KSCAA

Karnataka State Chartered Accountants Association ®

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Start-up Valuation | Service Tax | KVAT | Income Tax - Sec. 269ST | Indirect Taxes Update | Financial Reporting | Buy-back of shares

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION ®

UDBODHA

Knowledge to initiate, ignite & inspire

10 Hrs CPE Unstructured

Jnanam Sa-Vijnanam

Creating Knowledge Consciousness

29th kscaa annual conference 2017

3rd & 4th March 2017

Friday & Saturday

Jnana Jyothi Convention Centre

Central College Campus, Bangalore University

Palace Road (Near SBM Circle), Bengaluru - 560 009

Celebrating 60 years 1957-2016

From the President

Jnanam Sa-Vijnanam
Creating Knowledge Consciousness

Dear Professional Colleagues,

On behalf of the Karnataka State Chartered Accountants Association (KSCAA), our hearty welcome to the 29th KSCAA Annual Conference in Bengaluru on 3rd & 4th March, 2017 at Jnana Jyothi Convention Centre, Bengaluru. This year's conference theme "Udbodha: Knowledge to initiate, ignite and inspire" is to envision, invigorate and thrust upon knowledge resurgence in this period of tax renaissance. The new economy sprouting from demonetisation and induced digitisation has led to a dynamic change causing a vacuum in tax panorama. At the cusp of this remarkable era, a plethora of opportunities open up for our multifaceted Chartered Accountant fraternity. The need for supreme competence in economy stemming from the ambitious Government reforms and Digitisation will create unseen opportunities and to demystify and unravel this, we present before you about eight plenary sessions to quench your knowledge thirst. Cross section of domain experts and professions in thick of things, we are sure will stir up right decoction of knowledge, networking, dissemination of ideas to instantly utilise in your area of practise and industry.

I am a person who has always given importance to basics and accordingly has put in efforts with my team to rebuild the foundation here. Further, we have plans to strengthen and re-establish the glory and attraction of the KSCAA. Having been associated with KSCAA for the past 5 years, I have seen the interest of members waning in KSCAA. There are several reasons for this which I will elaborate on an appropriate forum. To convey a sense of sincerity and seriousness with which we view this, we have decided to make all efforts required to make success of the 29th KSCAA Annual Conference to be held on 3rd & 4th March, 2017 at Jnana Jyothi Convention Centre, Bengaluru. To achieve this, we have ensured to cover topics of interest for all members and handpicked speakers of national repute who possess excellent domain knowledge. I expect and request support and encouragement from all of you by participating in large numbers. We have a very good team in Conference Committees and I am sure that we would be able to deliver a memorable conference to all the participants.

Representation:

As you all know, KSCAA is always forefront in fight for the interest of the profession. In order to ensure to perform our duty, we are submitting a memorandum to reverse the new section 271J proposed by Finance Bill 2017 to provide that if an accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate under any provisions of the Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) ma y direct him to pay a sum of Rs.10,000 for each such report or certificate by way of penalty w.e.f 01.04.2017. The objective of submitting this memorandum is to bring to kind notice of Government the possible hardships faced by the professionals who definitely will be under the mercy of Assessing Officers for subjective opinion of facts.

News Roundup:

Union Budget 2017-18 is realistic, high on substance and has positively surprised the markets by defying expectations of populism amid demonetisation and impending state elections. As expected, the Budget focused on key areas such as agriculture, job generation, infrastructure, housing for all and digital economy while maintaining fiscal discipline. The Budget also marked an important step towards making the country a tax complaint one through tax administration and digital economy, which will bring in more transparency and reduce the shadow economy. With stringent measures towards cash transaction limits and political funding, the Budget has lived up to the theme of "effective governance."

Sticking to commitment to roll out the goods and services tax (GST) on time, the government will begin its outreach to trade and industry on April 1 to make stakeholders aware of the benefits of the indirect tax reform. The GST Council has finalised its recommendations on almost all issues based on a consensus approach. The Finance Minister's Budget speech emphasized the progress made by the government with respect to achieving various GST-related milestones. Efforts by the government such as passage of the GST Constitutional Amendment Bill and setting-up of the GST Council were lauded by the finance minister, showcasing how the government is moving with full gusto towards adopting GST.

Ministry of Corporate Affairs (MCA), Government of India has invited applications for empanelment of Mediators/ Conciliators in pursuant to Rule 3(3) read with Rule 3(5) of the Companies (Mediators and Conciliators) Rules, 2016 for the year 2017-2018. Any person is eligible to empanel as a mediator or conciliator, if he/she has been a professional for at least fifteen years of continuous practice as a Chartered Accountant. The notice is available at the MCA website.

Upcoming Events & Programs for the month:

KSCAA's GST Weekend Workshop was overwhelmingly received by participants beyond expectations and has motivated us to organize another batch in North Bengaluru in the month of March 2017. We are working on schedule and speakers for the workshop. Interested participants can register their names in advance as very limited seats would be available.

For the Benefit of members of Bagalkot district, 3 hours practical workshop on Spreadsheet Accounting is organized by KSCAA in association with Bagalkot District CA Association. This workshop is aimed to provide practical approach to financial accounting in spreadsheet and excelling in spreadsheet. Well known Excel trainer CA.Shivakumaar H will train the participants.

A seminar on Co-operative Bank is organized on 19th February in Bagalkot. This seminar focuses on TDS and other important income tax compliances by Co-operative Banks, Accounts, Audit and Regulatory provisions applicable to Co-operative Banks. This is organised in association with Bagalkot District CA Association, Karnataka State Co-operative Federation, Bagalkot District Co-operative Union and Co-operative Department, Bagalkot and will provide an opportunity to mofussil members to understand Accounts, Audit & Taxation of Co-operative Banks in a better manner. Hence request you all to make the most of this event.

KSCAA is further conducting Career Orientation Programs in Government First Grade Colleges of Hubli, Dharwad on 16th February and Government First Grade College, Alnavar on 17th February. These programs provide interesting insights of CA course to Students of Government colleges and create awareness of CA course in rural areas.

Last but not the least; I feel the following words of Thomas A. Edison relevant when we did CA course, all the more relevant now too:

Our greatest weakness lies in giving up.
The most certain way to succeed
is always to try just one more time.

We shall never give-up our dreams until it is reality.

Always at your service!

CA. Raghavendra Puranik
President

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

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KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION ®

CAREER COUNSELLING PROGRAMMES

in Government First Grade College

Hubli, Dharwad & Alnavar

by **CA. Shivaprakash Viraktamath**

on ***Thursday, 16th February 2017 & Friday, 17th February 2017***

Contact:

CA. Anant Nyamannavar - ***+91 95389 91480***
CA. Chetan Padaki - ***+91 98440 29188***

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION
jointly with
BAGALKOT DISTRICT CHARTERED ACCOUNTANTS ASSOCIATION
Organizes

Practical Workshop on Spread Sheet Accounting

by **CA. H. Shivakumaar**

on ***Saturday, 18th February 2017***

at ***10:00 am to 12:00 pm***

Venue : Basaveshwara Commerce College, Bagalkot

Contact:

CA. I.S. Yanni, *President, BDCAA, Mob.:* ***90366 47312***
CA. R.N. Mundra, *Secretary, BDCAA, Mob.:* ***94487 51151***
CA. Kumar S. Jigajinni, *Treasurer, KSCAA, Mob.:* ***94803 11197***

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION
jointly with
BAGALKOT DISTRICT CHARTERED ACCOUNTANTS ASSOCIATION,
KARNATAKA STATE CO-OPERATIVE FEDERATION, BANGALORE,
BAGALKOT DISTRICT CO-OPERATIVE UNION &
CO-OPERATIVE DEPARTMENT, BAGALKOT
Organizes

Seminar on Income Tax, Audit & Regulatory Provisions applicable to Co-operative Banks

by **CA. Prakash Hegde & CA. H. Shivakumaar**

on ***Sunday, 19th February 2017*** *at* ***10:00 am***

Venue : BDCC Bank Auditorium, *Navanagar, Bagalkot.*

Start-up Valuation

CA. S. Krishnaswamy

In the last article on Fair value measurement Ind AS 113, I dealt with the standard that lays down a frame work for valuation of all items in a Balance sheet. The main principle is laid down was the exit price of the item rather than the entry price. It lays down;

i. Income Approach

ii. Market Approach

The standard also said that if measurement is provided in any other specific standard than that standard would apply- For Example Intangible assets, Mergers and Acquisition.

The difficulty arises, however in valuing a start up where there is an "Idea" or a "Vision" which envisages capturing a large section of users (scale) is technology based and sustainable as For Example - Facebook, Google search.

The investors who invest in startups will on their Balance Sheet mark the value to the market, Basically a startup can be valued on its "Potential" and the assumptions made by the promoter and curated by an incubator. The following facts at the seed level will have to be critically gathered.

1. How much money is required to grow up to a point where significance growth is achieved? This should settle the first round of investment. How much money the Promoter will bring at each stage valuation.

Then at the seed stage, the valuation will be on the basis of:

1. Traction:

   Out of all things that you could possibly show an investor, traction is the number one thing that will convince them. The point of a company's existence is to get users, and if the investor sees users- the proof is in the pudding. So, how many users?

   If all other things are not going in your favor, but you have 100,000 users, you have a good shot at rising $1 M (that is assuming you got them within about 6-8 months). The faster you get them, the more they are worth.
2. Reputation and competence of the promoters.
3. Revenues
4. Distribution Channel
5. Tax Benefits
6. Benefits under Government policy

In essence it is the future cash flows that determine the initial valuations

Ten Top Techniques for Startup Valuation

1. Place a fair market value on all physical assets (asset approach)
2. Assign real value to intellectual property
3. All principals and employees add value
4. Early customers and contract in progress add value
5. Use discounted cash flow (DCF) on revenue projections (income approach)
6. Multiple of discretionary earnings (earnings multiple approach)
7. Calculate replacement cost for key assets (cost approach)
8. Find " comparables" who have received financing (market approach)
9. Look at the size of the market, and the growth projections for your sector
10. Assess the number of direct competitors and barriers to entry

The value also depends on the buyer and his objective in case of purchase or acquisition as For Example:

Why Facebook bought Instagram 8 reasons:

Facebook's announcement that it is acquiring Instagram, a precious mobile app for sharing retro-ized photos has everyone asking, 'Why would Facebook pay $1 Billion for a company with no revenue?'

1. Because it could.
2. Because it didn't want a competitor to snap it up first.
3. Because Facebook's mobile app sucks. Instagram's doesn't.
4. Because Facebook is having a midlife crisis, and the acquisition of the beloved, hip photo-sharing app is its equivalent of buying a sports car.
5. Because most people are on Facebook to look at other people's photos, and Facebook wants to keep it that way.
6. More data. Which translates into better mobile ads
7. Because it wanted to buy soul.
8. Because it's cheaper than inventing a time machine.

Factors of synergy (complementary- competence volume growth- portfolio mix- market share – Talent acquisition etc.) also matter.

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Reversal of Credit on Exempted Services before 30th June

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

Mechanism of availing Cenvat credit in case of manufacturers or service providers having both taxable and non-taxable activities has been subject to litigation. Lot of developments have happened in Rule 6 of Cenvat credit Rules 2004 in specifying the mechanism for availing the credits. The latest was in the year 2016. The scope of exempted services was enhanced with amendment of 'exempted services' meaning. Assesses would have opted for proportionate credit reversals for FY 2016-17 based on turnover ratio of FY 2015-16 as per Rule 6(3A) of Cenvat credit Rules 2004. Now they are required to re-compute the actual credit reversals based on turnover of 2016-17 before 30th June 2017 for which understanding the scope of exempted services would be key.

In Finance Act 2016, vide notification no.13/2016-CE-NT, the scope of exempted services for the purpose of Rule 6 has been expanded by stating that 'exempted services' would include an activity, which is **not a 'service'** as defined in Section 65B(44) of the Finance Act, 1994 by adding explanation 3 to Rule 6(1). It is also stated that the value to be considered in such cases is invoice/ agreement/ contract value and where such value is not available, such value needs to be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act and the Rules.

This amendment has put the assessee in dilemma as computation of eligible Cenvat credit amount in case of common services would be depending on value of exempted services. In terms of Section 65B(44) of the Finance Act, any activity carried out by a person for another for consideration is a service and includes a declared services. This definition excludes following activities which would not be considered as service:

(i) Transfer of title in goods / immovable property by way of sale, gift or in any other manner;

(ii) Transaction in money or actionable claim;

(iii) Provision of service by an employee to employer;

(iv) Fees taken in any Court or tribunal established under any law.

This amendment therefore is illogical as an activity cannot be said to be an exempted service unless it is service first. Strict interpretation of this amendment would bring many assessees into Rule 6 compliance. For example, an assessee who is exclusively engaged in manufacturing of excisable goods also sells one immovable property as one time affair. He could be required to consider such sale as exempted service and the value would be invoice / contract value which could be huge and sometime could be more than turnover of manufactured goods.

After this amendment was made, with effect from 13th April 2016, it was clarified by amendment to Explanation 1 that the activity which is not service would be treated as exempted service only when such activity has used inputs or input services.

However, this amendment may not help the assesses much as it can be argued that most of the input services are used even by such non-service activities. For example, sale of flats by developers before completion certificate with service tax and sale after completion certificate without service tax. It is difficult to prove that no services are used in relation to flats which are sold after completion certificate. Similarly, interest income earned on bank deposits. It could be argued that services like telephone services could are put to use in earning income from bank deposits. *[Please note that value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest is not to be considered as per Rule 6(3D)].*

Assesses need to be careful in ascertaining the eligible credits based on the amendment which has happened. If there are any credits which are exclusively used towards such non-service activity, entire credit to be reversed. In case of common services, proportionate credit could be reversed taking turnover ratio.

Conclusion: Professionals could play a key role in bringing this awareness among the assesses as many seem to be unaware of the impact of the amendment happened. The new GST law could get introduced from July 2017 and before this, assesses should compute all eligible credits appropriately and disclose in financial statements along with statutory returns so that the benefit is not lost. Even credit reversals to be made, if any, can be identified for reversal under present indirect tax regime.

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Updates under the Karnataka Commercial Taxes Laws

CA. Srikanth Acharya and **CA. Annapurna Kabra**

I) **Southern Motors v. State of Karnataka and Others – Civil Appeal Nos. 10972-10978 of 2016 [SC]**

Discount is allowable after issuance of the tax invoice.

Facts:

The appellant is a dealer in the motor vehicles and registered under the Act. During 2007-08 and 2008-09, it had raised tax invoices on the purchasers of motor vehicles according to the policy of manufacturers of the vehicles in order to maintain uniformity in price. After the sale is completed, the appellant allowed discount to its customers by issuing of credit notes, in order to meet the existing competition in the market. Hence, the net amount received, after the grant of discount was reflected in the books of accounts and returns filed thereafter. The Assistant Commissioner of Commercial Taxes, (Audit-1.6), by his reassessment orders, had allowed the discount reflected in the credit note as claimed by the appellant. However, the High Court, in its decision had disallowed such claim of discount, since only discounts mentioned in the tax invoices as eligible for deduction from the total turnover in terms of Rule 3(2)(c) of the Karnataka Value Added Tax Rules. Aggrieved by the rectified order passed by the High Court, the appellant has filed an appeal before the Supreme Court Authority.

Issue: Whether discount is allowable after issue of the tax invoice?

Grounds of Appeal:

The respondent of the case states that the discounts allowed through the issue of credit notes since the same were not revealed at the time of issuance of tax invoices. The respondent was of the view that once the sale invoice was issued and the sale price was collected along with the tax, such sales form part of the total turnover and the tax was payable on the taxable turnover, after claiming deduction permissible under Rule 3(2) of the KVAT Rules. As per Rule 3(2), discount allowed to customers shall qualify for deduction only if such amount is reflected in the sale invoice. Therefore, by issuing of a credit note post sale, but before filing of returns, cannot be construed that such discount shall be eligible for deduction under Section 3(2) of the Rules.

The appellant has relied upon Section 30 and Rule 31 of the Act clearly states that the assesse are entitled to claim deduction of discount issued to its customers by was of a credit note, in order to arrive at the taxable turnover. The appellant has contended that such discounts which are linked to achievement of targets for a particular period cannot be ascertained before hand and therefore, logically they cannot be reflected in the tax invoice. Therefore, such discounts are issued by way of a credit note at the end of such period for which such target is fixed, and are therefore, governed by Section 30 and Section 31 of the Act.

On a plain reading of Rule 3(2)(c), it can be observed that a discount to be eligible for deduction, has to be the one which is allowed in accordance with the regular practice of the dealer or in accordance with the terms of any contract or agreement entered into with the concerned party. Also, in order for a discount to qualify for deduction shall relate to the transaction resulting in the final sale /purchase price and not limit to the original sales invoice issued. The sale or purchase price is required to be adjusted on a combined consideration of the sale invoice issued along with the accounts reflecting the trade and other discounts and the actual price paid.

Judgment:

The Supreme Court has allowed the appeals of the petitioner. As per Section 30 and Rule 31, with reference to the provisions mentioned in Rule 3(2)(c), any discount allowed in terms of any contract entered into with the purchaser or is in regular practice of the dealer, shall be allowed on the basis of any account maintained by the dealer, i.e. credit note in the present case, irrespective of its absence in the original sales invoice issued.

Comment:

Rule 3(2)(c) requiring to show the discount at the time of issuance of invoice is read down to allow discount after issuance of tax invoice as normally discounts are allowed after sale of goods and not before sale of goods.

II) **Entry Tax – Supreme Court Constitutional Bench Judgment Analysis**

Jindal Stainless Ltd & ANR. Vs State of Haryana & Ors (SC) Civil Appeal No 3453/2002 dated 11/11/2016

The Supreme Court upheld the demand of entry tax by states for allowing goods and raw materials into their territories. Jindal Steels Ltd was the first to challenge the entry tax levied by Haryana in 2002. Later, other manufacturing companies such as Vedanta, Reliance, Steel Authority of India Ltd and Hindalco followed. According to these firms, it was beyond the power of the states to impose entering its territory. The companies challenged them on the ground that they are against the concept of free trade and commerce under Article 301 (Freedom of Trade commerce and Intercourse) of the constitution.

This was long pending dispute and the constitutional validity of entry tax levied by various states has been settled. The court held that entry tax levy cannot be held as invalid, for the reason similar goods are not manufactured within the State. It was questioned that entry tax can be levied on the goods imported from outside the country, as states have no jurisdiction to levy tax on goods imported from outside country under Section 5 of the CST Act. Whether the entire state can be termed as local area and such levy can be considered as valid. However it is held that levy of entry tax on imported goods is valid.

The States contended these arguments by saying their sovereign powers should not be diluted as the right to levy and entry tax is essential to the division of tax powers between the centre and states. Hence states argued that they have the constitutional right to pass laws on issues placed in the state list and concurrent list defined under the constitution including movement of the goods. It was held that constitution does not seek tax as a barrier but it should not be imposed in such a way that it acts as a barrier and obstruction to free movement of goods.

The Court held that states are within their right to levy entry tax provided there is no discrimination between the goods imported from other states and goods within the state. It is a tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing state. The Court has referred the cases to regular bench for deciding whether the entry tax acts of various states discriminate between goods imported from outside the state and goods within the state.

The apex court held that "a non-discriminatory tax does not per se constitute a restriction on the right to free trade, commerce and intercourse guaranteed under Article 301". The examination of vires of entry Tax legislations will have to be decided on the ground of discrimination by the respective courts. It is stated that only such taxes which are non-discriminatory in nature are valid and those taxes which are discriminatory in nature are unconstitutional.

Karnataka Tax on Luxuries Act 1979

Vide Notification No KTL CR- 07 /2016-2017 dated 23.12.2016 with reference to the powers conferred in section 6(1) of Karnataka Tax on Luxuries Act 1979, the proprietors are notified of the requirement of productions of accounts in support of the returns filed by them for year ending 31.3.2016:

- Proprietors in whose case nonpayment or short payment of tax in any period in the year 2015-2016 has been detected on a visit or inspection by any of the departmental authorities
- Proprietors who have been assessed in any of the previous one year to an additional tax of twenty five thousand rupees or more than admitted by them in the return filed for the year
- 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%
- Proprietors who are Nil Filers or Non- Filers or who have closed the business during the year 2015-2016.

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Penalty for Cash Transactions of Rs 3 Lakh or More

CA. Prakash Hegde and **CA. Raghavendra N**

During 2011, acting on a petition, the Supreme Court of India ('SCI') had ordered the appointment of a Special Investigation Team ('SIT') headed by a former judge to handle the menace of black money. Since then, the SIT has been submitting its reports relating to various kinds of studies and recommendations. During July 2016, the SIT, headed by retired Justice M.B. Shah, submitted its fifth report to the SCI on methods to curb black money in the economy.

It had reported that a large amount of unaccounted wealth isstored and used in the form of cash.Considering the provisions which exist in various countries and also the reports and observations of various courts regarding cash transactions, the SIT opined that there isa need to put an upper limit to cash transactions. It recommended a total ban on cash transactions of Rs3 Lakh and above. It had also suggested an upper limit of Rs15 Lakh on cash holding.

The Finance Minister MrArun Jaitley has accepted the recommendation of the SIT with respect to restrictions on cash transactions of Rs 3 Lakh and above. [Fortunately or unfortunately, the other recommendation on upper limit of Rs 15 Lakh on cash holding has not been considered at the moment.] In the Finance Bill 2017 presented on 01 February 2017, the Finance Minister has proposed to include the following section in the Income Tax Act, 1961 ('the Act').

***269ST.* Mode of undertaking transactions**

No person shall receive an amount of three lakh rupees or more -

(a) in aggregate from a person in a day; or

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or an account payee bank draft or use of electronicclearing system through a bank account:

Provided that the provisions of this section shall not apply to—

(i) any receipt by —

(a) Government;

(b) any banking company, post office savings bank or co-operative bank;

(ii) transactions of the nature referred to in section 269SS;

(iii) such other persons or class of persons or receipts, which the Central Government may, bynotification in the Official Gazette, specify.

Explanation.—For the purposes of this section,—

(a) "banking company" shall have the same meaning as assigned to it in clause (i) of the Explanation to section 269SS;

(b) "co-operative bank" shall have the same meaning as assigned to it in clause (ii) of theExplanation to section 269SS.

Analysis ofthe above provisions:

The following aspects may be noted in respect of the proposed section:

- Proposed section 269ST restricts any person from receiving an amount of Rs 3 Lakh or more otherwise than by

(a) account payee cheque or

(b) account payee bank draft or

(c) electronic clearing system through a bank account.

- As may be noted from the proposed section, restriction on receipt of an amount of Rs 3 Lakh or more in cash is applicable if it is received,

o from one person in a day, irrespective of the number of transactions (e.g. cash receipts from one person in a single day due to several sale transactions);

o in respect of a single transaction, even if received over several days / years (e.g. cash receipts spread over several days but in relation to a single sale transaction);

o in respect of a single transaction, even if received from several persons (e.g. cash receipts from several persons for a single sale transaction);

o from one person, even if received in respect of several transactions and even if received over several days / years but relating to one 'event' or 'occasion' (e.g. cash receipts from one person over several days for different activities like decoration, stage preparation, catering etc. but for a single mega event).

- Restriction is applicable to all kinds of persons; whether individuals, firms, companies, trusts etc. from receiving an amount of Rs 3 Lakh or more except through one of the specified three modes. However, the restriction does not apply to amount received by Government, any banking company, post office savings bank or co-operative bank. Further, the Central Government is authorized to specify other persons or class of persons or receipts to whom / which these provisions would not be applicable.
- The proposed section appears to cover most of the combinations of situations and therefore, quite comprehensive in restricting cash transactions above the specified limit.
- A possible view is that the proposed section restricts even receipt of cash on withdrawal of Rs 3 Lakh or more in a day from one's own bank account as the exceptions provided therein do not cover such situations! As noted above, the exceptions cover only the amount received by the Government or banks etc. and transactions of the nature referred to in section 269SS. Transactions referred to in section 269SS are 'taking or accepting certain loans, deposits and any specified sum' (i.e. sum of money in relation to transfer of immoveable property) but do not include withdrawal of deposit / cash. Therefore, it may be contended that withdrawal of cash of Rs 3 Lakh or more from one's own bank account is a 'receipt' prohibited by this proposed section.

An argument against the above view could be that withdrawal of cash from one's own bank account is not a 'transaction' as the heading prefixed to the proposed section is 'Mode of undertaking transactions' and is not expected to cover an activity which is not a 'transaction'. However, the term 'transaction' has not been defined in the Act (though the term 'international transaction' has been defined which in turn refers to the term 'transaction' itself without defining what it is). Drawing reference from Chapter VII of the Finance Act 2005 which had introduced the erstwhile Banking Cash Transaction Tax, withdrawal of cash from a bank account is also a transaction! Therefore, the argument that withdrawal of cash from a bank account is not a 'transaction' may not be acceptable.

Another argument could be that withdrawal of cash from one's own bank account is not a 'receipt' as contemplated in the proposed section. This interpretation may also not be accepted as the withdrawal from bank account results in actual receipt of cash in the hands of the person withdrawing the same.

Therefore, the interpretation of the provisions of this section in relation to withdrawal of cash of Rs 3 Lakh or more in a day from a bank accountmay lead to litigation with the income-tax authorities. An amendment to the proposed section is required to avoid litigations if such an interpretation is not the intention of this proposed section.

- The restrictionunder this proposed section will take effect from 01 April 2017.
- The restriction under the provisions of this section is applicable to transactionsequivalent to Rs 3 Lakh as well. Where the amount of cash received is less than Rs 3 Lakh, say, Rs2,99,000, the restriction is not applicable.
- Though the proposed sectiondoes not specifically define the term 'cash transactions',the provisions areintended to curbcash transactions and encourage transactions through banking system as per the recommendations of the SIT as noted above.
- Transactions like taking or accepting loan or deposit or any specified sum which are referred to in section 269SS of the Act will still be covered under the provisions of section 269SS as a lower limit of Rs 20,000 will continue to be applicable to them.
- It may be interesting to note that though the proposed section does not refer to receipt from sale of agricultural produces, the Notes on Clauses (page no. 80) accompanying the Finance Bill 2017 states that *"the said restriction shall not apply to…….any receipt from sale of agricultural produce by any person being an individual or Hindu Undivided Family in whose hands such receipts constitutes agricultural income*"!!

The above sentence in the Notes on Clauses is in contradiction with the provisions of the proposed section as the proposed section does not grant any exemption for agricultural receipts! Perhaps, the Finance Minister might have thought of relaxing the provisions for agricultural receipts initially and then he might have changed his mind but forgot to update the Notes on Clauses!! Since the proposed Section 269ST has not relaxed the restriction for agricultural income, the provisions would be equally applicable to agricultural receipts.

Further, the Finance Minister has also proposed to insert the following section in the Act:

***271DA*. Penalty for failure to comply with provisions of section 269ST**

(1) If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt:

Provided that no penalty shall be imposable if such person proves that there were good andsufficient reasons for the contravention.

(Contd. on page 13)

Indirect Taxes Update – February 2017

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

Budget 2017 - Highlights- Excise and Service Tax

A. Amendments to Advance Ruling Authority provisions:

a) Section 23A(e) which defines Authority has been proposed to be substituted to mean the Authority for Advance Rulings as defined in Section 28E(e) the Customs Act, 1962. Section 28E(e) of the Customs Act, 1962 provides that the authority constituted under 245-O of Income Tax Act, 1961 shall be the authority of advance rulings

b) Fee for making an application for advance ruling has been proposed to be increased from Rs. 2000 to Rs. 10,000/-

c) The time limit for pronouncing the advance rulings by the authority has been proposed to be enhanced from 90days of the receipt of application to 6 months of receipt of the application.

d) In terms of the proposal to merge the Advance ruling authority for Customs, Excise and Service Tax with that of the authority under Income Tax provisions, new section 23-I is proposed to be inserted to provide for transfer of the pending applications on the date of assent of the President to the Finance Bill 2017.

B. Amendments to the provisions of Settlement Commission

a) Section 32E which provides for making an application to settlement of cases, is proposed to be amended so as to enable any person, other than assessee, to make an application to the Settlement Commission. Any other person, as referred above, could make an application subject to condition that the show cause notice issued to him is in a case relating to the assessee which has been settled or is pending before the Settlement Commission and such notice is pending before an adjudicating authority.

b) In terms of Section 32F, where application for settlement is allowed then in such case, the Settlement Commission shall within 7 days from the date of order allowing the application, call for a report along with the relevant records from the Principal Commissioner of Central Excise or Commissioner of Central Excise having jurisdiction and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission. The said provision has been proposed to be amended to provide that such report / records could be called not only from Principal Commissioner of Central Excise or Commissioner of Central Excise having jurisdiction but also from Principal Additional Director General of Central Excise Intelligence or Additional Director General of Central Excise Intelligence, as the case may be, having jurisdiction.

c) Sub-section(5A) is being proposed to be inserted in Section 32F to provide for rectification of error apparent on the face of record.

C. Amendment to Central Excise Rules, 2002

Rule 21 of the Central Excise Rules, 2002 deal with remission of duty in certain circumstances. Sub-rule (2) of the said rule has been amended to provide for a time limit of three months from the date of application for granting remission of duty. The period could be further extended by the higher authority by a period maximum of 6 months on sufficient cause being shown and reasons to be recorded in writing.

D. Amendment to Cenvat Credit Rules, 2004

a) Rule 6:

Explanation 1 to Rule 6(3D) defines the value of goods or services for the purpose of Rule 6(3 or 3A). Clause (e) of said explanation, presently provides that value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount is not included for the purpose of application of Rule 6(3) or 6(3A).

The said clause has been amended to provide that the above clause shall not apply to a banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances.

It shall be noted that in terms of Rule 6(3D) provides an option to reverse 50% of the total credit for the month instead of following proportionate reversal or payment of 7% of exempted service. There is no change to this provisions and therefore, w.e.f 2.2.2017, where a banking company or a non banking financial services opt for 6(3) or 6(3A) based reversal then in such case, the interest on loans and advances shall be treated exempt services and reverse the credit or pay amount accordingly.

b) Rule 10:

Rule 10 of Cenvat Credit Rules, 2004 provides for transfer of accumulated cenvat credit the circumstances of change in the ownership, shifting of factory etc.

Sub-rule 4 is being inserted in Rule 10 of CENVAT Credit Rules, to provide that transfer of CENVAT Credit by the jurisdictional Dy./Assistant Commissioner of Central Excise, shall be allowed within 3 months from the date of receipt of application from the manufacturer or service provider.

The period specified above may, on sufficient cause being shown and reasons to be recorded in writing, be extended by the Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be, for a further period not exceeding six month.

It is relevant to note that clauses (1) to (3) of Rule 10 supra does not provide for or envisage making a specific application for transfer of credit. Though the present amendment only provides for disposal of application for transfer, this gives rise to new procedure for obtaining prior permission to transfer credit.

E. Clarifications on availment of exemption on goods imported / locally procured by EOU and used for manufacture and clearance in DTA.

On the issue of on availment of exemption on goods imported / locally procured by EOU and used for manufacture and clearance in DTA, it is clarified that non-applicability of exemptions under notifications issued under section 5A of the Central Excise Act, 1944 is only in respect of excisable goods produced or manufactured by an EOU and cleared to DTA and not in respect of inputs/raw materials procured by them domestically and utilised for production/manufacture of goods which are cleared by them to DTA.

Therefore, it is clarified that EOUs will also be eligible to import or procure raw materials / inputs at other concessional/Nil rate of BCD, excise duty/CVD or SAD, as the case may be, provided they fulfill all conditions for being eligible to such concessional or Nil duty.

Service Tax

F. Amendment to Negative list and related definitions

Section 66D, lists out the activities being excluded from purview of taxability. Clause (f) of the negative list covered 'processing of goods amounting to manufacture' wherein this entry was excluded from service tax. The said clause is proposed to be deleted. However, as the suitable amendments have been made under exemption Notification 25/2012-ST, there would not be any requirement of payment of service tax on such activities.

However, as the said transaction is treated as exempt activity and accordingly, it would be easier for the Government to modify or omit this by way notification.

G. Amendments to Advance Ruling Authority provisions:

a) Section 96A (d) which defines Authority has been proposed to be substituted to mean the Authority for Advance Rulings as defined in Section 28E(e) the Customs Act, 1962. Section 28E(e) of the Customs Act, 1962 [proposed amendment]provides that the authority constituted under 245-O of Income Tax Act, 1961 shall be the authority of advance rulings

b) Fee for making an application for advance ruling has been proposed to be increased from Rs. 2000 to Rs. 10,000/-

c) The time limit for pronouncing the advance rulings by the authority has been proposed to be enhanced from 90days of the receipt of application to 6 months of receipt of the application.

d) In terms of the proposal to merge the Advance ruling authority for Customs, Excise and Service Tax with that of the authority under Income Tax provisions, new section 96-HA is proposed to be inserted to provide for transfer of the pending applications on the date of assent of the President to the Finance Bill 2017.

H. Retrospective amendments

a) Retrospective exemptions to the certain services provided by State Government industrial development corporation or undertaking

Notification No. 41/2016-S.T., dated 22-9-2016 exempted , State Government Industrial Development Corporations/

Undertakings to industrial units from payment of service tax payable on one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) on granting of long term (thirty years, or more) lease of industrial plots.

Clause 104 of Finance Bill proposes to grant the above exemption retrospectively from 1.6.2007(date from which service tax on renting of immovable property services were introduced) till the date of the issue of Notification No. 41/2016 ST (supra).

The said clause also provides that in case where the undertaking have already remitted service tax on above referred amount, they would be entitled for refund of the same and for the said purpose, the application for refund shall be filed within 6 months from the date on which the Finance Bill, 2017 receives the assent of the President.

b) Retrospective exemptions to the certain services provided by Army, Naval and Air Force Group Insurance Funds

The taxable services provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government, during the period from 10.9.2004 till 1.2.2016 has been retrospectively exempted vide Clause 105 of Finance Act, 2017

The said clause also provides that in case where service tax is already remitted, the funds referred to above, would be entitled for refund of the same and for the said purpose, the application for refund shall be filed within 6 months from the date on which the Finance Bill, 2017 receives the assent of the President.

Entry 26D of notification No. 25/2012-ST as amended by Notification NO. 7/2017-Service Tax dt. 2.2.2017, provides for prospective exemption.

c) Retrospective Amendment to valuation provisions

Rule 2A of Service Tax (Determination of Value) Rules, 2006 which provides for manner of determination of value works contract services has been amended retrospectively from 1.7.2010, to provide for deduction of value of land for the purpose of arriving the value of works contract services as detailed below:

Period	Nature of amendment
1.7.2010 to 30.06.2012	Value of land or undivided share of land shall be excluded for the purpose of computing the value of works contract on actual basis Where value cannot be determined on actual basis then service tax shall be payable on 25% of the gross amount charged which shall include value of goods as well as land or undivided share of land subject to condition of non availment of cenvat credit on input and input services and non availment of exemption under Notification No. 12/2003-ST
1.7.2012 onwards	Value of land or undivided share of land shall be excluded for the purpose of computing the value of works contract on actual basis
	Where value cannot be determined on actual basis then:
1.7.2012 to 28.02.2013	Value of works contract shall be 40% of the gross amount charged for the works contract and where the gross amount charged includes amount towards value of goods and value of land or un divided share of land, then in such case, the value of works contract shall be 25% of the gross amount charged
1.3.2013 to 7.5.2013	Value of works contract shall be 40% of the gross amount charged for the works contract. Where the gross amount charged includes amount towards value of goods and value of land or un divided share of land, then in such case, the value of works contract shall be 30% of the gross amount charged. However, where the carpet area of the residential house is upto2000 sq mts. then service tax shall be paid on 25% of the gross amount charged
8.5.2013 to 31.3.2016	Value of works contract shall be 40% of the gross amount charged for the works contract. Where the gross amount charged includes amount towards value of goods and value of land or un divided share of land, then in such case, the value of works contract shall be 30% of the gross amount charged. However, where the carpet area of the residential house is upto2000 sq mts. and amount charged per residential unit from service recipient is less than rupees one crore then service tax shall be paid on 25% of the gross amount charged

Period	Nature of amendment
1.4.2016 onwards	Value of works contract shall be 40% of the gross amount charged for the works contract. Where the gross amount charged includes amount towards value of goods and value of land or un divided share of land, then in such case, the value of works contract shall be 25% of the gross amount charged.

The above amendment is probably to ensure that the service tax on works contract which also involves amount charged for value of land, is not struck down on the ground of legislative competence and lack of clear rules for deduction of value of land. [refer SURESH KUMAR BANSAL vs. Union of India 2016 (43) S.T.R. 3 (Del.)]. As however the said judgement was based on construction of complex services, that entry would not be affected but those who opted for works contract then cannot claim refunds or challenge the same.

I. Exemptions [Amendment to Notification No. 25/2012-ST dt. 20.06.2012]- Notification NO. 7/2017-Service Tax dt. 2.2.2017,

a) Entry 9B: services provided by IIMs

Two year full time residential Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by Indian Institute of Management were exempted from payment of service tax w.e.f. 1.3.2016. The said entry has been amended to provide exemption to not only to residential programmes but also to other than residential programmes.

b) Entry 23A:

Service tax on the amount of viability gap funding (VGF) payable to the airline operator for the services of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme (RCS) airport, under the Regional Connectivity Scheme (RCS), is exempted for a period of one year from the date of commencement of operations of the Regional Connectivity Scheme (RCS) as notified by Ministry of Civil Aviation.

c) Entry 26D: Life insurance services by the Army, Naval and Air Force Group Insurance Funds

Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.

d) Entry 30 – Substituted with effect from the date on which the Finance Bill, 2017 receives Presidential Assent to provide for exemption from payment of service tax on activity amounting to manufacture**:**

J. Repeal of Research and Development Cess Act, 1986:

Clause 140 of Finance Bill, 2017 proposes to repeal 'The Research and Development Cess Act,1986. Further, clause 139 of Finance Bill, 2017 states that this repeal shall come into force on 1st day of April 2017. Consequently, as clarified in TRU Circular, the exemption granted from payment of Service tax, in terms of Notification No. 14/2012-ST dated 17-03-2012, to the extent of R&D cess paid, would not be available and Full service tax along with cesses (Swachh Bharat Cess and Krishi Kalyan Cess) would be applicable to such taxable service imported.

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Penalty for Cash Transactions of Rs 3 Lakh or More

(Contd. from page 9)

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

As a result of the above proposed section, where anybody receives Rs 3 Lakh or more in cash, he will be liable to pay a penalty equal to the amount received,unless he proves that there were 'good and sufficient reasons'. What arethese good and sufficient reasons depends on the facts and circumstance of each case and perhaps, the simplest example could be a medical emergency.

Even if a receipt of an amount is exempt under the provisions of section 56(2) [i.e. received from a relative or on the occasion of marriage of the recipient etc.] penalty may still become payable unless the recipient can prove that there were good and sufficient reasons. Interpretation of a few terms like 'a single transaction', 'one event or occasion', 'good and sufficient reasons' are bound to lead into litigations.

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Financial Reporting – Practitioners Update

CA. Vinayak Pai V

1. INTRODUCTION

The first phase of IND-AS transitioning companies will present their first set of IND-AS compliant annual financial statements for the ensuing fiscal year ending March 31, 2017. The second phase of companies, both listed and unlisted, will also have to prepare IND-AS comparatives for the year ending March 31, 2016 albeit they transition to the new accounting framework from April 1, 2017. MAT has been a contentious issue right from the time of release of the Indian variant of International Financial Reporting Standards.

The Union Budget 2017 has proposed rationalization provisions of Section 115JB of the Income Tax Act to align the same with IND-AS. The amendments will apply in relation to AY 2017-18 and have an important bearing on provision for current and deferred taxes for in-scope companies apart from the creation of tax assets/liabilities on the balance sheet under IND-AS.

Interestingly, every company under IND-AS irrespective of whether they are within the ambit of MAT or not will mandatorily switch over to a new framework for financial reporting of deferred taxes with the "temporary differences" approach and "balance sheet approach" for deferred taxes kicking in under IND-AS in line with practices that have been in vogue for a considerable period of time under International GAAPs.

2. FINANCIAL REPORTING UPDATES

a) IND-AS: MAT RATIONALIZATION IN BUDGET 2017

The Union Budget presented on February 1, 2017 proposes amendment to Section 115JB of the Income Tax Act in order to provide a framework for computation of book profits under the new accounting regime. The salient aspects of the same that have an important bearing on the **current tax and deferred tax provisioning** for IND-AS compliant companies that are under the purview of MAT are discussed herein below.

- **No further adjustments** to **net profits** (pre other comprehensive income measure) other than that already specified under section 115JB.
- For items of other comprehensive income **(OCI)** that will **never be recycled to the income statement**, their **inclusion in book profits** for purpose of MAT computation will be at **specified points in time**.
  - The specified point of time for changes to **revaluation surplus** related to items of *Property, Plant and Equipment/ Intangible assets* and fair value changes from investments in equity instruments that are classified as FVTOCI (Fair Value Through Other Comprehensive Income) is the **time of de-recognition**.
  - The specified point of time for **re-measurements** (actuarial gains and losses**) of defined benefit plans** and **any other OCI item** is every year.
- The MAT position proposed in the budget with respect to the **first-time adoption exercise that triggers an adjustment to equity** is detailed herein below.
  - Adjustments recorded in OCI that would be subsequently reclassified to profit and loss will be included in book profits in the year in which such reclassification adjustments are made.
  - The adjustments recorded in OCI that would never be reclassified to the statement of profit and loss will be included in book profits at specified points of time.
  - The specified point of time for changes to **revaluation surplus** related to items of *Property, Plant and Equipment/ Intangible assets* and fair value changes from investments in equity instruments that are classified as FVTOCI (Fair Value Through Other Comprehensive Income) is the **time of de-recognition** (realization/disposal/retirement/ transfer).
  - **Re-measurements** (actuarial gains and losses**) of defined benefit plans** and **any other OCI item** will be included in book profits equally **over a period of five years** starting from the year of first-time adoption of IND-AS.

- **All other transition adjustments** recorded **under reserves and surplus** (other than capital reserves and securities premium reserves) and that would otherwise never subsequently be reclassified to the Statement of Profit and Loss will be included in computation of book profits equally **over a period of five years** starting from the year of first-time adoption of Indian Accounting Standards.

- Where a company at the time of transition to IND-AS uses **fair value as deemed cost** for items of **property, plant and equipment** /intangible assets, then the **impact** of such revaluation **shall be ignored** for the purposes of book profits computation. Further, the **allowable depreciation** on such assets will be based on computation **ignoring the amount of adjustment to opening retained earnings** arising from the option of using fair value as deemed cost at the date of transition to the new accounting framework.

b) **FOREIGN EXCHANGE TRANSACTIONS UNDER ICDS (REVISED)**

Revised Income Computation and Disclosure Standards (ICDS) are **applicable from Assessment Year 2017-18** and the salient aspects of treatment of foreign exchange transactions addressed in **ICDS VI**- *The Effects of Changes in Foreign Exchange Rates* are provided herein below.

- Foreign currency transactions need to be recorded at **initial recognition** in reporting currency by applying the applicable **exchange rate at the date of the transaction**. Here, an **average rate** for a week or a month **that approximates** the actual rate may be used for the period. However, **if** the exchange rate **fluctuates significantly**, the **actual exchange rate** should be used.
- With respect to conversion of **balance sheet items** as at the last date of the previous year, if the closing rate reflects an **unrealistic rate,** and it is not possible to effect an exchange at such rate, then the relevant balance sheet item **should be reported** in reporting currency at the **amount which** is **likely to be realized** from or required to disburse such item.
- The **recognition** of **exchange differences** is subject to provisions of **section 43A** of the Income Tax Act. It may be noted that this section permits **capitalization** of realized **foreign exchange fluctuation losses** on liabilities incurred for acquisition of assets **outside India**.
- Foreign exchange **forward contracts** that are entered into for purposes other than trading or speculation shall be accounted as follows.
  - The **premium/discount at inception** to be **amortized** over the life of the contract to the income statement.
  - **Exchange differences** to be recognized in income statement in the **previous year** in which the exchange rate changes.
  - Profit/loss on cancellation of such contracts to be recognized as income/expense for the previous year.

c) **AUDIT –COMMUNICATION WITH THOSE CHARGED WITH GOVERNANCE – CHANGES TO SA 260**

The revised Standard on Auditing **(SA) 260** – ***Communication with those charged with governance*** is effective for audits of financial statements for periods beginning on or after **April 1, 2017**. Some of the salient aspects of the same are highlighted herein below.

- The auditor shall **communicate** with those charged with governance about the **significant risks** identified by the auditor.
- It has now been specified that **when SA 701 applies**, the auditor needs to communicate with those charged with governance, the auditor's **responsibilities to determine and communicate** key audit matters **(KAMs)** in the auditor's report.
  - *It may be noted that KAMs are those matters that, in the auditor's professional judgment, were of most significance in the audit of financial statements. KAMs are selected from matters communicated with those charged with governance. SA 701 typically applies to the audit of listed entities.*
- The matters to communicate with those charged with governance includes **how the auditor plans to address** areas of **higher assessed risks** of **material misstatement**.

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Input Tax Deduction Under Karnataka Value Added Tax Act 2003 – Judicial Conundrum

CA. S. Ramasubramanian and **CA. Prateek Marlecha**

(Contd. from previous month)

3.9 When there seemed to be a judicial consensus that the input tax deduction is to be claimed in the same tax period to which the purchase invoice relates, the High Court rendered its judgment in Manyata. The issue in Manyata is with reference to S.20(2) of KVAT Act. U/s 20(2) of KVAT Act, a SEZ unit or a developer is entitled to refund of tax paid on purchase of inputs. In this case, the dealer claimed the refund of the purchase tax paid by him in a month other than the month of purchase.. This was rejected by the authorities. When the matter reached the High Court, the High court approved the finding of the Tribunal that S.10(3) is not applicable to a refund claim made u/s 20(2) of the Act. It was also held that S.20(2) r.w.r. 130A form a separate code by itself and the refund is to be governed by only these two provisions and not by S.10(3). But the Hon'ble High Court did not stop at that. It was held that nowhere in the Act it has been stated that input tax credit should be claimed in the month in which the date of invoice of the Supplier/Vendor falls or the purchasing dealer has to claim input tax credit in the same period in which the bills have been raised by the selling dealers. The above observations are with reference to the input tax deduction u/s 10(3). It appears that the above observations are mere obiter dicta. As stated earlier, having held that S.20(2) and Rule 130A form a separate code, there was no need for the Hon'ble court to discuss S.10. Though the High Court referred to K.Bond, it did not refer to other decisions holding otherwise..

3.10 On a writ petition filed by various dealers in Sonal Apparels' case, the Hon'ble single judge held that it is not necessary to claim the deduction in the same tax period to which the purchase invoice relates. It followed obiter dicta in Manyatas' case and distinguished Centum Industries' case. Centum Industries was distinguished on following terms.

> In Centum Industries Private Limited's case, this Court has interpreted Section 10(3) to mean that a dealer is required to avail credit of input tax in the month in which the 'input tax' is paid by the purchasing dealer. The said decision does not however, support the proposition that input tax must be availed of in the month in which the selling dealer raises his invoices. The Revenue is hence not justified in seeking to apply the said decision in support of its reasoning.

With respect it is submitted that the distinction made by the Hon'ble single judge does not appear to be reasonable. The factual position in Centum's case as noted earlier is that the debit note was raised in the month of July 2006. The court held that the input tax deduction cannot be claimed in the month of December 2006 and ought to have been claimed only in July 2006. This will apply with equal force even to the claiming of input tax deduction on the basis of purchase invoices.

3.11 Now the facts of Ajantha Digital Lab can be noticed. In this case the dealer was claiming that he is not liable to pay VAT on processing and supply of photographs, prints and negatives. This was based on certain judicial pronouncements of Karnataka High Court. Later, the Supreme Court reversed these judgments and held that such processing would amount to works contract and hence, a deemed sale. While assessing the dealer after the Supreme Court judgement, the tax authorities did not allow the input tax deduction on the ground that it was not claimed in the return. The High Court held that input tax credit was not claimed in the original returns because the assessee had taken a stand that it is not liable to pay tax and therefore, it cannot be non-suited to make such claim at the time of reassessment after Supreme Court judgment. It may be noted here that the decisions in Infinite Builders and Sumo Oil where the High Court had held that claiming the input tax deduction in the return is necessary, have not been noted in the judgment.

3.12 In Bhoorathnom Construction Companies' case the High Court held again that unless a dealer claims the input tax deduction in the return, the deduction cannot be claimed. It followed the decision of the Centum Industries. The decision in Manyata and Sonal Apparels were not considered.

3.13 An analysis of the above decision would show that there is an apparent contradiction in the judgment of the High Court. In the opinion of the authors a valid criticism can be levelled against the judgments on the ground that a full and deeper analysis of S.10(3) of KVAT Act has not been made to arrive at the final conclusion. It appears that following is the proposition of law laid down by the High Court.

a) The input tax deduction should be claimed in the return filed by a dealer. If for any reason the dealer did not claim the input tax deduction in the return, he is not entitled to the same.

b) The deduction should be claimed in the month in the tax period to which the purchase invoice relates.

c) This may not apply to a case of a refund and the refund can be claimed at any time.

3.14 Now let us analyze S.10(3) independently without referring to any judicial precedence. S.10(3) before its amendment in 2015 is in two parts. S.10(3) deals with the computation of net tax payable for a tax period. The section envisages following steps

a) The net tax payable for each tax period should be calculated as provided in the section.

b) The output tax payable for that period is to be determined.

c) Input tax deductible as may be prescribed for that period should be deducted.

d) The balance is the net tax payable or refundable.

It may be noted the expression used with respect to output tax and input tax is "that period" The use of "that" in "that period" suggests that it refers to a period mentioned earlier. In the first portion of S.10(3) the period referred to is the net tax payaable for a tax period. Therefore, the period with reference to output tax and input tax deduction is that tax period for which the net tax is to be computed. There can be no difficulty in understanding that the output tax always relates to a particular tax period; i.e, the tax period in which the sale takes place. The output tax automatically relates to the sale and the tax is payable in that tax period in which the sale takes place. But when it comes to input tax deduction the exact phrase used is "less input tax deductible by him as may be prescribed in that period". There is nothing in S.10(3) which initially states that the input tax shall be deducted in a particular tax period. The court has not given proper emphasis to the expression "as may be prescribed in". It is humbly submitted that the expression "as may be prescribed" governs not only the input tax deductible but also "in that period". Therefore, unless the rules clearly prescribe the tax period during which the input tax is to be claimed, S.10(3) cannot be interpreted to say that the input tax deduction should be claimed in that tax period to which the purchase invoice relates. It is not the case of the department that there are any rules to this effect in the KVAT Rules. Even Rule 38 only states that the net tax relating to all place of business should be paid before filing the return and the return should be accompanied by proof of payment. In the absence of any particular rule prescribing any condition as to when the input tax deduction should be claimed, by a process of interpretation of S.10(3) such conditions cannot be imposed. Even assuming that the expression "as may be prescribed" governs only the input tax deductible and not "that period" the question that needs to be answered is whether there is any statutory prescription that input tax deduction can be claimed only in a particular period. The answer is an emphatic no. How can a time limit can be assumed in the absence of specific provisions? Central Excise Rules dealing with Modvat\Cenvat credit provide for specific time limit within which the credit should be availed. In those decisions where the court has rejected the claim of the dealer that S.10(3) does not prescribe any time limit for claiming input tax deduction, it has failed to notice that there is no specific provision specifying the time limit. It is submitted with respect that court has also failed to notice the fundamental principles on which the VAT system is based. The fundamental principle is that the tax is to be levied on value addition and the input tax deduction is bed rock of the VAT system. The Hon'ble Supreme Court, in Collector of Central Excise. Dai Ichi Karkaria Ltd 1999 (112) ELT 353 held that the modvat credit is indefeasible. The ratio of the above decision would apply to input tax deduction also. It is submitted that the input tax deduction is not a concession given by the legislature as a matter of gratis.

It is an integral part of VAT system and unless the input tax deduction is allowed, the VAT system cannot work. No doubt the legislature can prescribe the conditions for allowing the input tax deduction. But that does not mean that the input tax deduction is a benefit or gratis given by the legislature. The strict principles of interpretation regarding exemptions provisions cannot be applied. It is submitted that the provisions of input tax deduction should be interpreted keeping in mind the fundamental principles of VAT system. But the Hon. Supreme Court has held otherwise. In Jayam & co vs ACCT, 96 VST 1 it was held that there is no inherent or vested right in dealers to claim the benefit of input tax deduction. The above judgment was given in the context of challenge to constitutional validity of sections prescribing conditions. It is submitted that the Supreme Court decision should be understood in the context in which it was rendered. It is submitted with respect that it is not correct to say that input tax deduction is a concession ignoring the fundamentals of VAT scheme. Principle laid down in Dai Ichi Karkaria continues to hold the field. Rajasthan High Court in Panwar Trading Corporation vs State of Rajasthan held that input tax deduction is a concession. Therefore our view that input tax deduction cannot be treated as a concession may not be acceptable in view of the above two judgments.

The expression 'deductible by him' has to be read in conjunction with section 10(4) of KVAT Act. Section 10(4) permits a deduction of input tax provided the prescribed tax invoice or debit note or credit note is with the registered dealer at the time of claiming the input tax deduction.

Reading subsections 3 and 4 of section 10 together, it is submitted that input tax deduction can be claimed in any month if conditions specified in subsection 4 of section 10 are satisfied. It is also submitted that the expression 'input tax deductible by him' as may be prescribed in that period refers to the quantum of deduction and not to the eligibility of deduction. For instance, by applying the partial rebating formula and special rebating formula, the quantum may get reduced. Therefore, the expression 'deductible' refers to the quantum of input tax deduction and not to the entitlement.

Therefore, until the amendment of S.10(3) w.e.f. 1.4.2015 there was no requirement that the input tax deduction should be claimed only in that tax period to which the purchase invoice or other documents relate.

3.15 The Centum Industries' case is now pending in appeal before the Hon'ble Supreme Court and one hopes that the counsel will make detailed submissions and the Hon'ble Supreme Court will arrive at a fair interpretation of S.10(3) after taking into account all aspect of the matter.

3.16 One issue which needs to be discussed is whether there is a requirement that the input tax deduction should be claimed in the return and one cannot make a claim during the assessment if the deduction has not been claimed in the return. As stated earlier, there is nothing specific in KVAT Act which requires that the input tax deduction should be claimed in the return. Wherever the legislature wanted a deduction to be allowed only if it is claimed in the return, it has specifically provided so. For instance, S.80A(5) of Income Tax 1961 states that deductions u/s 10A, 10AA or certain sections of VI A of Income Tax Act will not be allowed unless a return is filed claiming such deduction. S.80AC states that the some deductions under Chapter VIA of Income Tax Act shall be allowed only if the deduction is claimed in the return filed within the time allowed u/s 139(1) of Income Tax Act. Therefore, can it be said that in the absence of any similar provisions in KVAT Act, the deduction can be allowed even if the input tax deduction is not claimed in the return and the dealer makes a claim during the assessment or reassessment proceedings. It is a well settled principle that the proper determination of the taxable turnover and the tax payable is the fundamental duty of all stakeholders like dealers, assessing authority and the appellate authority. Just because a dealer did not claim a deduction which he is entitled to in the return, he should not be denied that deduction if he claims it during the assessment/reassessment. No doubt the Hon'ble Supreme Court in Goetze (India) Ltd Vs CIT 284 ITR 323 held that an assessee cannot file an additional claim before the assessing officer without filing a revised return. Though one may justifiably and with respect argue that Goetze India is not correctly decided, being a decision of the Supreme Court it is binding on all persons in India. So let us assume for the moment that the dealer cannot claim the deduction during the assessment/reassessment if he had not claimed it in the return. But in the very same judgment the Hon'ble Supreme Court held that the above position will not apply to the additional claims made during appeal proceedings. It was held that an assessee is entitled to make any fresh claim before the appellate authorities. Therefore, a dealer can claim that he is entitled to input tax deduction even though he has not claimed it in the return as an additional ground before the appellate authorities. The appellate authorities are bound to examine the claim and take a decision on merits and they cannot reject the additional ground by stating that the claim was not made in the return. The Hon'ble Supreme Court in National Thermal Power Corporation in (229) ITR 383 held that an assessee is entitled to raise additional grounds in appeal not raised before the assessing authorities. Similarly in Jute Corporation of India Ltd Vs CIT (187) ITR 688 it was held that an additional ground can be raised before appellate authorities. It is submitted that if the appellate authorities refused to allow the input tax deduction on the ground that it has not been claimed in the return, the filing of the additional grounds before the appellate authorities would be meaningless and a mere mirage. Therefore, we are of the opinion that at least in the appeal proceedings the dealers can agitate the allowability of input tax deduction even though they have not claimed in the return. It may also be noted here that there is no estoppel against law. The Hon'ble Karnataka High Court in Bhandari Metals and Alloys (Private) Ltd Vs State of Karnataka, 2004(56) KLJ 438 held that a dealer can raise a ground against non-taxability in an appeal even though he had admitted the liability in his tax returns. The High Court held that there is no estoppel against law. If a dealer can claim in appeal that he is not liable which he himself has admitted to be liable in his return, we do not see any reason as to why he cannot make a fresh claim by way of additional ground. Hence, a dealer can claim the input tax deduction in an appeal proceeding even though he has not claimed it in the return.

4 Conclusion:-

After amendment to S.10(3) with effect from 1-4-15, there is clarity in law as to the timing of input tax deduction. For the earlier period, the confusion continues. Let us hope that Supreme Court will give a well-reasoned judgment and settle the controversy.

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Buy-back of shares – Key income-tax implications

CA. Anand R Bhat

(Contd. from previous month)

- With reference to the amounts received by the company for issue of shares, now the manner of determination is as per the Income-tax Rules, 1962. Accordingly, CBDT has amended the Income-tax Rules, 1962 by Income-tax (28th Amendment), Rules, 2016 vide Notification No. GSR 982(E), dated 17/10/2016, which is effective from 1st June 2016. Rule 40BB now prescribes provisions for computing amounts received by the company for issue of shares.

1. ***Rule 40BB and determination of amounts received by the company :***

   Following table explains various situations and the computation mechanism with regard to amounts received by the company:

Situation	Computation mechanism
shares issued by way of subscription	Amount actually received by the company for such shares. It includes share premium received
If part of the shares are returned earlier.	The amount received for issue of shares to be reduced to the extent of amount so returned. However, if the sum or any part of it so returned was chargeable to additional income-tax under section 115-O and the company has paid such additional income tax then such sum or part thereof, as the case may be, shall not be reduced.
Share issued under any plan or scheme under which an employees' stock option has been granted or as part of sweat equity shares	Fair market value of the share [as computed in accordance with sub-rule (8) of rule 3], to the extent credited to the share capital and share premium account
Shares issued by an amalgamated company, under a scheme of amalgamation, in lieu of the share or shares of an amalgamating company	the amount received by the amalgamating company in respect of such share or shares
The amount received by a resulting company in respect of shares issued by it under a scheme of demerger	the amount which bears the amount received by the demerged company in respect of the original shares determined in accordance with this rule in the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger.
Share has been issued or allotted by the company as part of consideration for acquisition of any asset or settlement of any liability	Amount received = A/B Where, A = an amount being lower of the following amounts- a. the amount which bears to the fair market value of the asset or the liability, as determined by a merchant banker, the same proportion as the part of consideration being paid by issue of shares bears the total consideration; b. the amount of consideration for acquisition of the asset or settlement of the liability to be paid in the form of shares, to the extent credited to the share capital and share premium account by the company; B = the number of shares issued by the company as part of consideration:

Shares issued or allotted by a company on succession or conversion, of a firm into the company or succession of sole proprietary concern by the company,	Amount received = $\frac{A-B}{C}$ A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortized amount of deferred expenditure which does not represent the value of any asset; Explanation.—For determining book value of the assets, any change in the value of the assets consequent to their revaluation shall be ignored. B = book value of liabilities shown in the balance-sheet, but does not include the following amounts, namely:— (a) capital, by whatever name called, of the proprietor or partners of the firm, as the case may be; (b) reserves and surpluses, by whatever name called, including balance in profit and loss account; (c) any amount representing provision for taxation, other than amount of tax paid, as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto; (d) any amount representing provisions made for meeting liabilities, other than ascertained liabilities; and (e) any amount representing contingent liabilities, C = number of shares issued on conversion or succession.
Shares issued or allotted, without any consideration	Deemed value is at "Nil".
Shares issued on conversion of preference shares or bond or debenture etc.	The amount received by the company in respect of such instrument.
If shares are held in dematerialised form and the same cannot be distinctly identified	On the basis of the first-in-first-out method.
In any other case (not covered above)	Face value of the share

Conclusion :

The law tried to bring simplicity in the scheme of taxation akin to dividend distribution tax. While there is no clarity as to how these provisions u/s 115QA will address the treaty situation, underlying tax credits in cross border context and transfer pricing aspects, which in the near future may lead to controversy and litigation. Hence, the Government should proactively clarify tax position so that there should not be any legal controversies.

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Benefits for Service Exporters

CA. R S Pavan Kumar and **CA. Nithin Kamath**

The Government of India through its Foreign Trade Policy 2015-2020 introduced an incentive based scheme to promote the export of services through "Service Exports from India Scheme" (SEIS). This scheme has been introduced with an intent to increase the export potential among the Indian entrepreneurs by incentivising them through issue of freely transferrable duty credit scrips on earning convertible foreign exchange on export of notified services. This scheme has been introduced in place of the erstwhile Served From India Scheme (SFIS).

A service provider exporting notified services would be eligible to claim incentives under the scheme by way of freely transferrable duty credit scrips. Currently services like legal, accounting, consultancy, engineering, medical, research & development, manpower, motion picture production and distribution, motion picture projection, sound recording, radio and television services, travel agencies and tour operator, sporting services, construction, education, restaurant, advertising, market research, technical testing, maintenance services, printing, publishing and other like services are entitled for incentives under the SEIS. The scrips value would vary upto 5% based on the nature of services exported computed on the net foreign exchange earned.

The scrips issued under this scheme could be used for:

- Payment of Custom duties on import of goods into India;
- Payment of Excise Duty on procurement of goods;
- Payment of Service Tax on receipt of input services; and
- Payment of Custom Duty on account of default under the EPCG Scheme.

In case if the service provider is not in a position to utilize the duty scrip for any of the purpose specified above, the same may be sold to any other person, since the same are freely transferrable in nature.

However, services provided by units registered under the EOU/EHTP/STPI/BPT units Schemes and foreign exchange received by Healthcare and Educational Institutions through equity participation, donations etc. would not be eligible for the purpose of incentive under the current scheme. However, hospitals earning convertible foreign exchange for providing health care services, educational institutions receiving fees in foreign exchange would be eligible for benefits under this scheme. Also, SEZ units are eligible for claiming benefits under this scheme.

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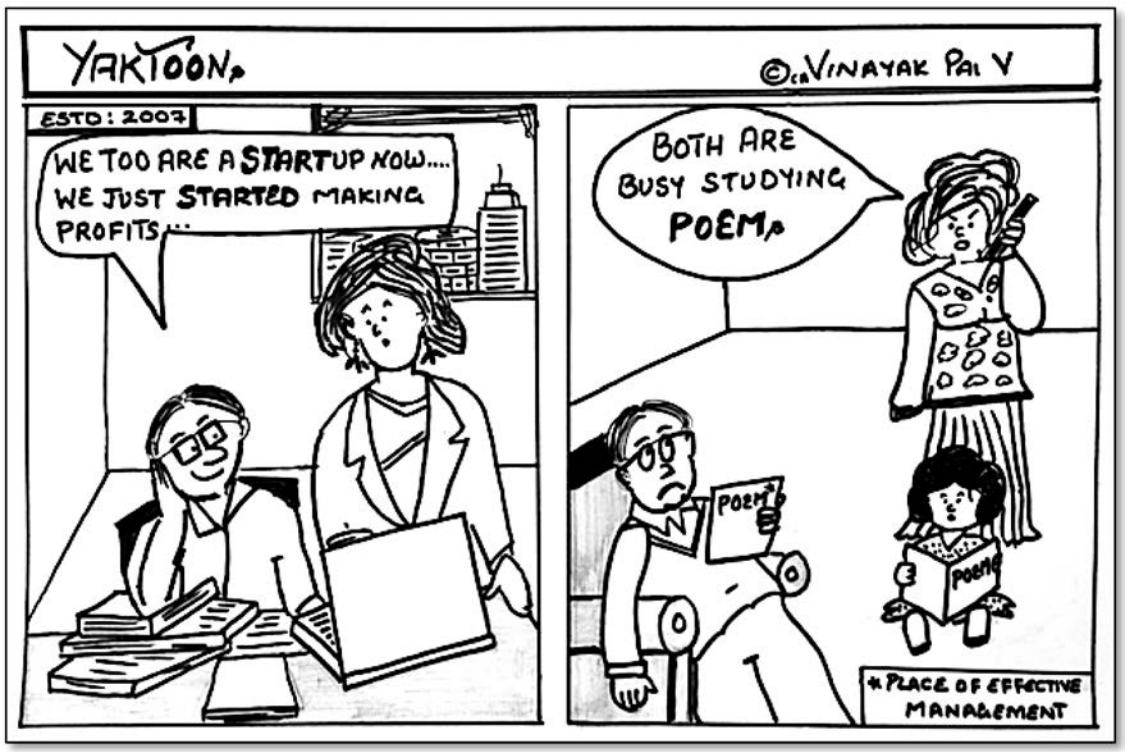

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PROGRAMME STRUCTURE

Friday, 3rd March, 2017

08:30 AM	Registration
	INAUGURAL SESSION
09:15 AM	**Guest of Honour:** **Justice Vishwanath Shetty** *Karnataka Lokayukta* Release of Publications & Release of Souvenir
10:45 AM	Inauguration of Exhibition & Tea Break
	FIRST PLENARY SESSION
11:00 AM	Big Bang Economic Reforms - Redefining Roles of CAs **CA. S Gurumurthy**
12:00 PM	Impact of Benami Transactions Act **Sri Uday Holla,** *Sr.Advocate*
01:00 PM	Lunch Break
	SECOND PLENARY SESSION
02:00 PM	Choosing the Right Entity for NPOs/NGOs **Dr. CA. N Suresh**
02:45 PM	Taxation of Capital Gains on Securities **CA. Ameet Patel,** *Mumbai*
03:30 PM	Tea Break
	THIRD PLENARY SESSION
03:45 PM	Panel Discussion: Budgetary Amendments and Issues in Direct Taxes *Panelists:* **CA. Padamchand Khincha,** **Sri K P Kumar,** *Sr.Advocate* **CA. B P Sachin Kumar,** **CA. Prashanth G S** *Moderator:* **CA. S Ramasubramanian**
06:00 PM	**FAMILY ENTERTAINMENT PROGRAMME**
	How to Deal with Your Children - **Dr. Ali Kwaja**
	Entertainment Activities
	FAMILY THEME DINNER

Saturday, 4th March, 2017

08:00 AM	Breakfast
	FOURTH PLENARY SESSION
09:15 AM	Spiritual Session **Swami Nirbhayananda Saraswati** *President, Ramakrihna Vivekananda Ashrama, Gadag-Vijayapur* *Session Chairman:* **CA. K S Madhavamurthy**
10:15 AM	Recent Developments in Companies Act **CA. Gururaj Acharya**
11:00 AM	Tea Break
	FIFTH PLENARY SESSION
11:15 AM	Valuation - Overview and Critical Issues **CA. Sujal Shah,** *Mumbai*
12:15 PM	The Insolvency and Bankruptcy Code - Professional Opportunities for CAs **CA. Sripriya Kumar,** *Chennai*
01:00 PM	Lunch Break
	SIXTH PLENARY SESSION
02:00 PM	Management Lessons from Unusual Examples **CA.V. Pattabhi Ram,** *Chennai*
02:45 PM	The Profession of the Future **CA. P R Ramesh,** *Hyderabad*
03:30 PM	Tea Break
	SEVENTH PLENARY SESSION
03:45 PM	Panel Discussion: "Devil's Advocacy on GST - Transitional & Other Issues" *Panelists:* **CA. Madhukar Hiregange,** **CA. S Venkataramani,** **Sri Shivadass G,** *Advocate,* **CA. Jatin Christopher** *Moderator:* **CA. Sanjay Dhariwal**
05:45 PM	**VALEDICTORY SESSION**

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