KSCAA NEWS BULLETIN

Vol. 3 • Issue 5 • ₹ 25/- • January 2016

English Monthly
for Private Circulation only

SAMVIT
Journey towards Professional Excellence

28th KSCAA Annual Conference

on Saturday & Sunday
5th & 6th March 2016
Jnana Jyothi Convention Centre
Central College Campus, Bengaluru

Workshop on APPLICABILITY OF ICDS FOR CO-OPERATIVE SOCIETIES AND OTHER ENTITIES on Saturday, 30.01.2016 CPE 2 Hrs.

Happy Republic Day

President's Communique

Dear Professional Colleagues,

New is the year, new are the hopes, new is the resolution, new are the spirits, and new are my warm wishes just for you. Have a promising and fulfilling New Year. Leave behind the demons of the past and look forward to a brand new start in 2016.

At the outset, congratulations to all the newly elected members to the Central and Regional Councils of ICAI for the term 2016-19 and we look forward to closely work with the elected representatives from Karnataka – CA. Madhukar N. Hiregange at the Central Council and CA. Cotha S. Srinivas, CA. Babu K. Thevar and CA. S. Panna Raj at the Regional Council.

Association had filed a Writ Petition before the Honorable High Court of Karnataka challenging the inclusion of Cost Accountants in Co-operative Audits in the month of January 2015. The Honorable Court passed an interim order on 11th December 2015 restraining the empanelment of Cost Accountants and Cost Accountant firms to do the work of auditing of Co-operative Societies as it is contrary to the provisions of the Chartered Accountants Act, 1949. Copy of the interim order is published in the News Bulletin elsewhere for reference. I, on behalf of the Association, sincerely thank all the members for supporting us morally and financially in this journey thus far and a special thanks to our Past Presidents CA. Allama Prabhu and CA. Raveendra S. Kore for their unstinting support in this regard. However, this battle is half won. We are informed by our Advocates that the Karnataka State Cost Accountants Association have filed their objections by impleading before the Honorable Court and are aggressively pushing for vacation of the interim order. The Office Bearers of the Association are working closely with the Advocates and are untiringly organizing facts and documents to support this legal battle. I would once again reassure our members that the Association is ready for any battle and would leave no stone unturned until the battle is fully won. I take this opportunity to once again request the members to generously contribute towards the legal fund and support in its constant endeavor to protect the interests of our profession.

Members attention is invited to communication No. WSU/WSU/9(1)2013/Settlement/35631 dated 8th January 2016 of Employees' Provident Fund Organization removing grace period of 5 days in regard to payment of contributions and administrative charges by the employers. Now, the employers are required to pay the contributions and administrative charges by 15th of following month. Members are requested to educate their clients and trade accordingly.

The Elections for the Managing Committee of the Bangalore Branch of SIRC of ICAI is scheduled to be held on Saturday 13th February 2016. We earnestly request all the members of Bengaluru to exercise their franchise and elect a right candidate who can contribute towards development of this noble profession.

Association is holding its 28th Annual Conference on 5th & 6th of March, 2016. It is a mega event for the Association, hence we request all the members to block their calendar and actively participate in this knowledge sharing and networking exercise. We earnestly request all Branches of ICAI and all District Associations of Karnataka State, not to hold any events on these dates and support this Annual Conference. The Conference details are published elsewhere in the News Bulletin. The Unique Selling Point (USP) of this Conference are (1) Open House – Question & Answer Session on Practical Issues in Income Tax where the elite panel of Income Tax Experts will address the members' queries at length (2) Tax Clinic exclusively for mofussil members – a one on one interactive session with elite panel of Income Tax Experts for query resolution. I earnestly request all the members to make use of this wonderful opportunity. You may write in your queries to samvit.kscaa@gmail.com or by post to Association and it should reach us by 25th February 2016. I sincerely request all the members to participate in this flagship conference in large numbers and make this event a grand success.

We celebrate our Republic Day with great pomp and show on the 26th of January every year. This day is of a great importance in the history of our freedom struggle. On this day in 1930, we took a pledge on the banks of river Ravi at Lahore that we will struggle for the achievement of complete independence (Poorna Swarajya) of India. We became independent on 15th August 1947. We chose 26th January 1950 as our Republic Day and our new Constitution came into force from this day. India was declared to be a Sovereign, Socialistic, Secular and Democratic Republic. It means the people of our country govern themselves. We have no king and are free of external domination.

"The difference between what we do and what we are capable of doing would suffice to solve most of the world's problems!"

Happy Republic Day & Happy Makara Sankranti to all our members.

In service of the Profession,

CA. Dileep Kumar T M
President

Congratulations to the Winners of Council Elections from Karnataka

Central Council

CA. Madhukar N. Hiregange

Regional Council

CA. Cotha S. Srinivas

CA. Babu K. Thevar

CA. S. Panna Raj

Co-opted EC Member
for the year 2015-16

CA Anant Nyamannavar

KSCAA
News Bulletin
January 2016
Vol. 3 Issue 5
No. of Pages : 20

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KSCAA welcomes articles & views from members for publication in the news bulletin / website.

email: kscaablr@gmail.com

Website: www.kscaa.co.in

BASAVANAGUDI CPE STUDY CIRCLE
has arranged a

CPE workshop on

APPLICABILITY OF ICDS FOR CO-OPERATIVE SOCIETIES AND OTHER ENTITIES

Venue : KSCAA –PREMISES,
7/8, 2nd Floor, Soukath Building, SJP Road,
Bengaluru – 560002

Date : Saturday, 30.01.2016.

Time : 4.30 PM to 6.45 PM

CPE Credit 2 Hrs.

Speaker : CA. SHIVAKUMAR H
CA. PRASHANTH KUMAR N

Followed by Interactive Session.

Reg. Fee: Nil

Note: *Registration is restricted to first 50 members.*

For Registration : send confirmation mail basavanagudicpe@gmail.com

Contact Persons:

CA Dileep Kumar - 98453 30800
CA Maddanaswamy - 93412 14962
CA Raghavendra T N - 98801 87870

Delegates can send their Queries by e-mail.

CA Course Awareness Program

Karnataka State Chartered Accountants Association, Bengaluru

Joint with

Bagalkot District Chartered Accountants Association, Bagalkot

Basaveshwar Arts and Commerce Independent P. U. College, Vidyagiri, Bagalkot

PRESIDENT:
Shri Ashok Sajjan
Chairman, College Committee B.V.V.S Bagalkot

SPEAKERS
CA. D R Venkatesh, *Bengaluru* **CA. Nithin M**, *Bengaluru*

PRESENT
CA. S G Hegde, *Bagalkot*

Date	*Time*	*Venue*
23-01-2016	**09.00 AM**	**College Auditorium**

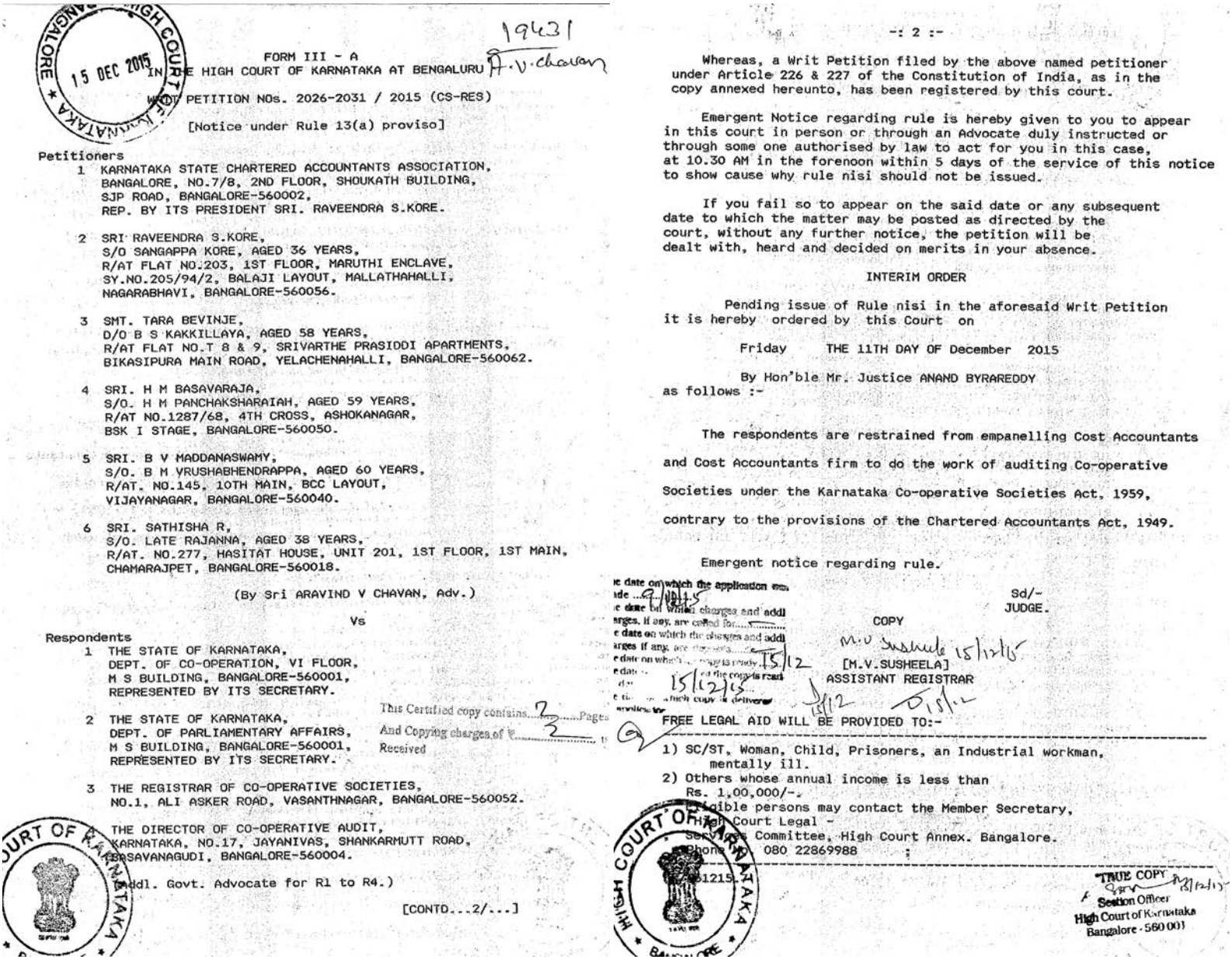
M C Jigajinni
Principal

CA (Smt.) Seema S Mannur
President, BDCAA, Bagalkot

CA. Dileepkumar T M
President, KSCAA, Bengaluru

CA. K S Jigajinni
Chairman, Mofussil Programme Committee, KSCAA, Bengaluru

Interim Order of the Honorable Karnataka High Court



19431 A.V.Chavan

FORM III - A

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

WRIT PETITION NOs. 2026-2031 / 2015 (CS-RES)

[Notice under Rule 13(a) proviso]

Petitioners

1 KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION, BANGALORE, NO.7/8, 2ND FLOOR, SHOUKATH BUILDING, SJP ROAD, BANGALORE-560002, REP. BY ITS PRESIDENT SRI. RAVEENDRA S.KORE.

2 SRI RAVEENDRA S.KORE, S/O SANGAPPA KORE, AGED 36 YEARS, R/AT FLAT NO.203, 1ST FLOOR, MARUTHI ENCLAVE, SY.NO.205/94/2, BALAJI LAYOUT, MALLATHAHALLI, NAGARABHAVI, BANGALORE-560056.

3 SMT. TARA BEVINJE, D/O B S KAKKILLAYA, AGED 58 YEARS, R/AT FLAT NO.T 8 & 9, SRIVARTHE PRASIDDI APARTMENTS, BIKASIPURA MAIN ROAD, YELACHENAHALLI, BANGALORE-560062.

4 SRI. H M BASAVARAJA, S/O. H M PANCHAKSHARAIAH, AGED 59 YEARS, R/AT NO.1287/68, 4TH CROSS, ASHOKANAGAR, BSK I STAGE, BANGALORE-560050.

5 SRI. B V MADDANASWAMY, S/O. B M VRUSHABHENDRAPPA, AGED 60 YEARS, R/AT. NO.145, 10TH MAIN, BCC LAYOUT, VIJAYANAGAR, BANGALORE-560040.

6 SRI. SATHISHA R, S/O. LATE RAJANNA, AGED 38 YEARS, R/AT. NO.277, HASITAT HOUSE, UNIT 201, 1ST FLOOR, 1ST MAIN, CHAMARAJPET, BANGALORE-560018.

(By Sri ARAVIND V CHAVAN, Adv.)

Vs

Respondents

1 THE STATE OF KARNATAKA, DEPT. OF CO-OPERATION, VI FLOOR, M S BUILDING, BANGALORE-560001, REPRESENTED BY ITS SECRETARY.

2 THE STATE OF KARNATAKA, DEPT. OF PARLIAMENTARY AFFAIRS, M S BUILDING, BANGALORE-560001, REPRESENTED BY ITS SECRETARY.

3 THE REGISTRAR OF CO-OPERATIVE SOCIETIES, NO.1, ALI ASKER ROAD, VASANTHNAGAR, BANGALORE-560052.

4 THE DIRECTOR OF CO-OPERATIVE AUDIT, KARNATAKA, NO.17, JAYANIVAS, SHANKARMUTT ROAD, BASAVANAGUDI, BANGALORE-560004.

(Addl. Govt. Advocate for R1 to R4.)

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Received

[CONTD...2/...]

-: 2 :-

Whereas, a Writ Petition filed by the above named petitioner under Article 226 & 227 of the Constitution of India, as in the copy annexed hereunto, has been registered by this court.

Emergent Notice regarding rule is hereby given to you to appear in this court in person or through an Advocate duly instructed or through some one authorised by law to act for you in this case, at 10.30 AM in the forenoon within 5 days of the service of this notice to show cause why rule nisi should not be issued.

If you fail so to appear on the said date or any subsequent date to which the matter may be posted as directed by the court, without any further notice, the petition will be dealt with, heard and decided on merits in your absence.

INTERIM ORDER

Pending issue of Rule nisi in the aforesaid Writ Petition it is hereby ordered by this Court on

Friday THE 11TH DAY OF December 2015

By Hon'ble Mr. Justice ANAND BYRAREDDY as follows :-

The respondents are restrained from empanelling Cost Accountants and Cost Accountants firm to do the work of auditing Co-operative Societies under the Karnataka Co-operative Societies Act, 1959, contrary to the provisions of the Chartered Accountants Act, 1949.

Emergent notice regarding rule.

Sd/-
JUDGE.

COPY

[M.V.SUSHEELA]
ASSISTANT REGISTRAR

FREE LEGAL AID WILL BE PROVIDED TO:-

1) SC/ST, Woman, Child, Prisoners, an Industrial workman, mentally ill.
2) Others whose annual income is less than Rs. 1,00,000/-.

Eligible persons may contact the Member Secretary, High Court Legal Services Committee, High Court Annex, Bangalore. Phone No: 080 22869988

TRUE COPY
Section Officer
High Court of Karnataka
Bangalore - 560 001

Request for KSCAA Legal Fund

KSCAA requests the members to generously contribute towards the legal fund and support in its constant endeavour to protect the interests of our profession.

Kindly issue Cheque / DD in favour of "KSCAA" payable at Bengaluru.

ICDS - Borrowing Costs

CA S. Krishnaswamy

The provisions by ICDS are subject to the provisions contained in the income tax act. In respect of the borrowing cost (Interest) the Act makes specific provision.

1) ICDS - Borrowing Costs

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of account.

In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Definitions

The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:

(a) "borrowing costs" are interest and other costs incurred by a person in connection with the borrowing of funds and include:

(i) commitment charges on borrowings;

(ii) amortized amount of discounts or premiums relating to borrowings;

(iii) amortized amount of ancillary costs incurred in connection with the arrangement of borrowings;

(iv) finance charges in respect of assets acquired under finance leases or under other similar arrangements.

(b) "qualifying asset" means:

(i) land, building, machinery, plant or furniture, being tangible assets;

(ii) know-how, patents, copyrights, trade-marks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets;

(iii) inventories that require a period of twelve months or more to bring them to a saleable condition.

(2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meaning assigned to them in the Act.

2) Ind AS 23

Core principle

1. Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset form part of the cost of that asset. Other borrowing costs are recognised as an expense.

Definitions

1. This Standard uses the following terms with the meanings specified: *Borrowing costs* are interest and other costs that an entity incurs in connection with the borrowing of funds. A *qualifying asset* is an asset that necessarily takes a substantial period of time to get ready for its intended use or sale.

Borrowing costs may include:

(a) interest expense calculated using the effective interest method as described in Ind AS 39 *Financial Instruments: Recognition and Measurement*;

(b) References to matters contained in other Indian Accounting Standards (Ind ASs)

(c) References to matters contained in other Indian Accounting Standards (Ind ASs)

(d) finance charges in respect of finance leases recognised in accordance with *Leases*; and

(e) exchange differences arising from foreign currency borrowings to the extent that they are regarded as an adjustment to interest costs.

Recognition

An entity shall capitalise borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset as part of the cost of that asset. An entity shall recognise other borrowing costs as an expense in the period in which it incurs them.

3) Comparison Between ICDS, AS 16, Ind AS 23

Particulars	ICDS	AS 16	Ind AS 23
Definition of borrowing costs	Interest and others costs. Specifically includes commitment charges, amortised amount of discounts, premium & anciliary costs & finance charges under finance lease	Interest and other costs incurred by an enterprise in connection with borrowing	No such provison
Definition of Qualifying Asset	Means Tangible fixed asset, intangible assets & inventories requiring 12 months or more to bring in saleable condition	Asset that necessarily takes a substantial period of time to get ready for its intended use or sale	No such provision
Borrowing cost eligible for capitalization	Specific borrowing – Capitalise actual cost General borrowing – Use formula Ax(B/C) A= General borrowing cost incurred except specific borrowing B= (i) Average cost of qualifying asset on first and last day of BS (ii) Not appearing in both BS, 50% of cost of qualifying asset (iii) Appearing in first day BS only, average of cost of qualifying asset as on first day of BS and date put to use or completion C= Average of total assets on first day and last day of PY, excluding assets directly funded.	Specific borrowings – Actual borrowing cost General borrowing – use capitalization rate for recognizing borrowing cost eligible for capitalisation	No such provision
Commencement of capitalisation	Specific borrowing – date on which funds were borrowed General borrowing – the date on which funds are utilised	No such provision	No such provision
Cessation of capitalization (in case of asset or part of asset)	In case of tangible fixed asset and intangible asset when first put to use In case of inventory when substantial activities necessary to prepare such inventory for its intended sale are complete	No such provision	No such provision
Disclosure	• Accounting policy • Amount of borrowing cost capitalized during PY	No such provision	No such provision

4) Differences Between Ind AS and AS 16

(i) Ind AS 23 does not require an entity to apply this standard to borrowing costs directly attributable to the acquisition, construction or production of a qualifying asset measured at fair value, for example, a biological asset whereas the existing AS 16 does not provide for such scope relaxation.

(ii) Ind AS 23 excludes the application of this Standard to borrowing costs directly attributable to the acquisition, construction or production of inventories that are manufactured, or otherwise produced, in large quantities on a repetitive basis whereas existing AS 16 does not provide for such scope relaxation and is applicable to borrowing costs related to all inventories that require substantial period of time to bring them in saleable condition.

(iii) As per existing AS 16, Borrowing Costs, inter alia, include the following:

(a) interest and commitment charges on bank borrowings and other short term and long term borrowings;

(b) amortisation of discounts or premiums relating to borrowings;

(c) amortisation of ancillary costs incurred in connection with the arrangement of borrowings;

Ind AS 23 requires to calculate the interest expense using the effective interest rate method as described in Ind AS 39 Financial Instruments: Recognition and Measurement. Items (b) and (c) above have been deleted, as some of these components of borrowing costs are considered as the components of interest expense calculated using the effective interest rate method.

(iv) Existing AS 16 gives explanation for meaning of 'substantial period of time' appearing in the definition of the term 'qualifying asset'. This explanation is not included in the Ind AS 23.

(v) Ind AS 23 provides that when the Standard on Financial Reporting in Hyperinflationary Economies is applied, part of the borrowing costs that compensates for inflation should be expensed as required by that Standard (and not

capitalised in respect of qualifying assets). The existing AS 16 does not contain a similar clarification because at present, in India, there is no Standard on Financial Reporting in Hyperinflationary Economies.

(vi) Ind AS 23 specifically provides that in some circumstances, it is appropriate to include all borrowings of the parent and its subsidiaries when computing a weighted average of the borrowing costs while in other circumstances, it is appropriate for each subsidiary to use a weighted average of the borrowing costs applicable to its own borrowings. This specific provision is not there in the existing AS 16.

(vii) Ind AS 23 requires disclosure of capitalisation rate used to determine the amount of borrowing costs eligible for capitalisation. The existing AS 16 does not have this disclosure requirement.

5) Income Act

Amount Deductable From Total Income

Section 36 (iii) : The amount of the interest paid in respect of capital borrowed for the purpose of the business or profession:

[Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.]

Explanation.- Recurring subscriptions paid periodically by shareholders, or subscribers in Mutual Benefit Societies which fulfill such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

Sec 43 (1) Explanation 8. Capitalization of Interest ceases after asset is put to use

For the removal of doubts, It is hereby declared that where any amount is paid or is payable as interest in connection with the acquisition of an asset, so much of such amount as is relatable to any period after such asset is first put to use shall not be included , and shall be deemed never to have been included , in the actual cost of such asset.

6) Case Laws :

S. 36(1)(iii) : Deductions - Interest on borrowed capital - Expansion of business

Assessee manufacturing cement, set up factory at about 25 yards from its earlier factory to enhance its production capacity , it being a case of expansion of business and not a case of setting up a new business , interest paid by it on borrowed capital was allowable as revenue deduction under section 36(1)(iii). (A.Y. 1993-94)

Dy. CIT v. Mangalam Cement Ltd. (2005) 92 ITD 44 /92 TTJ 0001 (TM) (Jp.) (tirb)

S. 36(1)(iii) : Deductions - Interest on borrowed capital - Debentures - Investment in shares - Cost of acquisition

Assessee firm earned interest on debentures as also profit on sale of shares , since assessee was able to establish nexus between interest bearing borrowed funds and investments in debentures on which interest had been earned by the assessee, to that extent interest should be allowed against said income ; as regards shares, if assessee was able to establish direct nexus between interest bearing borrowed funds and investments in shares, which had been sold during year, said interest should be added to cost of acquisition. (A.Y. 2001-02)

Hemroj Canji v. ITO (2005) 2 SOT 689 (Mum.) (Trib.)

S. 36(1)(iii) : Deductions - Interest on borrowed capital - Existing business

Interest paid on funds borrowed for purchase of Machinery, to be used for business in existence was held to allowable though the interest was capitalized in the books and partly in W.I.P (A.Y. 1994-95)

ITC Ltd. v. Dy. CIT (2003) 86 ITD 135 / 80 TTJ 15 (TM) (Kol.) (Trib.)

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KSCAA WELCOMES NEW MEMBERS - JANUARY 2016

	Name	*Place*
1	Subhash S.B.	Bengaluru
2	Taarakesh Sunku	Bengaluru
3	Mahadev C Malagan	Bengaluru
4	Aravind Patil	Bengaluru

Distribution of Service Tax Credits – Few Issues

CA Madhukar N Hiregange and **CA Mahadev.R**

Manufacturers or service providers operating from multiple locations may often find it difficult to avail the Cenvat credit on inputs, input services and capital goods which are commonly or otherwise used in multiple locations. In case of input services received, the invoices would mostly be addressed to the head office and bifurcation of the credits for distribution to each location would be tricky. In order to address this issue, the concept of Input service distributor (ISD) had been introduced in the Cenvat Credit Rules 2004. The credit distribution mechanism has undergone few changes in recent years, possibly with an intention to simplify the process. However, still few issues which are discussed in this article needs to be addressed by the Revenue.

ISD has been defined in Rule 2(m) of Cenvat Credit Rules 2004 as an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under Rule 4A of the Service Tax Rules 1994 towards purchase of input services and issues invoice / bill / challan for the purposes of distributing the credit of service tax paid on said services to such manufacturer or producer or provider. The main objective of ISD is to receive the input service invoices and distribute the credits to eligible branches / units as the services would have been commonly or exclusively utilised by such branches.

The service provider has the option of even distributing the credit of excise duty availed on inputs to other units in addition to option of distributing the input service credits.

Methodology to distribute the credits

As per Rule 7, the distribution of credit is subject to following conditions:

1. Credit distributed should not exceed the amount of service tax paid.
2. Credit of service tax attributable to service used by *"one or more units exclusively engaged in the manufacture of exempted goods or providing exempted services"* shall not be distributed.
3. Credit of service tax attributable to service used *"wholly by a unit"* shall be distributed only to that unit
4. Credit of service tax attributable to service used *"by more than one unit"* shall be distributed *pro rata* on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period.

Considering the methodology of distributing the credits, now we would discuss few issues which need to addressed in the ISD concept.

Time limit for availing the credit

The provider of output service or manufacturer is allowed to avail the Cenvat credit in respect of inputs and input services within 1 year from the date of documents as specified in Rule 9(1) of Cenvat credit Rules 2004. The bill / challan issued by the ISD is also specified in Rule 9(1). Now the issue is whether the time limit of one year is applicable for ISD as well. If yes, whether the unit / branch to which credit is transferred needs to avail it within one year from ISD bill or from original bill based on which credit is transferred? From literal reading of the provisions, it appears that the time limit is applicable only from ISD bill / challans. However, the board needs to issue clarification in this regard.

Credit distribution issues

Circular no. 178/4/2014-ST dated 11.07.2014 has been issued by the board confirming that input service pertaining to more than one unit shall be distributed pro-rata irrespective of whether such common input services were used in all the units or in some of the units. Even though the method of ascertaining the eligible credit seems to be simple, there is every possibility that the assessee would end up losing eligible credit. This could be understood by following example:

Particulars during relevant period	Branch A	Branch B	Branch C
Turnover of taxable services	4,00,000/-	6,00,000/-	Nil
Turnover of exempted services	Nil	Nil	3,00,000/-
Total turnover	**4,00,000/-**	**6,00,000/-**	**3,00,000/-**
Credit commonly used in **Branch A** and **B** – Rs.25,000/-			
Credit to be distributed pro-rata	7,692	11,538	5,770

In the above example, credit of Rs.25,000/- needs to be distributed to all the branches based on their respective turnover even though the input service is used only at Branch A and B. The denominator for pro-rata distribution would be total turnover of Rs.13,00,000/- including turnover of exempted services. As a result of this method, the assessee would be required to distribute credit of Rs.5,770/- to Branch C even though no part of the service is utilised towards exempted services. However, credit cannot be utilised as there is only exempted services provided from Branch C.

As a result of the amendment and the clarification issued through the circular, the assessee end up losing eligible credits which otherwise would have been fully eligible. It is interesting to note that even the department could be at the losing end due to this amendment in the manner of distribution sometimes. Let us consider the following example:

Particulars during relevant period	Branch A	Branch B	Branch C
Turnover of taxable services	4,00,000/-	6,00,000/-	Nil
Turnover of exempted services	Nil	Nil	20,00,000/-
Total turnover	**4,00,000/-**	**6,00,000/-**	**20,00,000/-**
Credit commonly used in **Branch B** and **C** – Rs.25,000/-			
Credit to be distributed pro-rata	3,333/-	5,000/-	16,666/-

In this example, the eligible credit for the assessee would be Rs.8,333/- as the credit distribution needs to be to all the branches. The ineligible credit would be Rs.16,666/-. If turnover of only B and C is considered for distribution, then the ineligible credit would be [20,00,000 / 26,00,000] * 25,000 = 19,231/-.

Filing half yearly return by ISD

ISD is required to submit half yearly return as per Rule 9 (10) of Cenvat Credit Rules 2004 [CCR] in Form ST-3 giving details of credit received and distributed within 30 days from end of relevant half year. For example, for the half year October 2015 to March 2016, the due date is April 30, 2016. Rule 9 (11) of CCR provides for revision of such return within 60 days from date of filing return. However, as per the Service Tax Rules 1994 [STR], the service provider who could also be a ISD needs to file the ST-3 return within 25 days from end of half year and has option of revising the return in 90 days from filing the return.

The provisions of STR and CCR with respect to filing of ST-3 return are conflicting which needs to addressed.

Conclusion: The better way for the board is to restore the earlier Rule wherein the credit was distributed considering turnover of only respective units or branches (for nominator as well as denominator) where the input services are used instead of considering all units. This would ensure that both revenue and assessee do not lose any tax or eligible credit which is rightly eligible for them.

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madhukar@hiregange.com and *mahadev@hiregange*

Recent Decisions of the High Courts on Income Tax

CA K.S. Satish, *Mysore*

CHARITABLE TRUST

In DIT & Anr. v. Envisions (2015) 378 ITR 483 (Kar) where the assessee, a charitable trust, filed Form No. 10 with the Assessing Officer claiming accumulation of income under section 11(2) for three purposes which were covered by some of the objects mentioned in the trust deed, the Karnataka High Court ruled that merely because more than one purpose had been specified in Form No. 10 and details of how such amount was proposed to be spent in future had not been given, the benefit of section 11(2) could not be denied to the assessee-trust.

SECTION 14A

The Delhi High Court has in Cheminvest Ltd. v. CIT (2015) 378 ITR 33 (Del) taken the view that disallowance under section 14A cannot be made in the year in which no exempt income had been earned or received.

NOT BUSINESS LOSS

In M.S. Ramaswamy v. ITO (2015) 378 ITR 513 (Mad) where the facts were that the assessee, a manufacturer of handloom silk, desiring to commence a new business of distribution of LPG cylinders paid Rs. 9 lakhs to a company for getting distributorship of LPG, the distributorship business did not start and the assessee on learning that there was no possibility of recovering the deposit amount claimed it as a loss to be set off against his income from handloom silk business, the Madras High Court opined that the deposit made for the purpose of entering into the new business could not be regarded as an expenditure in the course of carrying on the existing business, that the said deposit could not be treated as revenue in nature and that the loss thereof was not allowable as a business loss.

SECTION 41(1)

The amount of principal waived by the financial institutions cannot be taxed under section 41(1) as it had neither been debited to the profit & loss account nor had been claimed as a deduction from the taxable income in the earlier years held the Delhi High Court in CIT v. Pasupati Spinning Weaving Mills Ltd. (2015) 378 ITR 80 (Del).

SECTION 43B

In CIT v. Rathi Graphics Technologies Ltd. (2015) 378 ITR 107 (Del) where the creditor agreed to convert a portion of the interest outstanding into shares, the Delhi High Court expressed the view that the said amount of interest for which conversion is taking place is no longer a liability and that such conversion should be taken to be actual payment of interest within the meaning of section 43B.

METHOD OF ACCOUNTING

The Madras High Court in CIT v. Shriram Investments Ltd. (2015) 378 ITR 533 (Mad) where the assessee-company engaged in the business of hire purchase financing and leasing accounted for additional finance charges receivable from the customers who did not pay the monthly instalments as per the terms of the lease agreements on accrual basis in the books of account maintained for the purposes of the Companies Act, 1956 but accounted for it on cash basis for purposes of income tax, observed that there is no prohibition under the Income Tax Act, 1961 for an assessee to maintain one set of accounts for the purpose of income tax and another set for the purpose of compliance with other Acts namely, the Companies Act, 1956 or the Central Excise Act, 1944 and held that the additional finance charges was taxable in the hands of the assessee on cash receipt basis and not accrual basis.

REVENUE EXPENDITURE

Stamp duty and registration fees paid by the assessee-company on the lease transactions entered into by it with ICICI Ltd. constitute revenue expenditure opined the Bombay High Court in CIT v. Indian Petrochemicals Corporation Ltd. (2015) 378 ITR 569 (Bom).

RECOVERY OF TAX

The Karnataka High Court has in CIT & Anr. v. Karnataka State Industrial Investment Development Corporation Ltd. (2015) 378 ITR 234 (Kar) taken the view that where the assessee, a State owned financial institution, had sanctioned a term loan on creation of equitable mortgage over immovable properties by the borrower in its favour, the assessee was a secured creditor, even the Crown debt could be discharged only after the debt of secured creditors stood discharged, the assessee was entitled to appropriate the sale proceeds of the said immovable properties towards discharge of debt due to it and it was to hand over the remaining amount, if any, to the Tax Recovery Officer.

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Tax Updates under the Karnataka Tax on Luxuries Act 1979

CA G.B. Srikanth Acharaya and **CA Annapurna Kabra**

Notification No KTL.CR.4/2013-2014 dated 08.12.2015

With reference to section 6(1) of the Act it is notified that in following cases the proprietors are notified of the requirement of production of accounts in support of the return filed by them for the year ending 31st March 2015.

a) Proprietors in whose case non -payment or short payment of tax for any tax period in the year 2013-2014 or 2014-2015 has been detected on a visit or inspection by any of the departmental authorities.

b) Proprietors who have been assessed in any of the previous two years to an additional tax of twenty five thousand rupees or more than admitted by them in the return filed for the year.

c) Proprietors in whose case the increase in the amount of tax payable for the year as declared in the return filed as compared to the amount of tax paid or assessed for the previous year is less than 15%.

d) Proprietors who are nil filers or non filers or who have closed business during the year 2014-2015.

Entry 62 of State list includes taxes on luxuries including taxes on entertainments, amusements, betting and gambling. The word luxuries in Entry 62 of List II means the activity of enjoyment of or indulgence in that which is costly or which is generally recognized as being beyond the necessary requirements of an average member of society and not articles of luxury.

I) Luxury Tax on Hotels:

Charges for lodging: It includes charges for air-conditioning, telephone, telephone calls, television, radio, music, extra beds and the like but do not include any charges for food, drink, laundry or other amenities (Section 2(1))

Hotel: means a building or part of a building where lodging accommodation, with or without board is by way of business provided for a monetary consideration, and includes a lodging house, club and holiday resorts.(Section 2(4)).

A club, a lodging house and a holiday resort for which charges are collected for providing accommodation whether or not in the course of business shall be deemed to be a hotel for the purpose of this Act. Luxuries: means services ministering to enjoyment, comfort or pleasure extraordinary to necessities of life (Section 2(4-B))

"Luxury provided in a hotel' means,-

(i) accommodation for lodging provided in a hotel, the rate of charges for which (including charges for air-conditioning, telephone, television, radio, music, extra beds and other amenities for which charges are compulsorily payable, but excluding charges for food and drinks) is not less than one hundred and fifty rupees per room per day;

(ii) provision in hotels, whether to residents or others of such facility as health club, beauty parlour, swimming pools, conference hall and the like for which charges are separately made (Section 2(5))

Levy & Collection of Tax on Hotels (Section 3)

Charges	Rate of Tax
Where the charges for lodging per room per day are not less than five hundred rupees (Now 750/-)but not more than one thousand rupees	Four per cent of such charges
Where the charges for lodging per room per day are more than one thousand rupees but not more than two thousand rupees	Eight per cent of such charges
Where the charges for lodging per room per day are more than two thousand rupees	Twelve per cent of such charges

II) Luxury tax on Health Club (Section 3 B) :

There shall be levied and collected a tax at the rate of ten per cent on the charges collected for luxuries provided in a hotel for residents or others such as health club, beauty parlour, swimming pool, conference hall and the like when such charges are collected separately

Mode of collection of tax (Section 4)

(1) Where the rate of charges for luxury provided in a hotel is inclusive of the charges for food or drink or other amenities, if any (being amenities referred to in clause (5) of section 2), then the Luxury Tax Officer may, from time to time, after giving the proprietor an opportunity of being heard, fix separate rates of charges for such

luxury and for food or drink or other amenities, if any, being amenities referred to in clause (5) of section 2, for the purpose of calculating the tax under this Act.

(2) Where, in addition to the charges for luxury provided in a hotel, service charges are levied and appropriated to the proprietor and not paid to the staff, then, such charges shall be deemed to be part of the charges for luxury provided in the hotel.

(3) Where luxury provided in a hotel to any person is charged at a **concessional rate,** then the tax on such luxury, shall be levied and collected on such lower charges where such lower charges are allowed as a result of any discount allowed in general or is in accordance with the terms of a contract or agreement entered into in a particular case and also where such discount allowed is published in tariff cards or displayed or disclosed in writing, in any manner for information.;]

(4) Where luxury provided in a hotel for a specified number of persons is shared by more than the number specified, then, in addition to the tax paid for the luxury provided to such specified number of persons, there shall also be levied and collected separately, **the tax in respect of the charges made for the additional number of persons accommodated**.

Levy & Collection of Tax on Club (Section 3-D)

There shall be levied and collected a tax on luxuries provided in a club to the members who are required to pay any amount as fee, deposit, donation or any other such charges by whatever name called, at the rate as specified in column (3) of the table below.

Location of club	Rate of Tax
Corporation Area	Rs. 600 per annum per member
Other Areas	Rs. 300 per annum per member

Levy & Collection of Tax on Club

- Provided that no tax shall be payable in respect of a member who has attained **sixty five years of age** and who is not a corporate member subject to such conditions as may be prescribed.
- Provided further that no tax shall be payable in respect of a member of a Youth club registered or recognised as such by the Department of Youth Services.
- (2) The tax levied under sub-section (1) shall be paid by every proprietor within such period and in such manner as may be prescribed.
- **Explanation I**. - For the purpose of this Section, luxuries means more than one of the facilities like card room, bar, billiards room, snooker room, tennis court, swimming pool, sauna, Jacuzzi and the like, gymnasium, golf course, internet facility, video, video compact disk, digital video disk and computer games.
- **Explanation II**.- Where any corporate membership or similar membership allows use of luxuries provided in a club by more than one person (other than a person who is a dependent of the member), tax shall be levied and collected in respect of every such person."

III) <u>Luxury Tax on Hospital :</u>

Charges for luxuries provided in a hospital: means charges for accommodation provided in a hospital for any patient or inmate or resident, by whatever name called and his attendant including charges for air-conditioning, telephone, telephone calls, television, radio, music, extra beds and the like but does not include any charges for food, drink, laundry or other amenities, medicines, medical including consultation, testing, diagnostic and nursing services, therapeutic services or other similar services (Section 2 (1-c)

Levy & Collection of tax on Hospital

(1) There shall be levied and collected a tax at the rate of eight per cent on the charges collected for luxuries provided in a hospital in a room such as accommodation, air conditioning, telephone, telephone calls, television, radio, music, extra beds and the like, where such charges are more than one thousand rupees per day per room. (Sec 3- E)

(2) Not/Circular reference: KTL-CR-06 / 2007-2008 dated 28-9.2007: The charges should be per patient per room

(3) The tax levied under sub-section (1) shall be paid by every proprietor within such period and in such manner as may be prescribed.

IV) <u>Luxury Tax on Marriage Hall:</u>

- "Marriage Hall" means,-

(i) Kalyana Mantap, Shaadi Mahal, Community Hall, a building or part of a building or a temporary structure or a property as defined in section 3 of the Transfer of Property Act, 1882 where accommodation is provided for marriage or reception or matters related therewith or for organizing any official, social or business function whether functions are conducted in such place regularly or not;

(ii) Seminar, convention, banquets, meeting or exhibition hall or a temporary structure or a property as defined

(Contd. on page 15)

Indirect Taxes Update – December 2015

CA C.R. Raghavendra, *B.Com, FCA, LLB, Advocate* and
CA J.S. Bhanu Murthy, *B.Com, FCA, LLB, Advocate*

FOR THE MONTH OF NOVEMBER 2015:

A. Notifications and Circulars

a) Notifications:

Rule 9 of Cenvat Credit Rules, 2004 has been amended to provide that in case of goods imported through Authorised courier – the certificate issued by an Authorized Courier, registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the customs airport is a valid document for CENVAT credit.

[Source: Notification No. 27/2015- CX (N.T), Dated 3.12.2015].

b) Circulars

i) Speedy disbursal of pending refund claims of exporters of services under rule 5 of the CENVAT Credit Rules, 2004:

Central Board of Excise and Customs(CBEC) has issued circular prescribing mechanism for speedy disbursal of pending refund claims. This scheme provides for disbursement of 80% of the claim, pending adjudication of the refund claim, on submission of certain documents as detailed in the scheme. The details of the scheme are as follows:

a) Applicability of scheme: The scheme is applicable to the refund claims filed on or before 31.3.2015 and which have not been disposed of. The phrase 'disposed of' has been clarified in the circular to mean that those claims which are either sanctioned fully or partly or rejected fully or party through an adjudication order.

Therefore, it appears that even though the show cause notice has been issued or personal hearing has been conducted, but order has not yet been issued, in such cases also, this facility would be available.

However, certain cases, which are adjudicated earlier but remanded back to the original authority either by Commissioner(Appeals) or by CESTAT or by court, would not get covered under this scheme.

b) Documents to be submitted:

a. Certificate from statutory or tax auditor of the assessee

b. Declaration by the assessee that he would repay, along with interest in case, any of the amount which is granted as refund, is ineligible.

c) Process: on submission of the above documents, the jurisdictional Assistant Commissioner shall grant 80% of the refund amount provisionally within 5 working days of submission of documents. Thereafter, the Assistant Commissioner shall grant balance amount of refund on examination. In case the final adjudication results in excess refund granted (on account of ineligibility), the same shall be demanded along with interest.

d) For formats of the CA certificate and declaration refer to the circular.

[Source: Circular No. 187/6/2015-ST dt. 10.11.2015]

ii) Clarification regarding taxability of seed testing activity:

This clarification is issued in the backdrop of the amendment to negative list vide Finance Act, 2013, wherein the phrase 'seed testing' in the agricultural related activity was amended to read as 'testing'.

It is clarified in the present circular that the intention of the amendment was to cover all types of testing activity relating to agriculture and not merely to seed testing. It is clarified that testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of 'testing' as mentioned in sub-clause (i) of clause (d) of section 66D of the Finance Act, 1994. Therefore, such services are not liable to Service Tax under section 66B of the Finance Act, 1994.

[Source: Circular No. 189/8/2015-ST dt. 26.11.2015]

iii) Monetary limits for filing appeals by department:

Vide instruction No. F. No. 390/Misc./163/2010-JC dt. 17.12.2015, CBEC has revised the monetary limits for filing appeals by the department as below:

Forum	Monetary limit
CESTAT	Rs. 10,00,000
High Court	Rs. 15,00,000
Supreme Court	Rs. 25,00,000

Further vide clarifications dated 1.1.2016 (in F. No. 390/ Misc./163/2010-JC) it is clarified that the said monetary limits would be applicable to the pending cases before CESTAT and High Court.

B. Important Decisions

1. CCE Vs TVS MOTORS COMPANY LTD Vs. 2015-TIOL-299-SC-CX

Issue: Whether the pre-delivery inspection charges and after sales service charges are to be included in the assessable value?

Held: The Supreme Court held that pre-delivery inspection charges and free After Sales Service charges would not be included in the assessable value under Section 4 of the Act for the purposes of paying excise duty. The Court observed that what is liable to duty is only the amount charged by the manufacturer for sale of the goods to the dealer. As these charges are not collected by the manufacturer separately from the dealers such amounts shall not be added to the transaction value.

2. CCE Vs M/s Brimco Plastic Machinery Pvt Ltd, 2015-TIOL-273-SC-CX

Issue: The issue before the Hon'ble Supreme Court was whether the installation, erection and commissioning charges for equipment installed at customer's premises could be added/included for determining the assessable value

Held: The Court held that on reading of Section 4 of the Central Excise Act, 1944, which deals with the valuation provisions, it is clear that the transaction value is to be arrived at the time of clearance of the goods at the factory gate. All the expenses which are incurred post clearance (i.e., after the supply of equipment) in respect of installation, etc., shall not be taken into consideration for payment of duty of excise.

3. Bajaj Auto Ltd & Anr Vs. CCE, 2015-TIOL-264-SC-CX

Issue: Whether aluminium dross and aluminium ash that arises during the manufacture of die-casting of aluminium parts would be liable to duty of excise as manufactured products.

Held: The Court observed that CESTAT in another case has categorically held that during the manufacture of die-casting of aluminium parts, dross and ash emerge as by-products and, therefore, insofar as these by-products are concerned, no manufacturing process is involved. On that basis, it has been held that no excise duty shall be payable on such products. Based on this the Supreme Court held that the said products are not liable to duty as no manufacture was involved.

4. CC Vs. Jai Industries, 2015(325) ELT 3(SC)

Issue: Assessee imported certain goods which are of Chinese origin. The assessing authority disputed the transaction value and adopted the value of similar / identical goods of Germany, Italy and US origin goods. This valuation was rejected by the CESTAT on appeal by the assessee.

Held: On appeal by the department, the Supreme Court held that the Tribunal has rightly held that goods manufactured coming from one country cannot be comparable with similar goods of origin of different country for the purpose of valuation under the Customs valuation rules as identical or similar goods.

5. CC Vs. Same Engines India Pvt. Ltd., 2015(325) ELT 241(SC)

Issue: Assessee imported components of Tractors and assessed the same on the basis of transaction value. However, department, on finding that the assessee has entered into technical know-how agreement with foreign exporter, contended that the amounts paid to foreign exporter towards technical knowhow, training and drawing shall also be considered for the purpose of valuation of imported goods.

Held: The Supreme Court on basis of facts, observed that all the said expenditure which is paid by the assessee to the foreign company is post importation expenses and hence such costs need not be added to the assessable value of goods imported. The Court relied on its decision in the case of Commissioner v. Essar Steel Ltd. — 2015 (319) E.L.T. 202 (S.C.) wherein it was held that any amount that is referable to the imported goods post-importation has necessarily to be excluded.

6. Maharashtra Cricket Association Vs CCE 2015-TIOL-2418-CESTAT-MUM

Issue: Whether service tax paid on services such as Architect Services, Consulting Engineers Services, Management Consultancy Services etc. used for construction of sports stadium, are admissible as input services for the taxable service of renting of the said stadium.

Held: Tribunal allowing the credit held that 'input service' is not limited to the services for providing output service, but it also includes the service for setting up the premises of provider of output service. Tribunal observed that the Appellant is clearly entitled for Cenvat Credit in respect of all the services used for construction/setting up the stadium which is admittedly used for providing the output services viz. Renting of Immovable Property.

7. M/s Crompton Greaves Ltd Vs. CCE, 2015-TIOL-2724-CESTAT-MUM

Issue: The assessee who is engaged in manufacture of goods, sent the certain equipment to a testing agency located outside India for the purpose of callibration testing and paid service charges for the same. The department demanded service tax on such payment towards the testing activity under the provisions of Section 66A of Finance Act, 1994.

Held: Hon'ble Tribunal, on the basis of provisions of Section 66A read with Rule 3(ii) of Taxation of Services (Provided from Outside India and received in India) Rules, 2006, held that the service of testing would be liable to service tax under Section 66A only where the services are performed in India. In the present case, as the testing activity is performed entirely outside India, hence no service tax would get attracted.

8. Lona Industries Ltd Vs. CCE, 2015-TIOL-2694-CESTAT-MUM

Issue: Assessee is engaged in manufacture of dutiable goods. Head office of the assessee was registered as Input Service Distributor (ISD) in the month of Feb. 2008 and the said ISD availed credit of various services received by the Head office from 2005 to 2008 after registration and distributed the same to the factory. The availment and distribution was disputed by the department.

Held: Based on the provisions of the Cenvat Credit Rules, 2004 (as applicable during the relevant period), the Tribunal held that there is no provision under said rules which prescribe time limit for availment of credit. Further, there is no restriction on availment of cenvat credit of input services received prior to registration. Therefore, the availment of distribution of the credit was held to be proper.

[***Note**: in terms of the amended Cenvat Credit Rules, 2004, presently credit on input services shall have to be availed within 1 year from the date of the invoice]*

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Tax Updates under the Karnataka Tax on Luxuries Act 1979

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in section 3 of the Transfer of Property Act, 1882 where accommodation is provided for marriage or reception or matters related therewith or for organizing any official, social or business function whether functions are conducted in such place regularly or not;

(iii) Any other place or temporary structure as may be specified by the Commissioner, where accommodation is provided for marriage or reception or matters related therewith or for organizing any official, social or business function whether functions are conducted in such place regularly or not. (Section 2-5B)

(1A) "Charges for marriage hall" include charges for air conditioning, chairs, utensils and vessels, shamiana, electricity, water, fuel, interior or exterior decoration [or any amount received by way of donation or charity or by whatever name called in relation to letting out the marriage hall] but do not include any charges for food and drinks;

If any question arises whether any charges are charges for marriage hall, such question shall be referred to the Commissioner and decision of the Commissioner shall be final and shall not be called in question in any Court.

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Recent Decisions of the High Courts on Income Tax

(Contd. from page 10)

PENALTY

Where the assessee repaid loan amounting to Rs. 20 lakhs in cash on the insistence of the lender to repay the loan in cash, such insistence of the lender was a compelling circumstance and constituted a reasonable cause for repayment of the loan in cash and consequently, penalty could not be levied under section 271E held the Madras High Court in CIT v. M. Ramakrishna (2015) 378 ITR 437 (Mad).

TAX DEDUCTION AT SOURCE

The Madras High Court in Anusha Investments Ltd. v. ITO (2105) 378 ITR 621 (Mad) has expressed the view that where the transaction involving payment to a non-resident does not result in liability to tax, the question of the assessee deducting tax at source under section 195 does not arise.

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Sale in Transit under Central Sales Tax Act, 1956

CA Kuber V. Hundekar

Value added tax and central sales tax is one of the important indirect tax and major source of revenue to State Governments. While the intra-State sale of goods are liable to tax under the respective State VAT laws, inter-State sale of goods are liable to tax under the provisions of Central Sales Tax Act, 1956 (CST Act). CST Act provides various exemption on certain inter-State sales. Amongst others, Section 6(2) provides exemption from levy of tax on sale in transit subject to certain conditions. In this article an attempt is made to explain the provisions relating to exemption from levy of tax on sale in transit under CST Act.

I. **Relevant Provisions:**

1. **Section 3:** In terms of Section 3 of CST Act, a transaction of sale or purchase of goods shall be deemed to have taken place in the course of inter-State trade or commerce if:
   i. the sale or purchase occasions the movement of goods from one State to another; or
   ii. the sale or purchase is effected by transfer of documents during the movement of goods from one State to another.

   Explanation 1 to Section 3 provides that the movement of goods shall deem to commence at the time of delivery of goods to the carrier or bailee and terminate at the time when the delivery of goods is taken from such carrier or bailee
2. **Section 6(2):** In terms of Section 6(2) of CST Act, where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of goods from one State to another or has been effected by transfer of documents of title during movement from one State to another, any subsequent sale during such movement effected by transfer of documents of title to such goods to registered dealer is exempt from tax.

   The first proviso to Section 6(2) specifies the following conditions that should be satisfied to claim exemption from payment of tax:
   i. selling dealer has to issue certificate in in Form E-I / E- II to the purchasing dealer; and
   ii. selling dealer should obtain declaration in Form C from the subsequent buyer;

   Second proviso to Section 6(2) provides for exception to the condition stated in clause (ii) *supra*in respect of subsequent sale of goods, if subject goods are exempt from levy of tax in appropriate State or such goods are generally subject to tax at a rate less than 3%.

II. **Conditions for claiming exemptions**

With specific reference to Section 6(2) of the CST Act, the dealer claiming exemption on subsequent sale by transfer of documents of title to goods in the course of movement of goods from one State to another should satisfy the requirements discussed in the following paragraphs:

1. **First sale should be inter-State sale:** The first and the foremost condition for claiming exemption under Section 6(2) is that, the first sale should be in the course of inter-State trade or commerce. In terms of Section 3 of CST Act, a sale shall be deemed to have taken place in the course of inter-State trade or commerce, if such sale:
   a. either occasions the movement of goods from one State to another; or
   b. is effected by transfer of documents of title to such goods during their movement from one State to another.

   In this regard, it is relevant to note that sale which takes place under Section 3(a) is excluded from the purview of section 3(b). In other words, sale classifiable under Section 3(a) is not eligible for exemption under Section 6(2). It is relevant to note here that the judgment of Honourable Supreme Court in the case of A & G Projects and Technologies Limited vs. State of Karnataka reported in 19 VST 239 (in short "A & G") wherein it has been held that,**the dividing line between sales or purchases under Section 3(a) and those falling under Section 3(b) is that in the former case the movement is under the contract, whereas in the latter case the contract comes into existence only after the commencement and before the termination of the inter-State movement of the goods.** Therefore, it follows that an inter-State sale can either be governed by Section 3(a), if it occasions movement of goods from one State to another, or under Section 3(b) if it is effected by transfer of documents of title after such movement has started and before termination of movement. Accordingly, it is inferred that subsequent sale to be exempt under Section 6(2) should be the one that falls under clause (b) of Section 3.
2. **The first seller should charge tax:** Since the first sale should be inter-State sale, the first seller should be registered and should charge tax under CST Act. The exemption as provided under Section 6(2) is only in relation to subsequent sale. The first inter-State sale will be liable to tax in terms of Section 6(1) of CST Actand accordingly, the first seller should charge and remit tax.The Honourable Supreme Court, analysing the scheme of Section 6 in A & G, has pronounced that,

"*analysing Section 6(2), it is clear that sub-Section (2) has been introduced in Section 6 in order to avoid the cascading effect of multiple taxation. A subsequent sale falling under sub-Section (2), which satisfies the conditions mentioned in the proviso thereto, is exempt from tax as first sale has been subjected to tax under sub-Section (1) of Section 6 of the CST Act, 1956*". As such, remittance of tax under Section 6(1) on first inter-State sale is pre-requisite for a subsequent sale to be exempt under Section 6(2).

In the case of CTT vs. Azad Scrap Traders reported in 20 VST 768, Honourable High Court of Allahabad held thatfor a second or subsequent sale to be exempt under Section 6(2) of CST Act, it is not sufficient that purchases were made from registered dealer. A further finding that the goods purchased were tax-paid under the CST Act, is necessary.

In Mitsubishi Corp. Ind. Ltd. vs Value Added Tax officer reported in 34 VST 278, Honourable High Court of Delhi with reference to the judgment of Honourable Supreme Court in the case of A & G held that, exemption under Section 6(2) cannot be denied on the grounds that first sale was exempted sales. Thus even if the first sale was exempted due to exemption of tax available in the State wherefrom the first sale is made the subsequent sales in other State will be exempted if the conditions under Section 6(2) of CST Act are satisfied.

In the above backdrop, it can be understood that tax under Section 6(1) should have been remitted on first inter-State sale if such sale is liable to tax. The exemption on subsequent sale cannot be denied if the first inter-State sale is exempt.

3. **The dealer effecting subsequent sale should be registered:** Section 6(2) prescribes that subsequent sale shall be exempt, if the goods are of the description referred to in Section 8(3). Accordingly, it infers that selling dealer in subsequent sale should be registered under CST Act and the goods should be specified in the registration certificate. In terms of Section 8(3) read with Rule 13 of CST (R & T) Rules, 1957 the dealer can seek registration of goods which are intended for re-sale; for use in manufacture or processing for sale; for use in telecommunications network; for use in mining; for use in power generation / distribution; or containers and packing materials. Honourable High Court of Madras in the case of State of Tamil Nadu vs. Trade International reported in 113 STC 70 disallowed the exemption claim and held that, "*unless and until the registration certificate of the respondent-dealer covered the goods, it could not have the benefit of exemption under Section 6(2)*".

4. **Subsequent sale should be effected during the movement of goods from one State to another:**Subsequent sales must be a section 3(b) sale i.e, it should be a sale by way of transfer of documents of title to goods during the movement of such goods from one State to another. In terms of Explanation 1 to Section 3, the movement of goods shall deem to commence at the time of delivery of goods to the carrier or bailee and terminate at the time when the delivery of goods is taken from such carrier or bailee.So long as the goods are in the custody of the carrier, they are said to be in the course of movement. Accordingly, the sale referred to in Section 6(2) is the sale effected after the goods are delivered to carrier and before the delivery of goods is taken from such carrier. There is no restriction on the number of endorsement sales. The only condition is that none of the intermediaries should physically handle goods. The moment goods are taken delivery from the carrier, the chain breaks and the movement is deemed to stop.

5. **Subsequent sale should be by transfer of documents of title to goods: "Documents of title to goods"**means a document which evidences that the person holding the document has title to goods represented by such document. Title need not be ownership. It represents that the person holding the document of title has right of possession to those goods or has control over goods indicated therein. The receipt issued by carrier upon delivery of goods for movement is a document of title to goods. Section 2(4) of the Sale of Goods Act, 1930 defines, **"documents of title to goods"** includes a bill of lading, a dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented. In simple terms transfer of documents either by endorsement or delivery does complete transfer of title.The Honourable High Court of Madras in the case of State of Tamil Nadu vs. Gopal Enterprises reported in 113 STC 46 disallowed the exemption under Section 6(2) on the grounds that the proof of subsequent sale of goods during the movement from one State to another was not available. Accordingly, endorsing the documents of title to goods seems to be significant for claiming exemption besides furnishing of certificate and declaration forms as prescribed.

   In the case of State of Tamil Nadu vs. N. Ramu Bros reported in 89 STC 481 the assessee effected purchases from dealer located in another State. The assessee after receiving the documents relating to movement of goods, without taking delivery of goods issued letter of authority to carrier instructing to deliver goods to its customers by raising delivery notes. Honourable High Court of Madras allowing the petition filed by the State held that the subsequent sale will not qualify for exemption under Section 6(2) since the delivery note raised by the assessee will not qualify as document of title to goods in terms of Section 2(4) of Sale of Goods Act, 1930.

6. **The subsequent sale should be effected to registered dealer who should issue declaration in Form C:** The subsequent sale is exempt only if the purchaser is registered with sales tax authorities. In terms of Section 2(f), registered dealer is defined to mean a dealer who is registered under Section 7 of CST Act, 1956. In this context, the dealer having registration only under the State Act is not entitled to claim exemption under Section 6(2). In this regard, it is relevant to note that, subject goods should be specified in the certificate of registration in terms of Section 8(3)(b) read with Rule 13 of CST (R & T) Rules, 1957 and enable the purchasing dealer to issue declaration in Form C.

   In the case of State of Gujarat vs. Esso Standard reported in 83 STC 186 the assessee registered under the State of Maharashtra effected purchase of goods from the State of Gujarat by issuing declaration in Form C. During the course of movement, the assessee effected sale of such goods to unregistered dealer. Honourable High Court of Gujarat held that, such sale does not qualify as subsequent sale exempt from levy of tax under Section 6(2) and therefore, in terms of Section 9(1) of CST Act, the State of Maharashtra is competent to levy tax on such sales.

   In Deputy CST vs. Indian Hardware Stores reported in 132 STC 431, Honourable High Court of Kerala rejecting the claim of assessee held that, exemption from levy of tax under Section 6(2) of CST Act on subsequent sale can be claimed only if the assessee furnishes declaration in Form C.

7. **Certificate in Form E-I / E-II and declaration in Form C:** The first selling dealer should issue certificate in Form E-1 to purchasing dealer certifying that tax under CST Act has been paid or will be paid or sale is exempt from tax in respect of goods detailed in the certificate. Further, the selling dealer should obtain declaration in Form C from the purchasing dealer. In terms of Rule 12(7) of CST (R & T) Rules, 1957, the selling dealer in subsequent sale should furnish such certificate in Form E-I and declaration in Form C to the prescribed authority within three months after the end of the period to which the certificate relates. The prescribed authority may provide extension in time if there exists sufficient cause which prevented the dealer from furnishing the certificate within a period of three months.

   In case of subsequent sale, the selling dealer should issue Form E-II certifying that the signatory has purchased the documents of title during their movement from one State to another State against certificate in Form E-I/E-II.

   The requirement of furnishing certificate and declaration can be illustrated by an example. Assume that W in Karnataka despatches goods to X in Madhya Pradesh, W charges tax under CST Act and remits the tax thereon in the State of Karnataka. During movement of goods, X sells goods to Y in West Bengal and Y ultimately sells goods to Z in Orissa. Z takes delivery of goods and the 'movement of goods' comes to end. Sale from X to Y and Y to Z is by transfer of documents of title to goods during the movement. In this case, W will receive declaration in Form C from X and will issue certificate in Form E-I to X. Later, X will issue certificate in Form E-II to Y and receive declaration in Form C from Y. Finally, Y will issue certificate in Form E-II to Z and will receive declaration in Form C from Z, which will complete the chain.

III. Conclusion

To conclude, reference is drawn to a recent judgment of Honourable High Court of Andhra Pradesh in the case of L & T Ltd., vs. State of AP (judgment pronounced dated 14.09.2015 in WP Nos. 22960 of 2007 and others). Honourable High Court relying on the judgment of Honourable Supreme Court in the case of A & G pronounced the ingredients of Section 6(2). The facts before the Honourable High Court of Andhra Pradesh were that the petitioner entered into contract for executing turnkey projects. The contract stipulated that, petitioner was required to procure materials from the suppliers identified by contractee located outside the State by paying tax under Section 3(a). After purchasing the goods, the petitioner was contractually bound to sell the goods to the contractee during transit by endorsement of lorry receipts. Honourable High Court held that the contract of sale entered into either before the commencement of movement in the first State or after completion of movement of goods in the second State, can neither be a Section 3(b) sale nor a subsequent sale exempt under Section 6(2) of the CST Act. Further, Honourable High Court analysing Section 6(2) observed that, to claim exemption on subsequent sale following conditions should be satisfied:

1. In the first instance there should exist inter-State sale occasioning the movement of goods from one State to another;
2. Such first inter-State sale should be effected by dealer registered under the provisions of CST Act and has remitted the applicable tax thereon;
3. The purchasing dealer in the first inter-State sale is registered and such goods are mentioned in certificate of registration;
4. Such goods are sold subsequently during the movement (after the goods are delivered to the carrier and before the delivery of goods is taken);
5. Subsequent sale is effected by transfer of document of title to goods to a registered dealer;
6. The dealer claiming exemption furnishes certificate in Form E-I / E-II issued by the selling dealer and declaration in Form C issued by purchasing dealer.

The conditions discussed in this article are based on the judgments of various courts. While the law seems to be laid down by the Apex Court, the Revenue may stipulate certain other requirements on facts of each casedue to complex nature of transaction.In my view, despite of law laid down, the exemption under Section 6(2) is not free from litigation!!!

The above comments / analysis are dated and are based on the law prevalent as on January 2016.

Author can be reached on kuber@sduca.com

28th KSCAA Annual Conference

SAMVIT — Journey towards Professional Excellence

on Saturday & Sunday 5th & 6th March 2016

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"Registered" News Bulletin for India vide No.KA/BGGPO/2542/2015-17
RNI Regn. No. KARENG/2013/51293
Licensed to post without prepayment License No. WPP-309
Total No. of Pages Printed : 20
Date of Posting 15th of the month, Place of Posting at Bangalore PSO, Mysore Road, Bangalore 560026

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Programme Structure

Saturday 5th March 2016

08.30 AM	Registration
INAUGURAL SESSION	
09.15 AM	Inaugural Address by Chief Guest Release of Publications, Release of Souvenir
10.30 AM	Inauguration of Exhibition & Tea Break
FIRST TECHNICAL SESSION	
11.00 AM	**Start-ups – Analysis & Opportunities** • Funding **Mr. Ganapathy Venugopal** *Co-founder & CEO, Axilor Ventures* • Valuation **CA. Anjana Vivek** • Statutory & Taxation **CA. P.V. Srinivasan**
01.30 PM	Lunch Break
SECOND TECHNICAL SESSION	
2.30 PM	**Reporting and Compliance requirements-Auditor's perspective** • Audit reports & IFC **CA. Gururaj Acharya** • Ind. AS **CA. Vinayak Pai**
4.15 PM	Tea Break
THIRD TECHNICAL SESSION	
4.30 PM	**Practical Issues in Income Tax** • Open House Q & A Session **CA. Padamchand Khincha** **CA. A. Shankar** **CA. Dr. R.B. Krishna**
6.45 PM	**Kutumbotsava** – Family Entertainment Programme
8.30 PM	Bhoori Bhojana (Family Dinner)

Sunday 6th March 2016

8.00 AM	Break Fast
HEALTH / WELLNESS SESSION	
9.15 AM	**Stress Management for Professionals** **Dr. C.R. Chandrashekar**, *Psychiatrist & Author*
FOURTH TECHNICAL SESSION	
10.15 AM	**Practical Issues of Not for Profit Organizations (NPOs)** • Formation • Exemption • Assessments **CA. S. Krishnaswamy** **CA. Phalguna Kumar E**
11.30 AM	Tea Break
FIFTH TECHNICAL SESSION	
11.45 PM	**E-Commerce - Taxation Issues** • VAT **CA. S. Venkataramani** **Dr. B.V. Murali Krishna** *Joint Commissioner of Commercial Taxes* • Service Tax **CA. A. Jatin Christopher** *Moderator:* **CA. Sanjay Dhariwal**
1.30 PM	Lunch break
SPECIAL SESSION	
2.30 PM	**Unbounded New Professional Opportunities - Am I Future Ready ?** **CA. Madhukar Hiregange**
3.15 PM	Tea Break
SIXTH TECHNICAL SESSION	
3.30 PM	**Union Budget Analysis–Panel Discussion** • Direct Tax **CA. K.K. Chythanya, CA. K.R. Sekar** • Indirect Tax **CA. V. Raghuraman, CA. Rajesh Kumar T.R.** *Moderator:* **CA. S. Ramasubramanian**
5.30 PM	**Valedictory Session**

Practical Issues in Income Tax

Request participants to send their queries for the Third Technical Session in advance before 25-2-2016 to *samvit.kscaa@gmail.com*

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Published at # 7/8, 2nd Floor, Shoukath Building, S.J.P.Road, Bengaluru-560 002. Editor : **CA. Dileepkumar T M**