduction of Rs. 1 crores in respect of the investment of Rs. 50 lakhs made in each financial year;

(ii) The cheque was issued to NHAI before the expiry of 6 months from the date of transfer. The fact that the allotment of the Bonds was made after 6 months is irrelevant. A payment by cheque which is encashed subsequently relates back to the date of receipt of the cheque. The date of payment is the date of delivery of the cheque and not the date of its encashment (Kumarpal Amrutlal Doshi (ITAT Mumbai) followed).

**Reassessment Notice u/s. 148 of Income Tax Act, 1961 issued by a non-jurisdictional AO is not valid**

INDORAMA SOFTWARE SOLUTION LTD. VS. ITO [ ITAT MUMBAI]

Section 148 mandates issue of notice before assessment, reassessment or computation u/s 147. As per section 148, it is mandatory that the assessing officer shall serve on the assessee a notice required him to furnish a return. The expression “assessing officer” used in the section 148 means ‘the assessing officer vested with the jurisdiction over the assessee as stipulated in the definition u/s 2(7a) by virtue of the directions / orders passed u/s 120, sub-section (1) & (2)’. Thus, the notice u/s 148 is required to be issued by the assessing officer who is vested with the jurisdiction over the assessee on the basis of the criteria of territorial area, a person or classes of persons, income or classes of incomes and cases or classes of cases as enumerated in sub-section 3 of section 120 of income tax act. It is not the case of the revenue that the assessing officer who has issued the notice u/s 148 was vested with the jurisdiction by virtue of any direction or orders issued under sub-section (1) or (2) of section 120 of the income tax act. Thus, there is no dispute about the jurisdiction vested with the assessing officer – ITO, ward-9(2)-1 over the assessee when the notice u/s 148 was issued by the ITO, ward-10(3)-4. When it is apparent that the notice u/s 148 was issued by the AO who was not vested with the jurisdiction over the assessee then, the same is patiently illegal and void. Consequently, the reassessment proceedings and order in pursuant to the illegal notice u/s 148 are also void ab initio and liable to be set aside. Hence, we hold that the reassessment on the basis of an illegal notice u/s 148 is not sustainable and accordingly the same is set aside.
Centralised Processing of Statements of Tax Deducted at Source

Scheme, 2013

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 outstanding tax demand can be done u/s 245 of the Act only after issuing prior intimation to the taxpayer. An appeal can also be filed against the actions of the CPC.


In exercise of the powers conferred by sub-section (2) of section 200A of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following scheme for centralised processing of statements of tax deducted at source, namely:-

Short title and commencement

1. (1) This scheme may be called the Centralised Processing of Statements of Tax Deducted at Source Scheme, 2013.

(2) It shall come into force on the date of its publication in the Official Gazette.

Definitions

2. (1) In this scheme, unless the context otherwise requires,-

(a) "Act" means the Income-tax Act, 1961 (43 of 1961);

(b) "Assessing Officer" means the Assessing Officer who is ordered or directed under section 120 of the Act to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under Chapter XVII of the Act;

(c) "authorised agency" means the person authorised by the Director General to receive the statement of tax deducted at source or correction statement of tax deducted at source;

(d) "Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(e) "Cell" means the Centralised Processing Cell having jurisdiction over such statements of tax deducted at source as may be specified by the Board;

(f) "Commissioner" means the Commissioner of Income-tax in charge of the Centralised Processing Cell;

(g) "correction statement of tax deducted at source" means the statement furnished for rectifying any mistake or to add, delete or update the information furnished in the statement of tax deducted at source furnished under sub-section (3) of section 200 of the Act;

(h) "deductor" means a person deducting tax in accordance with the provisions of Chapter XVII of the Act;
(i) "Director General" means the Director General of Income-tax (Systems) appointed as such under sub-section (1) of section 117 of the Act;

(j) "portal" means the web portal of the authorised agency or the web portal of the Cell, as the case may be;

(k) "statement of tax deducted at source" means statement of tax deducted at source furnished under sub-section (3) of section 200 of the Act.

(2) The words and expressions used herein but not defined and defined in the Act shall have the meaning respectively assigned to them in the Act.

Centralised Processing Cell

3. The Board may set up as many Centralised Processing Cells as it may deem necessary and specify their respective jurisdictions.

Furnishing of correction statement of tax deducted at source

4. (1) A deductor shall furnish the correction statement of tax deducted at source in the form specified by the Director General-

(a) at the authorised agency through electronic mode; or

(b) online through the portal.

(2) The correction statement referred to in sub-paragraph (1) shall be furnished under digital signature or verified through a process in accordance with the procedure, formats, and standards specified by the Director General.

Processing of statements

5. (1) The Cell shall process the statement of tax deducted at source furnished by a deductor in the manner specified under sub-section (1) of section 200A of the Act after taking into account the information contained in the correction statement of tax deducted at source, if any, furnished by the deductor before the date of processing.

(2) The Commissioner may-

(a) adopt appropriate procedure for processing of the statement of tax deducted at source; or

(b) decide the order of priority for processing of the statement of tax deducted at source based on administrative requirements.

Rectification of mistake

6. (1) An Income-tax authority of the Cell may, with a view to rectifying any mistake apparent from the record under section 154 of the Act, on its own motion or on receiving an application from the deductor, amend any order or intimation passed or sent by it under the Act.

(2) An application for rectification shall be furnished in the form and manner specified by the Director General.
(3) Where a rectification has the effect of reducing the refund or increasing the liability of the deductor, an intimation to this effect shall be sent to the deductor electronically by the Cell and the reply of the deductor shall be furnished in the form and manner specified by the Director General.

(4) Where an amendment has the effect of reducing a refund already made or increasing the liability of the deductor, the order under section 154 of the Act passed by an Income-tax authority of the Cell shall be deemed to be a notice of demand under section 156 of the Act.

Adjustment against outstanding tax demand

7. Where a refund arises from the processing of a statement under this scheme, the provisions of section 245 of the Act shall, so far as may be, apply.

Appeal

8. (1) Where a statement of tax deducted at source is processed at the Cell, the appeal proceedings relating to the processing of the statement shall lie with the Commissioner of Income-tax (Appeals) having jurisdiction over the Assessing Officer who has jurisdiction over the deductor and any reference to Commissioner of Income-tax (Appeals) in any communication from the Cell shall mean such jurisdictional Commissioner of Income-tax (Appeals).

(2) The Assessing Officer who has jurisdiction over the deductor shall submit the remand report and any other report to be furnished before the Commissioner of Income-tax (Appeals) and an order, if any, giving effect to appellate order shall be passed by such Assessing Officer.

No personal appearance at the Cell

9. (1) No person shall be required to appear personally or through authorised representative before the authorities at the Cell in connection with any proceedings.

(2) The Cell may call for such clarification, evidence or document as may be required for the purposes of the processing of statement of tax deducted at source or for the purposes of the rectification of any order or intimation passed or sent by the Cell under the provisions of the Act.

(3) The deductor shall furnish the reply to any communication under sub-paragraph (2) in such format as may be specified by the Director General.

Service of notice or communication

10. (1) The service of a notice or order or intimation or any other communication by the Cell may be made by delivering or transmitting a copy thereof to the deductor,-

(a) by electronic mail; or

(b) by placing such copy in the registered electronic account of the deductor on the portal of the Cell; or (c) by any mode mentioned in sub-section (1) of section 282 of the Act.

(2) The date of posting of any communication under sub-paragraph (1) in the electronic mail or electronic account of the deductor in the portal of the Cell shall be deemed to be the date of service of such communication.

(3) The intimation, orders and notices shall be computer generated and need not carry physical signature of the person issuing it.
Power to specify procedure and processes

11. The Director General may specify procedures and processes, from time to time, for effective functioning of the Cell in an automated and mechanised environment, including specifying the procedure, formats, standards and processes in respect of the following matters, namely:

(a) form of correction statement of tax deducted at source;
(b) the manner of verification of correction statement of tax deducted at source;
(c) receipt of correction statement of tax deducted at source;
(d) form of rectification application;
(e) the manner of verification of rectification application;
(f) receipt and processing of rectification applications in the Cell;
(g) the mode and format of the acknowledgement to be issued by the Cell for the receipt of any document;
(h) the mode of authentication of any document or information submitted to the Cell, including authentication by digital signature or electronic signature;
(i) validation of any software used for electronic filing of correction statement of tax deducted at source or rectification application;
(j) provision of web portal facility including login facility, tracking status of correction statement of tax deducted at source or statement of tax deducted at source, display of relevant details of tax deduction or refunds to the taxpayer or deductor, as the case may be, and facility of download of relevant information;
(k) call centre to answer queries and provide taxpayer services, including outbound calls to a deductor requesting for clarification to facilitate the processing of the statement of tax deducted at source filed;
(l) provision of grievance redressal mechanism in the Cell;
(m) managing tax administration functions such as receipt, scanning, data entry, processing, storage and retrieval of statement of tax deducted at source and documents in a centralised manner or receipt of paper documents through authorised intermediaries.

Section 50C of Income Tax Act, 1961: This section does not apply to transfer of immovable property held through company.

Irfan Abdul Kader Fazlani vs. ACIT (ITAT Mumbai)

The assessee held shares in a company called Kamala Mansion Pvt. Ltd. The company owned flats in a building known as Om Vikas Apartments, Walkeshwar Road, Mumbai. The shares were sold by the assessee for Rs. 37.51 lakhs and capital gains were offered on that basis. The AO & CIT(A) held that by the sale of shares in the company, the assessee had effectively transferred the immovable property belonging to the assessee and that it was an indirect way of transferring the immovable properties being the flats in the building. He accordingly ‘pierced the
corporate veil’, invoked s. 50C and computed the capital gains by adopting the stamp duty value of the flats. On appeal by the assessee to the Tribunal, appeal is allowed and Tribunal held as under.

S. 50C applies only to the transfer of a “capital asset, being land or building or both”, “assessed” by any authority of a State Government for stamp duty purposes. The expression “transfer” has to be a direct transfer as defined u/s 2(47) which does not include the tax planning adopted by the assessee. S. 50C is a deeming provisions and has to be interpreted strictly in accordance with the spirit of the provision. On facts, the subject matter of transfer is shares in a company and not land or building or both. The assessee did not have full ownership on the flats which are owned by the company. The transfer of shares was never a part of the assessment of the Stamp duty Authorities of the State Government. Also, the company was deriving income which was taxable under the head ‘income from property’ for more than a decade. Consequently, the action of the AO & CIT(A) to invoke s. 50C to the tax planning adopted by the assessee is not proper and does not have the sanction of the provisions of the Act.

**Section 50C of Income Tax Act, 1961: It does not apply to transfer of FSI & TDR**

ITO vs. Prem Rattan Gupta (ITAT Mumbai)

The assessee owned a plot of land admeasuring 2244.18 sq. mts of which 2110 sq. mts was acquired by the Municipality for development purposes. The assessee was entitled to receive TDR/ FSI in lieu of the land acquired. The assessee sold the development rights to the said property for Rs. 20 lakhs and computed capital gains on that basis. However, for purposes of stamp duty, the property was valued at Rs. 1.19 crores. The AO held that the value of the property as adopted by the stamp duty authorities had to be taken as the consideration u/s 50C for purposes of capital gains. This was reversed by the CIT(A). On appeal by the department to the Tribunal, it held as under.

S. 50C applies only to the transfer of “land or building” and not to the transfer of all “immovable property”. Accordingly, though FSI and TDR is “immovable property” as held in Chedda Housing Development vs. Babijan Shekh Farid 2007 (3) MLJ 402 (Bom), it is not “land or building” and so cannot be the subject matter of s. 50C. The property acquired for development (in lieu of which the FSI/TDR was granted) also cannot be considered even though the property continues to stand in the assessee’s name in the property records. The property should be valued by the DVO net of the land transferred to the Developer by the assessee after considering the acquisition made by the Govt & the Municipal Corporation and also excluding the value of TDR or additional FSI included in the consideration shown in the Development Agreement.

**Show Cause Notice issued after death of the proprietor is not valid**

CCE, Chandigarh vs. Shree Ambica Steel Industries [CESTAT, New Delhi]

Late Smt. Bimla Rani was the proprietor of the respondent firm M/s Shree Ambica Steel Industries. She died on 17.9.2006 and after her death the legal heir applied for cancellation of Excise registration in the name of the firm and the registration was admittedly cancelled by the Department in October, 2006. It is well settled that a sole proprietorship concerned has no legal entity independent of its proprietor. Thus it is obvious that the death of late Smt. Bimla Rani of the respondent company ceased to exist. That being the case, the relevant show cause notice dated 2.4.2009 issued to M/s Shree Ambica Steel Industries, Mandi Gobindgarh is bad in law as it was issued against any non-existent firm. This circumstance in itself is sufficient to dismiss the appeal filed by the Department.
Standard text books sold are eligible for Service Tax exemption, and not the study materials provided as a part of service.

Soni Classes vs. CCE [CESTAT, New Delhi]

Notification No. 12/2003-ST dated 20-6-2003 excludes the value of the goods and materials sold by the service provider to the recipient of service, from the value of the taxable services. The said exclusion is subject to the condition that there is documentary proof specifically indicating the value of the said goods and materials. Board’s Circular No. 59/8/2003-ST dated 20-6-2003 clarifies that the exemption to that extent would be available only in cases where the sale of such goods is evidenced and the sale value is quantified and shown separately in the invoices. It is also clarified that in case of commercial training and coaching institute, the exclusion shall apply only to the sale value of standard textbooks, which are priced and any study material or written text provided by such institute as a part of the service which does not satisfy the above criteria will be subjected to service tax.

Providing study materials, test papers etc. is a part of coaching services and is required to be included in the value. It is only the extra textbooks or extra materials which is admittedly being sold to the students and is also available for sale to outsiders and students or procured from the outside and sold to the candidates, which will not form part of the taxable coaching services.

Service tax is not payable on Electricity charges, because it is not part of ‘renting of immovable property’ service

Econ Hinjewadi Infrastructure (P.) Ltd. vs. CCE [CESTAT, Mumbai]

The applicant has contended before the adjudicating authority that supply of electricity is supply of ‘goods’ and the same is exempted as per Notification no. 12/2003-ST wherein it has been clarified that supply of goods shall not form part of taxable service.

Recovery procedure against confirmed demand orders – CBEC amends the existing procedures

CBEC has amended the procedure of initiation of recovery proceedings against a confirmed demand in the following manner:

1. Where NO appeal is filed with Commissioner (Appeals)/ CESTAT

Recovery to be initiated after the expiry of period for filing appeal i.e. 60 days / 90 days.

2. Where an appeal is filed with Commissioner (Appeals)/ CESTAT, WITHOUT a stay application

Recovery to be initiated after filing of such appeal, without waiting for the statutory period of filing an appeal to be exhausted.

3. Where an appeal is filed WITH a stay application with Commissioner (Appeals)/ CESTAT

Recovery to be initiated 30 days after the filing of appeal, if no stay is granted, otherwise as per the conditions of the stay order.
Further, apart from above, recovery proceedings will be initiated IMMEDIATELY in the following cases:

- Where Commissioners (Appeals) confirms demand in the order in original
- Tribunal or High Court confirms the demand, with no stay in operation.

These guidelines have been issued on the basis of the decision of Hon’ble Supreme Court in the case of Collector of Customs, Bombay Vs Krishna Sales (P) Ltd [1994 (73) E.L.T 519 (S.C)]

Consequential amendments have been made on the above subject in CBEC’s Excise Manual of Supplementary Instructions and following circulars issued on the above subject have been rescinded with immediate effect:

<table>
<thead>
<tr>
<th>S.No.</th>
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<td>3-8-94</td>
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<td>7.</td>
<td>25-2-2004</td>
<td>788/21/04 and 208/41/03</td>
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</table>

Stay by Andhra Pradesh High Court

It may be noted that recently, Andhra Pradesh High Court has granted an interim stay against this Circular in the WPMP No. 873 of 2013 in WP No. 730 of 2013 on 09.01.2013.

**CESTAT Appeals and Stay Applications to be listed according to chronological age.**

Circular [F. No. 01(32)/R(Judl.)/CESTAT/2012] dated 21-12-2012

The Hon’ble Vice President, CESTAT has ordered as under :-

1. Henceforth appeals and stay applications are to be listed in the cause list chronologically age-wise.

2. Assistant Registrars of the concern Benches will ensure that at least 20 stay applications and 15 regular matters are listed in cause list chronologically.

3. Appeal remanded by Hon’ble Supreme Court and the High Court should be listed on the top of the cause list chronologically.

4. Where out of turn hearing has been granted in any Bench in respect of any appeal the said appeal be listed in the cause list accordingly following chronological order unless the Bench has directed the same to be placed on top of the list.

5. The Bunch appeals involving same issue will be treated as one case.
Clarification on Payment of Service Tax on rent payable by Central/State Government Departments.

Trade Notice No. 47/ST/2012, dated 31-10-2012

It is to bring to the notice of all trade associations and stakeholders that Clarification has been sought whether Service Tax is payable on rent paid by them to various building owners who has given the buildings on rent to Govt. Departments for office purpose.

2. In this connection it is clarified that w.e.f. 1-7-2012, Service Tax is payable by landlords/property owners on rent received by them for buildings given on rent to such organizations like State Govt./Central Govt. Offices, even though the said organizations are non-commercial organizations. This clarification is based on legal provisions that Section 66D of the Finance Act, 1994 (Negative List) as well as Notification 25/2012-Service Tax, dated 20-6-2012, do not provide any exemption for such activities. Hence Service Tax is payable on rent paid by Central Govt./State Govt./Local Authorities for office buildings taken by them on rent.

3. All the trade associations are requested to give wide publicity to the contents of this Trade Notice amongst their member & constitutes.

**TDS is applicable u/s. 194C & Not U/s. 194I on Warehousing charges paid to C & F agents.**

CIT vs. Hindustan Lever Ltd. [HC, Delih]

CIT(Appeals) and the ITAT had the benefit of examining the entire documentary evidence which consisted of the various lease deeds and the c & f agents agreements. The conclusions drawn by these authorities on the basis of such scrutiny are concurrent. Even otherwise, if the revenue was of the opinion that any consideration paid to the c & f agent comprised of some elements such as rent, such a conclusion ought to have been supported by facts. What is discernable from the materials on record is that the assessee had rented premises from their landlords. Payments of rent were made after deducting the tax in terms of Section 194-I. What the assessee paid to the c & f agents as warehousing charges was the consideration in terms of the agreement which was tax deductible under Section 194C at 2.2%. In this factual background it was for the revenue to have established how Section 194-I could be attracted to the amounts or charges paid to the c & f agents in terms of the agreements.

**An Order of attachment u/s. 226(3) is not justified if Assessing Officer passes unspeaking order u/s. 220(6)**

Lalit Wadhwa vs. CIT [HC, Punjab and Haryana]

Under Section 220(6) of the Act, where an appeal was pending against the assessment order, the assessee was not to be treated as an assessee in default in respect of the amount in dispute in appeal, in the discretion of the Assessing Officer on such conditions as he may think fit to impose. The Assessing Officer is, thus, required to pass a reasoned speaking order. The order passed by respondent cannot be termed to be a speaking order in consonance with the requirements of Section 220(6) of the Act and the sole consideration which weighed with respondent was that the amount had not been paid and how to recover the same. In view of non-compliance of requirements of Section 220(6) of the Act of passing a speaking order, the order is quashed. Respondent is given liberty to pass a
fresh speaking order in accordance with law within 15 days from the date of receipt of certified copy of this order after affording proper opportunity of hearing to the parties.

**Section 292BB of Income Tax Act, 1961 does not have retrospective effect**

CIT vs. Salman Khan (Bombay High Court)

The AO issued a notice u/s 148 to make a reassessment. However, as a notice u/s 143(2) was not issued, the Tribunal quashed the reassessment. The Department filed an appeal before the High Court where it relied on s. 292BB (which provides that the failure to issue notice cannot be objected to if the assessee has appeared in the proceeding), inserted by the Finance Act 2008 w.e.f. 1.4.2008 and argued that the said provision was retrospective in operation and the reassessment was valid. HELD by the High Court dismissing the appeal:

The issue of a notice u/s 143(2) is mandatory. The failure to do so renders the reassessment void (J.M.Scindia 300 ITR 193 (Bom) followed). S. 292BB was inserted w.e.f. 1.4.2008 and came into operation prospectively for AY 1999-2000 and onwards.

**Section 153C of Income Tax Act, 1961: Failure to obtain JCIT's approval renders the assessment order invalid**

CIT vs. Akil Gulamali Somji (Bombay High Court)

Pursuant to search & seizure action u/s 132 on the premises of a third party, certain documents belonging to the assessee were found and seized pursuant to which a notice u/s 153C was issued to the assessee and assessment u/s 153C r.w.s. 144 were framed. In passing the assessment orders, the AO (ITO) omitted to obtain the consent of the JCIT as mandated by s. 153D. Before the Tribunal, the assessee argued that the failure to obtain the JCIT’s consent rendered the assessment a nullity. The Tribunal (137 ITD 94) upheld the plea on the basis that as the heading to s. 153D refers to a “prior approval” and uses negative wording and the word “shall”, compliance of s. 153D is mandatory and cannot be waived by the assessee. Reliance was also placed on Clause 9 of the Manual of Office Procedure which makes it clear that an assessment order under Chapter XIV-B can be passed only with the previous approval of the JCIT and that the approval must be in writing and stated to have been obtained in the body of the assessment order. On appeal by the Department to the High Court, it dismissed the appeal and held as under.

Though the question raised proceeds on the basis that approval of the JCIT was given as he had corrected the draft assessment order and the changes were incorporated by the AO in the final assessment order, the finding of fact was recorded by the Tribunal is that no prior approval of the Joint Commissioner was taken before the ITO passed the order. In view of the above, there is no reason to entertain the proposed question and the appeal is dismissed.

**Section 54F of Income Tax Act, 1961: Deduction is available even on portion of investment made in wife’s name**

CIT vs. Shri Mamal Wahal (Delhi, HC)

The new residential property was acquired in the joint names of the assessee and his wife. The income tax authorities restricted the deduction under Section 54F to 50% on the footing that the deduction was not available on the portion of the investment which stands in the name of the assessee’s wife. This view was disapproved by this Court. It noted
that the entire purchase consideration was paid only by the assessee and not a single penny was contributed by the assessee’s wife. It also noted that a purposive construction is to be preferred as against a literal construction, more so when even applying the literal construction, there is nothing in the section to show that the house should be purchased in the name of the assessee only. As a matter of fact, Section 54F in terms does not require that the new residential property shall be purchased in the name of the assessee; it merely says that the assessee should have purchased/constructed “a residential house”.

**Salary to wife cannot be allowed for mere possession of knowledge if the same is not been applied**

Yashwant Chhajta vs. DCIT [HC, Himachal Pradesh]

In the instant case, as noticed hereinaabove, the assessee’s wife though was in possession of technical qualification but the assessee was required to prove conclusively that his wife Smt. Nanda Chhajta was in fact looking after plans for execution work and was taking administrative decisions. The assessee cannot be given benefit merely on the ground that the deduction has been allowed to the assessment years 2001-2002 and 2002-2003. The order passed by the Income Tax Appellate Tribunal is reasoned and the proviso to section 64(1)(ii) have been correctly appreciated.

**CPC directive regarding processing of returns for AY 2012-13 with refund claims**

The CPC has issued a letter dated 30.01.2013 pointing out that there are 28,444 returns filed for AY 2012-13 where the refund is in excess of Rs. 10 lakhs which are pending processing. The CPC has directed the AO’s to check within 21 days whether any demand is outstanding in these cases and stated that in case no response is received, the e-returns shall be processed (and refund granted)

**Delhi Chartered Accountants Society won the case regarding CBEC Circulars for liability to pay higher service tax rate on services rendered/ invoice raised before 01.04.2012 but payment received thereafter.**

Delhi Chartered Accountants Society vs. UOI (Delhi High Court)

Rule 2(e) of the Point of Taxation Rules, 2011 inserted w.e.f. 01.04.2011 defined “point of taxation” as the point in time when a service shall be deemed to have been provided. Consequent to the insertion of s. 66B, the rate of service tax was enhanced from 10% to 12% w.e.f. 01.04.2012. The High Court had to consider what would be the rate of tax where (a) the service is provided by the chartered accountants prior to 01.04.2012 (b) the invoice is issued by the CAs prior to 01.04.2012 but (c) the payment is received after 01.04.2012. On facts, as the services were rendered before 01.04.2012 and even the invoices were raised before that date and it was only that the payment was received after the said date, the Petitioner claimed that Rule 4(a)(ii) of the Point of Taxation Rules, 2011 applies and the point of taxation shall be the date of issuance of the invoice. However, the service tax authorities issued Circular No.154 dated 28.03.2012 and Circular No.158 dated 08.05.2012 that in respect of invoices issued on or before 31st March 2012 the point of taxation shall be the date of payment. The Petitioner filed a Writ Petition to challenge the said Circulars. High Court held as under.
Rule 4 of the Point of Taxation Rules, 2011 which has continued even after 01.04.2012 is clearly the answer. It provides for a specific situation namely determination of the point of taxation in case of change in effective rate of tax. As per Rule 4, whenever there is a change in the effective rate of tax in respect of a service, the point of taxation shall be determined in the manner set out in the Rule. Sub-clause (ii) of Clause (a) of Rule 4 provides that where the taxable service has been provided before 01.04.2012 and the invoice was also issued before 01.04.2012, but the payment is received after 01.04.2012, then the date of issuance of invoice shall be deemed to be the date on which the service was rendered and, consequently, the point of taxation. The result is that where the services of the chartered accountants were actually rendered before 01.04.2012 and the invoices were also issued before that date, but the payment was received after the said date, the rate of tax will be 10% and not 12%. The circulars in question have not taken note of this aspect, and have proceeded on the erroneous assumption that the old Rule 7 continued to govern the case notwithstanding the introduction of the new Rule 7 which does not provide for the contingency that has arisen in the present case. Consequently, the circulars are quashed as being contrary to the Finance Act, 1994 and the Point of Taxation Rules, 2011. A Circular which is contrary to the Act and the Rules cannot be enforced (Ratan Melting & Wire Industries followed)

SECTION - B: OTHER UPDATES

Filing under XBRL mode: date Extended

General Circular number 01/2013 dated 15.01.2013

Time limit to file financial statements in XBRL mode (for the financial year commencing on or after 01.04.2011) without any additional fee has been extended upto15th February’ 2013 or within 30 days of AGM of the company, whichever is later

Extension in time limit for filling Cost Compliance Report in XBRL Mode up to 28/02/2013

General Circular No. 2/2013 [52/17/CAB-2011], dated 31-1-2013

In continuation of MCA’s GeneralCircular Nos. 8/2012, dated 10-5-2012 [as amended on June 29, 2012],18/2012, dated 26-7-2012 and 43/2012, dated 26-12-2012, it has been decided that all cost auditors and the companies concerned are allowed to file their Cost Audit Reports and Compliance Reports for the year 2011-12 [including the overdue reports relating to any previous year(s)] with the Central Government in the XBRL mode, without any penalty, within 180 days from the close of the company’s financial year to which the report relates or by February 28, 2013, whichever is later. The institute is requested to circulate this for the information of all concerned.

Import Duty on Gold & Platinum Raised to 6 Percent Government

Appeals to the people to moderate their Demand for Gold

The Government has proposed to provide a link between the Gold ETF (Exchange Traded Fund) and the Gold Deposit Scheme. The objective is to unfreeze or release a part of the gold physically held by mutual funds under Gold ETFs and enable them to deposit the gold with banks under the Gold Deposit Scheme. The advantage will be that a part of the gold lying in stock will be brought into circulation and will partially
meet the requirements of the gems and jewellery trade. It is hoped that, consequently, there will be a moderation in the quantity of gold that is imported into the country. This was announced by Shri Arvind Mayaram, Secretary, Ministry of Finance, Government of India, in New Delhi today.

Apart from Gold ETFs, the changes proposed to the Gold Deposit Scheme will make it attractive for individuals to deposit their idle gold with the banks under the Gold Deposit Scheme. The minimum quantity of gold that may be deposited will be reduced and the minimum tenure of deposit will be reduced to six months (from the present stipulation of three years). Banks have been advised to notify the changes in the Gold Deposit Scheme.

Government has consulted SEBI and RBI. The notification of the Gold Deposit Scheme will be modified by the Ministry of Finance. RBI will modify its guidelines reflecting these changes. SEBI will issue a circular enabling Gold ETFs to deposit part of the physical stock of gold held by them with banks under the Gold Deposit Scheme.

Government also appealed to the people to moderate their demand for gold. Gold imports in 2011-12 amounted to USD 56.5 Billion and, in the current fiscal year up to December, 2012, gold imports are estimated at USD 38 Billion.

In addition to providing a link between the Gold ETF and the Gold Deposit Scheme, Government has also decided to increase the import duty on gold and platinum from 4 per cent to 6 per cent with immediate effect. Consequential changes in additional customs duty and excise duty will be carried out in the notifications dealing with the import duty/excise duty on gold dore bars, gold ores and refined gold. The duties will be reviewed after some time if there is a moderation in the quantity of gold that is imported into the country.

Currently, there are two gold related schemes, namely, the Gold Exchange Traded Fund (Gold ETF) and the Gold Deposit Scheme, that are intended to channelize gold holdings into institutional channels. The Gold ETF is provided by mutual funds. Units are sold to subscribers through ‘authorized participants’ and are traded on the exchange. The units are backed by physical gold held by the mutual fund. Money collected under any Gold ETF shall be invested by the mutual fund primarily (a minimum of 90 per cent) in gold or gold related instruments notified by SEBI.

The Gold Deposit Scheme is offered by a number of banks. Banks accept gold deposited by clients. The gold is on-lent by the banks to the gems and jewellery trade. At the end of the deposit period, the depositor is entitled to a return of physical gold or its equivalent in cash at the current market price of gold.

**RBI reduces CRR to 4 per cent (25 basis point reduction)**

RBI/2012-13/401
Ref: DBOD.No.Ret. BC.76/12.01.001/2012-13
January 29, 2013
All Scheduled Commercial Banks
& Local Area Banks
(Excluding Regional Rural Banks)
Maintenance of Cash Reserve Ratio (CRR)

Please refer to Circular DBOD.No.Ret.BC.52/12.01.001/2012-13 dated October 30, 2012 on the captioned subject.

As set out in the Reserve Bank’s Press Release 2012-2013/1267 dated January 29, 2013, it has been decided to reduce the Cash Reserve Ratio (CRR) of Scheduled Commercial Banks by 25 basis points from 4.25 per cent to 4.00 per cent of their Net Demand and Time Liabilities (NDTL) with effect from the fortnight beginning February 09, 2013. The Local Area Banks shall also maintain CRR at 3.00 per cent of its net demand and time liabilities upto February 08, 2013 and 4.00 per cent of its net demand and time liabilities from the fortnight beginning from February 09, 2013.
### SECTION - C: STATUTORY DEADLINES

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<td>GAR-7 Challan</td>
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<td>22-Feb</td>
<td>Gujarat Value Added Tax Act</td>
<td>Challan</td>
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Secured Data Transfer over the Internet

When you use internet banking, have you noticed in address bar the “http://” gets converted into “https://” and “lock” icon appears there?

Actually, it is the mostly used communications protocol for the secure communication over a computer network and its full form is Hypertext Transfer Protocol Secure (HTTPS). In other words, it provides encryption based security to the data being transferred over the internet by use of SSL/TLS protocols.

SSL stands for Secure Sockets Layer and TLS stands for Transport Layer Security. These are the internet protocols which encrypt the data being transferred over the internet and thus provide a security against eavesdropping over the net.

Mechanism for such secured communication (handshaking procedure):

1. Your browser introduces itself to the secure server (e.g., server of your bank).
2. That server responds by sending back a message with the certificate included therein.
3. Your browser tells the secure server to prove its identity.
4. The secure server proves it’s identity by creating a message for your browser, generating a “fingerprint” of that message, and encrypting the “fingerprint” with the private key that is matched to the public key in the certificate. The browser, then decrypts the “fingerprint” generated by the server using the public key provided in the certificate.
5. Now, the browser is sure that the server is what it says it is. So, browser can send it secret messages encrypted with the public key provided in the certificate. The server (and only that server) can decrypt these messages, because only it has the private key corresponding to the public key used to encrypt the message.
6. At this point what generally happens is that the browser generates a session key using a completely different encryption algorithm. And a new session key is generated for every connection. So, many times we are advised by our banking company’s website that after log out, please close the browser and reopen it for new session.

[Disclaimer: The information given here on the above mentioned topic is only the explanation of the technical procedure in layman language and the author is in no way responsible for its use at any place without obtaining prior written consent of author]
Some very Short bouncers...

1. I am free of all prejudices. I hate everyone equally.

2. Sometimes I need what only you can provide: your absence.

3. War doesn't determine who's right. War determines who's left.

4. A bus station is where a bus stops. A train station is where train stops. On my desk, I have a work station... What more can I say?

5. Can you do anything that other people can't? Sure, I can read my handwriting.

I Adore My Profession
I Salute My Institute
I Respect My Council
I am proud to be a Chartered Accountant