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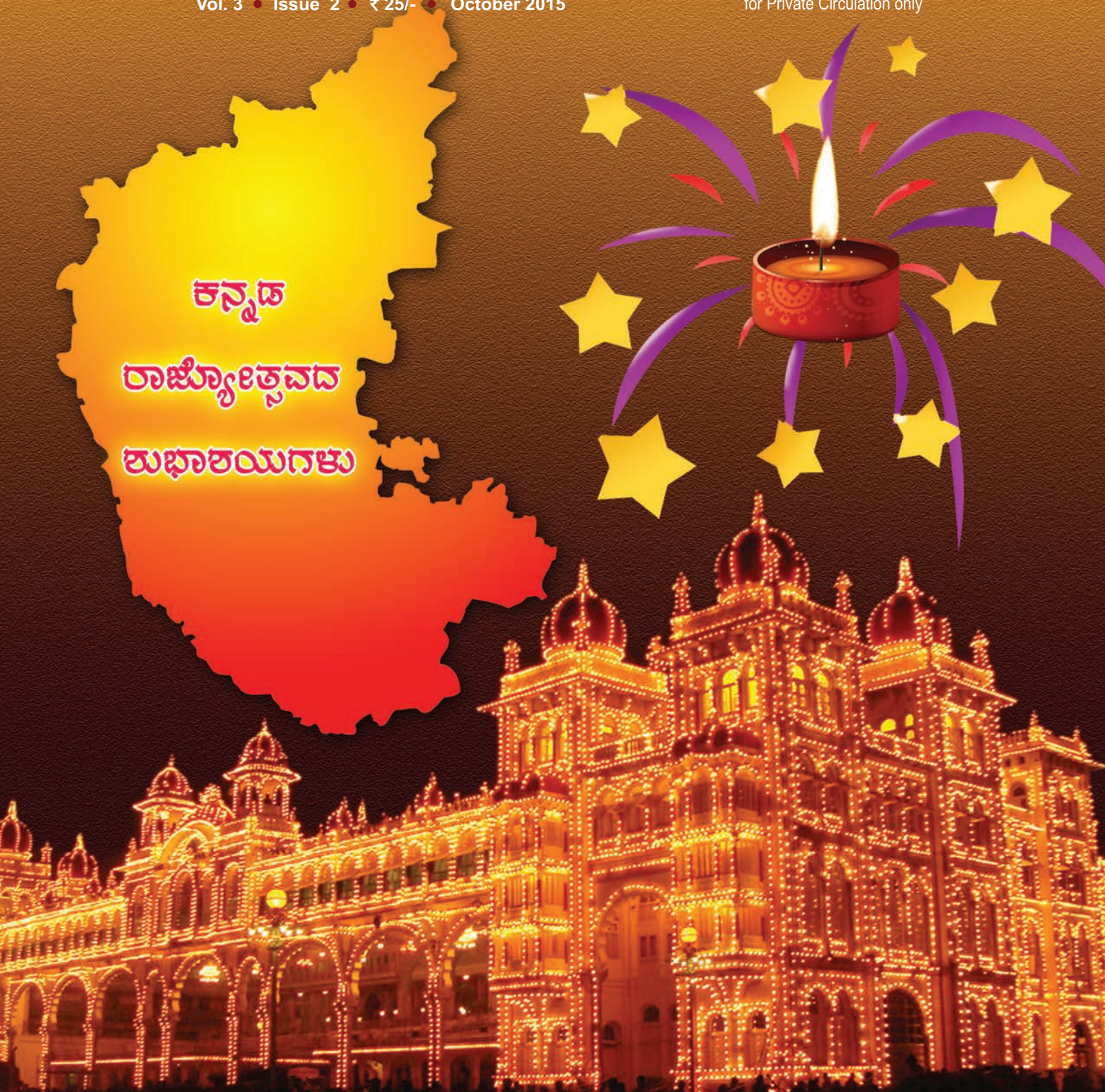

Executive Committee Communique

Dear Professional Colleagues,

Hope you all successfully completed your hectic tax audit season. This year was not an exception as compared to previous year. Income Tax Department released forms in the month of August and expected assessees to file the returns in time. This unreasonable expectations of revenue departments has been questioned by assessees and fellow professional colleagues. In spite of several representations made by various stakeholders seeking extension of the said due date, press release by Ministry of Finance, Govt. of India on 09th September 2015 stated that there will be no extension in due date for categories of assessees whose accounts are required to be audited. KSCAA has pioneered in questioning this decision in the Court of Law along with various Professional bodies across the country. KSCAA had filed Public Interest Litigation (PIL) before the Honourable High Court of Karnataka challenging the department's stand on not to extend the due date for filing of Income Tax Returns for certain categories of assessees including companies, firms and individuals engaged in proprietary business/profession etc., whose accounts are required to be audited. The honourable Karnataka High Court directed the Central Board of Direct Taxes to consider the representation of KSCAA peremptorily. Due to legal fight from our fraternity, CBDT has extended the time limit up 31st October 2015. The Association has proved once again that, it will fight for the noble cause of fraternity whenever it is needed. In this occasion, we earnestly request each one of you to contribute to the Association's Legal Fund. Your generous contributions and support will equip the Association financially and morally to take up the issues of larger professional interests before various legal forums.

Though due date of filing has been extended, but a basic question arises that who is responsible to file the return in time? As all of us know that, primary responsibility lies with assesses to file the return, then why are we fighting to extend the due date of filing? This million dollar question need to be asked within ourselves as every time we are seeking extension of due date, though publicly not expressed it. Most of our clients are well read, but not well educated in terms of tax matters, which is making us primarily responsible for this last minute rush to file the returns. We have to shoulder the responsibility of educating our clients to file the tax returns in time. This needs proper planning and follow-up from our side, also we need to be stern on our stand not to entertain last minute request of the client unless it is genuine. In our opinion, educating clients is the best thing to do to enhance progress in the tax system. It will therefore be prudent, if all stakeholders and administrators help the system by employing all mechanisms so as to address the problem. Income from taxes assist the Government in providing essential facilities to its citizens and failure to pay taxes means disaster. So, we all should ensure timely filing and discourage late filing.

Prime Minister said in his recent visit to Bengaluru, the government is hopeful of rolling out a landmark Goods and Services Tax bill by 2016 and will not to resort to retrospective taxation. He also indicated to defer the implementation of the general anti avoidance rules (GAAR) for two years. The GST bill — which aims to replace a string of central and local levies such as excise, VAT, octroi etc., with a single tax — is a key constituent of the government's reform agenda that has run into rough weather in Parliament. The government has already pushed the tax bill through Lok Sabha, but faces an uphill battle in Rajya Sabha, where it is in a minority, with a belligerent Opposition in no mood to give in. Once it is passed by the Parliament, the bill will need approval from at least half of the state legislatures.

RBI Governor at his monetary policy review surprised market analysts by reducing repo rate by 50 basis points to 6.75 per cent from 7.25 per cent earlier. The RBI had kept its benchmark lending rate viz. the repo rate unchanged at 7.25 per cent in its August 4 monetary policy review. The reduction showed policymakers recognised the need to put the economy on a sounder footing, regardless of data released that showed India outpaced China by growing 7.5 percent. "We still have very weak investment. He told “We haven't seen a strong pick-up," adding that there were factors to suggest that growth was weaker than the headline numbers made out. Benchmark shares indices recouped early losses to end higher on expectations, that higher-than-expected rate cut by the Reserve Bank of India would boost growth. Finance Minister was earlier asserted that common sense says the interest rates should come down. FM had said inflation is “very much under control” and the country is better prepared than most emerging economies to weather the global economic turbulence.

The Companies Act requires the Board of Directors of listed companies to comment in the board's report on the adequacy and effectiveness of Internal Financial Controls (IFC) of the company. Also, the Companies Act Rules require all companies to report on the adequacy of IFC with reference to the financial statements. Auditors are required to certify that the IFC are designed and operate effectively. Since the notification of the Act and thereafter the Rules, there has been significant confusion on the scope of this certification. The Institute of Chartered Accountants of India (ICAI) sought to address this confusion by issuing a detailed guidelines on audit of Internal Financial Controls over financial reporting as required under the new Company Law. According to the Guidance Note, the auditor needs to obtain reasonable assurance to state whether an adequate internal financial controls (IFC) system was maintained and whether such internal financial controls system operated effectively in the company in all material respects with respect to financial reporting only. Under the Companies Act, 2013, auditors are required to separately opine whether the company has adequate internal financial controls system in place and the operating effectiveness of such a framework for the year ending March 31, 2016. The Institute of Chartered Accountants of India has said the requirement under the Act has "cast onerous responsibilities on the statutory auditors". This is because reporting on internal financial controls is not covered under the standards on auditing issued by the ICAI and also because of the fact that no framework has been prescribed under the Act and the rules thereunder for the evaluation of internal financial controls, it said.

(Contd. on next page)

KSCAA
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CONTENTS

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

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Executive Committee Communique

(Contd. from previous page)

Ministry of Corporate affairs vide its notification dated 15th September 2015 has provided that w.e.f. 15th September 2015, a private company can accept unsecured loans from a relative of a director provided that relative of director furnishes a declaration in writing to the company at the time of giving such loan that the amount so given is not given out of borrowed funds and the company shall disclose the details of such monies so borrowed in its Board's report. Such a relative need not be a shareholder of the company. Further Notification has also provided that balances in securities premium account will also be included now in calculation of eligible amount of deposits which a company can raise. Earlier, Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014 provided for inclusion of paid up share capital and free reserves only, for such calculation.

This October month is a another tax compliance month for all the fellow professionals – due date for payment of excise and service tax by 6th, monthly excise return by 10th, Q2 e-TDS return by 15th, monthly sales tax return by 20th and lastly first half yearly service tax return by 25th of this month. Another busy taxing month for all the fellow professionals and hope we all comply with the above due dates.

Association held Mentors' Meet on 5th of October to discuss way forward on various issues. Our Past Presidents, well-wishers were present at the meeting and guided us on various matters. Also suggested activities to be conducted for the benefit of the CA profession and fellow colleagues. We are fortunate to have such active mentors who are always back bone of the Association and ready to serve noble cause of the profession.

Association is holding "Sports and Talent Meet and Cricket League" jointly with Bangalore branch of SIRC of ICAI on 22nd and 29th of November. We request all members to take out some time from routine professional life and participate in the games and cultural activities along with family. The details of the programme is published elsewhere in the news bulletin.

Date of filing nominations to elections of Council and Regional Councils has come to an end. Association congratulates the successful candidates and reminds them of the code of conduct made under rule 16 of the Chartered Accountants (Election to the Council) Rules, 2006 in performing their social life and campaign. Further requests the members not to forget fundamental duty of voting and electing suitable candidates who can contribute growth of our beloved profession.

October and November months are considered festive season. Navaratri, Dasara and Deepavali are the major festivals of India celebrated in these months. The day of Vijaya Dashami is considered to be very auspicious and is celebrated as the day that symbolizes the victory of Good over Evil. Deepavali, the festival spiritually signifies the victory of light over darkness.

"Everyday Sun Rise To Give Us A Message That Darkness Will Always Be Beaten By Light.
Let Us Follow The Same Natural Rule And Enjoy The Festival Of Good Defeats Evil.
Memories of moments celebrated together."

ನರ್ವರಿಗೂ ಕನ್ನಡ ರಾಜ್ಯೋತ್ಸವದ ಶುಭಾಶಯಗಳು

Always in service of profession,

Executive Committee
Karnataka State Chartered Accountants Association

ICDS V - Tangible Fixed Assets

CA. S. Krishnaswamy

1 [Companies (Indian Accounting Standards] Rules 2015 came into force on the 1st April 2015;

Indian Accounting standards Known as IND AS shall be applicable to companies other than the class of companies specified in Rule 4 i.e.

Applicable to :

1. Listed companies and their subsidiaries/Associated companies
2. Net worth of 500 Cr or more

From 01.04.2017

1. Net Worth less than 500 Cr
2. Un listed Companies - Net worth 250 Cr or more.

   Holding, Subsidiaries, JV'S or Associated Companies

2. The ICDS will come into force from 01.04.2015 (This is for computation of income for tax purposes only)

2.1 TANGIBLE FIXED ASSTES -

The Standard defines a tangible fixed asset as normally understood in accounts. The definition of "Identification Of tangible Fixed Assets"

The definition in paragraph 2 (1) (a) provides criteria for determining whether an item is to be classified as a tangible fixed asset.

"Tangible fixed asset" is an asset being land, building, machinery, plant or furniture held with the intention of being used for the purpose of producing or providing goods or services and is not held for sale in the normal course of business.

2.2 Identification of Assets Of Fixed Assets

Stand-by equipment and servicing equipment are to be capitalized. Machinery spares shall be charged to the revenue as and when consumed. When such spares can be used only in connection with an item of tangible fixed asset and their use is expected to be irregular, they shall be capitalized.

2.3 Components of Actual Cost

The cost of a tangible fixed asset may undergo changes subsequent to its acquisition or construction on account of

(i) Price adjustment, changes in duties or similar factors; or

(ii) Exchange fluctuation as specified in Income Computation and Disclosure

Administration and other general overhead expenses are to be excluded from the cost of tangible fixed assets if they do not relate to a specific tangible fixed asset.

Expenses which are specifically attributable to construction of a project or to the acquisition of a tangible fixed asset or bringing it to its working condition, shall be included as a part of the cost of the project or as a part of the cost of the tangible fixed asset.

2.4 ICDS - The Effects of Changes in Foreign Exchange Rates

Notwithstanding anything contained in paragraph 3, 4 and 5; initial recognition, conversion and recognition of exchange difference shall be subject to provisions of section 43A of the Act or Rule 115 of Income-tax Rules, 1962, as the case may be.

This is different from IND AS - AS11 The Effects Of Changes In foreign Exchange Rates , also see Borrowing cost AS-16

2.5 Fixed Asset Register

Under the standard also it is mandatory to maintain a tangible Fixed assets register containing the following details

(a) Description of asset

(b) Location and identification of asset

(c) Actual cost including adjustments on account of :

(i) Central Value Added Tax credit claimed and allowed under the Central Excise Rules, 1944, in respect of assets acquired on or after 1st March, 1994,

(ii) Change in rate of exchange of currency, and

(iii) Subsidy or grant or reimbursement, by whatever name called.

(d) Date on which the asset is first put to use

Right now there is no statutory requirement of maintaining fixed asset register for non-corporate entities subjected

to that they will not cover under tax audit. But ICDS specifies the parameter to consider while maintaining the fixed asset register i.e. description of assets, location, actual cost subject to some adjustment, date of asset first put to use.

2.6 Other Variations from AS-10

- Asset acquired against non monetary consideration

1. When a tangible asset is acquired for other asset, the FMV of tangible asset acquired shall be actual cost.
2. When a tangible asset is acquired for shares or other securities, the FMV of tangible asset acquired shall be actual cost.

- As per AS-10 if several assets are purchased for a consolidated price, consideration is apportioned on fair basis as determined by **competent valuers.** But in ICDS there is no concept of competent valuers. The consideration shall be apportioned to various assets on fair basis.

Comparison of ICDS with AS and IND AS

S. NO	Particulars	ICDS	AS	IND AS
1	Joint ownership	Jointly owned tangible fixed assets shall be indicated separately in fixed asset register	No such provision	No such provision
2	Consolidated price	Shall be apportioned to various assets on a fair basis	No such provision	No such provision
3	Depreciation	As per Income tax Act	As per companies Act	As per companies Act
4	Fixed Assts	There's no concept of revaluation of assets under the TAS, since the Act does not recognize the concept of revaluation assets.	Provides guidance for revaluation of assets.	Provides guidance for revaluation of assets.

2.7 Disclosure Under ICDS

Following disclosure shall be made in respect of tangible fixed assets:

(a) Description of asset/block of assets.

(b) Rate of depreciation.

(c) Actual cost or written down value, as the case may be.

(d) Additions/deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of-

(i) Central Value Added Tax credit claimed and allowed under the Central Excise Rules, 1944, in respect of assets acquired on or after 1st March, 1994,

(ii) Change in rate of exchange of currency, and

(iii) Subsidy or grant or reimbursement, by whatever name called.

(e) Depreciation Allowable.

(f) Written down value at the end of year.

3. Identification Of Fixed Assets - AS 10 Accounting for Fixed Assets

1. The Definition in paragraph 6.1 of AS-10 gives criteria for determining whether items are to be classified as Fixed assets. Judgment is required in applying the criteria to specific circumstances or specific types of enterprises. It may be appropriate to aggregate individually insignificant items, and to apply the criteria to the aggregate value. An enterprise may decide to expense an item which could otherwise have been included as fixed asset, because the amount of the expenditure is not material.

2. Stand- by equipment and servicing equipment are normally capitalized. Machinery spares are usually charged to the profit and loss account statement as and when consumed. however, if such spares can be used only in connection with an item of fixed asset and their use is expected to be irregular , it may be appropriate to allocate the total cost on a systematic basis over a period not exceeding the useful life of the principal item.

3. In certain circumstances, the accounting for an item of fixed cost may be improved if the total expenditure thereon is allocated to its component parts, provide they are in practice separable, and estimates are made of the useful lives of these components. For example, rather than treat an aircraft and its engines as one unit, it may be better to treat the engines as a separate unit if it is likely that their useful life is shorter than that of the air craft as whole.

ICDS refers only to Stand-by Equipment and not to para 1 and 3 above.

4 . From Published Accounts (Following Accounting Standards)

Reliance Industries Ltd - Annual Report 14-15

Fixed Assets

Tangible Assets are stated at cost net of recoverable taxes, trade discounts and rebates and include amounts added on revaluation, less accumulated depreciation and impairment loss, if any. The cost of Tangible Assets comprises its purchase price, borrowing cost and directly attributable to bringing the asset to its working condition for its intended use, net charges on foreign exchange4 contracts and adjustments arising from exchange rate variations attributable to the assets.

Subsequent expenditures related to an item of Tangible Asset are added to its book value only if they increase the future benefits from an existing asset beyond its previously assessed standard performance.

Projects under which assets are not ready for their intended use are disclosed under capital Work-in-Progress.

4.2 From Published Accounts (Following Accounting Standards

Indian Oil Corporation Annual Report 2014-15

Fixed Assets

Tangible assets are stated at acquisition cost less accumulated depreciation/ amortization and cumulative impairment.

Land acquired on lease on perpetual lease as well as on lease for over 99 years is treated as leasehold land

Technical know -how / license fee relating to plants/ facilities are capitalized as part of cost of the underlying asset.

Construction period expenses on projects

Revenue expenses exclusively attributable to projects incurred during construction period are capitalized. However, such expenses in respect of capital facilities being executed along with production/operations simultaneously are charged to revenue .

Financing cost incurred during construction period on loans specifically borrowed and utilized for projects is capitalized on quarterly basis up to the date of capitalization.

Financing cost, if any incurred on general Borrowings used for projects is capitalized at the weighted average cost. The amount of such borrowings is determined on quarterly basis after setting off the amount of internal accruals.

Impairment of Assets

As at each balance sheet date, the carrying amount of cash generating units / Assets is tested for impairment so as to determine :

(a) The provision for impairment loss, if any required; or

(b) The reversal, if any, required of impairment loss recognized in previous period

Impairment Loss is recognized when the carrying amount of an Asset exceeds recoverable amount.

(ICDS does not deal with/ recognize impairment of assets)

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KSCAA WELCOMES NEW MEMBERS - OCTOBER 2015

	Name	*Place*		*Name*	*Place*
1	Ravi Shankar B.R.	Bangalore	12	Prithviraj K. Shetty	Bangalore
2	Sundararajan . A	Bangalore	13	Sandesh B Shetty	Bangalore
3	Purushothama H.S.	Bangalore	14	Raghavendra Padiyar	Bangalore
4	Shamala Devi S	Bangalore	15	Sangeetha Rajamani	Bangalore
5	Venkateswara Reddy P.	Bangalore	16	Venkatakrishnan Rajamani	Bangalore
6	Karthik	Bangalore	17	Sunil Kumar R	Bangalore
7	Ganesh S.	Bangalore	18	Mahesh	Bangalore
8	Srihari K.	Bangalore	19	Anand Gowda	Bangalore
9	Jitendra Kumar G. Chopra	Bangalore	20	Shivananda M.C.	Mysore
10	Kishor C. Shetty	Udupi	21	Akash U Hegde	Bangalore
11	Madhuraja Rai A.	Bangalore			

Service Tax on TDS (Import of Services)

CA Mahadev.R

Different practices are being followed with respect to payment of service tax on TDS portion in respect of import of services. It is not clear for the assessee whether to pay service tax including TDS or to pay net of TDS. In this article, brief analysis of relevant provisions has been made to clear the confusion which exist in minds of assessee.

In case of few specified services, service receiver has been made liable for payment of service tax as per Section 68(2) of Finance Act 1994 read with Rule 2(1)(d)(G) of Service Tax Rules 1994. As per Rule 2(1)(d)(G), in relation to any taxable service provided or agreed to be provided by any person located in a non-taxable territory and received by person located in the taxable territory, the recipient of service is liable for service tax.

Section 67 is clear that for the purpose of payment of service tax, the consideration that is payable for the taxable services provided or to be provided shall be considered. Earlier, as per Rule 7 of Service tax (Determination of Value) Rules 2006 which was omitted with effect from 01.07.2012, value of taxable service received under the provisions of section 66A (old charging Section for import of services), shall be amount equal to actual consideration charged for services provided or to be provided. In normal circumstances wherein only monetary consideration is involved, invoice value shall be the value considered for service tax.

Based on the agreement / contract entered, the service receiver could either pay full invoice value or pay invoice value after deducting tax (TDS) under the income tax provisions. For instance, if the value of services as per invoice is Rs.5,00,000/- , the payment by the service receiver could be Rs.5,00,000/- wherein TDS portion would be borne by the service receiver. Other scenario could be payment of Rs.5,00,000/- less applicable TDS. In either of the scenarios, confusion arises as to treatment of TDS for service tax payment.

In the first scenario, it is clear that there is a need to pay service tax on Rs.5,00,000/- and no need to pay service tax on TDS portion which over and above Rs.5,00,000/- paid for the service portion. This view is supported by a tribunal judgment in case of *Mainetti (India) Pvt. Ltd- 2012 (27) S.T.R. 534 (Com. A)*. In this case, the tribunal held that as the Income Tax element was paid directly to the Government of India by the appellant, such income tax (TDS) should not form part of the gross amount for the calculation of service tax. In *In Re: Sundaram Auto Components Ltd. reported in 2012 (28) STR 545 (Commr. Appl.)* also similar view as held.

However, in the second scenario, non payment of service tax may not be acceptable as the amount charged for the services is Rs.5,00,000/- and the TDS is deducted from this amount and paid to Government on behalf of the service provider. The service provider outside the country would be able to get credit of this TDS under the DTAA (Double Taxation Avoidance Agreement). Therefore, such TDS would be treated as part of consideration for the taxable services.

The CBEC vide FAQ published by CBEC in September 2011 has also clarified this aspect as follows:

"Service Tax is to be paid on the gross value of taxable service which is charged by a Service Tax assessee for providing a taxable service. Income tax deducted at source is includible in the charged amount. Therefore, service Tax is payable on the gross amount including the amount of Income Tax deducted at source also".

Even the tribunal in case of *TVS Motors Co. Ltd. v/s CCE, Chennai-II - 2012 (28) STR 150* upheld this view. The property tax paid on building, VAT paid on materials is being allowed as deduction under the service tax provisions. Similarly, the Government should have allowed for deduction of even TDS under income tax. However, clarity is awaited in this regard. It is also interesting to note that the Supreme Court has remanded TVS Motors case referred earlier for fresh hearing and granting relief, if any. One could only hope for some relaxation in this regard.

Conclusion: It is advisable in the interest of the assessee to discharge the service tax when TDS is part of total consideration charged by service provider. Such service tax paid would also be eligible as Cenvat credit where the imported services are used for providing taxable services or used in relation to manufacturing of dutiable goods. If the TDS is borne by the assessee which is over and above the invoice value, then there maybe be no requirement to treat such TDS as part of service value for payment of service tax.

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CLARIFICATIONS UNDER THE COMMERCIAL TAX LAWS

CA Srikanth Acharaya and CA Annapurna Kabra

- The rate of tax is at 1% on "Gold sheet artwork of images like ganesha, Saraswathi, Sai baba, etc, framed under glass in a photo frame" falls within the ambit of description of goods – "Jewellery and Articles of Gold, Silver and other noble metals whether or not studded with precious or semi-precious stones" (**CLARIFICATION NO.CLR. CR.147/2014-15 DATED: 19-08-2015).**
- The rate of tax is at 14.5 % on "Automatic Irrigation Controller" under Section 4(1)(b)(iii) of KVAT ACT, 2003 with effect from 01.08.2012. **(CLARIFICATION NO. CLR.CR.50/2014-15 DATED: 11-08-2015)**
- The intention behind reduction of tax rate relating to sale of LPG cylinders of 12Kg capacity has been clarified in the clarification issued on 27-07-2011 vide No. CLR CR 40/2011-12 and there is no ambiguity to be addressed again. **(CLARIFICATION NO. CLR.CR.8/15/16 DATED: 09.07.2015)**
- LPG of 12kg capacity meant for domestic purpose and directly or indirectly to the ultimate end user domestic consumer are taxable @ 1% VAT and LPG of 4 Kg, 5Kg and 15 Kg capacity are taxable @ 14%under section 4(1) (b) of the KVAT Act 2003.**(CLARIFICATION NO. CLR. CR. 40/11-12 DATED: 28.07.2011)**
- The South Canara District Central Co-operative(SCDCC) Bank Ltd. , Mangaluru is liable for profession tax at Rs. 2500/- p.a. as per Sl. No. 24 of the Schedule to the Karnataka Tax on Professions , Traders, Callings and Employment Act, 1976. **(ORDER NO. PT/CR-17/2014-15 DATED: 06.06.2015)**
- The rate of tax is at 14.5 % on "Self-Adhesive Vinyl" under Section 4(1)(b)(iii) of KVAT ACT, 2003 with effect from 01.08.2012. **(CLARIFICATION NO. CLR.CR.50/2014-15 DATED: 11-08-2015)**
- Media, Denuding, Houlding, Nicon Microscope Ti-s, Fertisef wipes, Humagen Galss Pipettes and Mid- Atlantic Devices are liable to tax at the rate of 14.5% under Section 4(1)(b)(iii) of KVAT ACT, 2003 with effect from 01.08.2012. **(CLARIFICATION NO. CLR.CR.70/2014-15 DATED: 25-07-2015)**
- "HDPE/LDPE/PP Woven Fabric" falls within ambit of description of goods in Sl. No. 4 of Notification No. FD 11 CET 2002(I) dated 30.03.2002 and hence liable to entry tax at 1% and "HDPE/LDPE/PP Woven sacks" do not attract entry tax **(ORDER NO. KTEG/CLR/CR-01/2015-16 DATED 22.07.2015).**
- The tax rate is at 5.5% on Industrial Inputs – Epoxy Resin DER 663 U-E, Epoxy Resin DER 671 X75, Specflex NF 749 Polyol, Specflex FD 402 Polyol and Walocel CRT 50000 PA-07 with effect from 01.08.2012. **(CLARIFICATION NO. CLR.CR.123/2014-15 DATED: 22-07-2015)**
- The rate of tax is at 14.5 % on "braided cord" under Section 4(1)(b)(iii) of KVAT ACT, 2003. **(CLARIFICATION NO. CLR.CR.17/2015-16 DATED: 14-07-2015)**
- "Medical Accessories, Accessories for Ventilator, MAD Nasal Device without 3 ml Syringe and Medical Equipment" are not liable to Entry tax. **(CLARIFICATION NO. KTEG/CLR/CR-04/2015-16 DATED: 14-07-2015)**
- The rate of Entry tax is at 2% on "Hydraulic Hand Pallet Truck" as machinery of all kinds as per Sl. No. 7 of the Table in Notification No. FD 11 CET 2002, dated 30-03-2012. **(CLARIFICATION NO. KTEG/CLR/CR-16/2014-15 DATED: 14-07-2015)**
- a) Interior Works contract is liable to composition tax@ 4% on the total consideration for the Works Contract as per Notification No. FD 116 CSL 2006 (13), Bengaluru, dated 31.03.2006, if he has opted for composition Scheme. b) If the contractor has not opted for composition tax payment scheme, he is liable to pay tax @ 14.5% on interior works contract as per Sl. No. 23 of Sixth Schedule of KVAT Act, 2003 on the taxable turnover arrived as per Rules 3(2) of the KVAT Act, 2005 with benefit of availing input tax credit. **(CLARIFICATION NO. CLR. CR.156/2014-15 DATED: 14-07-2015)**
- The rate of tax is at 14.5 % on "Methyl Iso Butyl Ketone " under Section 4(1)(b)(iii) of KVAT ACT, 2003 with effect from 01.08.2012. **(CLARIFICATION NO. CLR. CR.153/2013-14 DATED: 19-05-2015)**
- Manually operated "sickles" are exempt from Entry Tax under Entry No. 1 of First Schedule of KVAT Act, 2003 as "agricultural implements manually operated or animal driven". **(CLARIFICATION NO. CLR.CR.143/2014-15 DATED: 22-05-2015)**

- The rate of tax is at 14.5 % on "Nickel bars, sheets, plates, strip and the like"and "Titanium bars, sheets, rods, plates and the like" with effect from 01.08.2012. **(CLARIFICATION NO. CLR.CR.35/2015-16 DATED: 01-07-2015)**
- The rate of luxury tax is at 8% on accommodation provided in ICU (Intensive Care Unit) charging more than Rs. 1000/- per day per room under Karnataka Tax on Luxuries Act, 1979. **(CLARIFICATION NO. KTL/ CR-08/2013-14 DATED: 02-07-2015)**
- It is clarified in the case of Appellant being a registered company engaged in the business of manufacture and sale of Coffee/Tea etc. that each place of business where Automatic Vending Machines(AVMs) are installed are to be treated as branches and accordingly each of the branches attract profession tax of Rs. 2500/- p.a. in addition to the principal place of the business vide Sl. No. 25 of the Schedule of the Act. **(CLARIFICATION NO. PT/CR-10/2014-15 DATED: 01-07-2015)**
- The rate of tax is at 5.5 % on "Wooden Pallet " under Section 4(1)(b)(iii) of KVAT ACT, 2003 with effect from 01.04.2015. **(CLARIFICATION NO. CLR.CR.153/2013-14 DATED: 19-05-2015)**
- The commodity used for smoothening and polishing the granite slabs named "Abrasives" are liable to Entry Tax @ 2% under the commodity description "Machinery (all kinds) and parts and accessories thereof but excluding agricultural machinery" vide Notification No. FD 11 CET 2002 dated 30.03.2002. **(ORDER NO. KTEG/CLR/CR-20/2014-15 DATED: 05-06-2015)**
- The rate of tax is at 14.5 % on "Lamps made out of Frozen Ghee and cotton wicks for worship " under Section 4(1) (b)(iii) of KVAT ACT, 2003 with effect from 01.08.2012. **(CLARIFICATION NO. CLR.CR.34/15-16 DATED: 04-06-2015)**
- The rate of tax is at 5.5 % on "Presensitized Lithographic Aluminium Plates " in terms of Notification No. FD 40 CSL 2015 dated 31.03.2015 with effect from 01.04.2015. **(CLARIFICATION NO. CLR.CR.153/2013-14 DATED: 19-05-2015)**
- No Entry Tax is payable on "Seepage Water Pumps, Crude Transfer pumps and Booster pumps" as they do not fall under the Commodity description "Machinery (all kinds) and parts and accessories thereof but excluding agricultural machinery" vide Notification No. FD 11 CET 2002 dated 30.03.2002. **(ORDER NO. KTEG/CLR/CR-14/2014-15 DATED: 22-05-2015)**
- "Dry Tissue" is liable to tax @ 5.5% under Section 4(1) (a) (ii) and "Wet Wipe/ Body Wipe" is liable to tax @ 14.5% under Section 4(1)(b) (iii)of KVAT Act, 2003 with effect from 01.08.2012. **(CLARIFICATION NO. CLR. CR.11/2013-14 DATED: 11-05-2015)**
- "Nutralite" is liable to tax @ 14.5% with effect from 01.08.2012 and onwards. **(CLARIFICATION NO. CLR. CR.82/2014-15 DATED: 31-01-2015)**
- "Fabric for target banner radar responsive" which is essentially a HDPE Monofilament Handloom woven fabric is exempt from tax under KVAT Act,2003 vide Notification No. FD 135 CSL 2012 dated 01.08.2012 and onwards. **(CLARIFICATION NO. CLR.CR.130/2014-15 DATED: 12-05-2015)**
- a) "Micro Phones, Head Phones, Ear Phones, Head Phones and Ear Phones combined with Microphone Speakers" are liable to tax @ 5.5% as notified IT products vide Sl. No. 4 of the Notification No. FD 116 CSL 2006 (16) dated 06.04.2006.

  b) "Parts of - Micro Phone, Head Phones and Ear phones are not covered under above notification and are liable to tax @ 14.5% under section 4(1)(b)(iii) of KVAT Act, 2003.

  c) "Multi Media Speakers" with a price not exceeding Rs. 1000/- per set are liable to tax @ 5.5% as notified IT products as per Notification No. FD 229 CSL 2013 dated 04-09-2014 with effect fom 04.09.2014.

  d) "Multi Media Speakers" with a price exceeding Rs. 1000/- per set are liable to tax @ 14.5% under section 4(1)(b)(iii) of KVAT Act, 2003 with effect fom 04.09.2014.**(CLARIFICATION NO. CLR. CR.130/2014-15 DATED: 29-06-2015)**
- "Bamboo and cane including bamboo splints and sticks, whether green or dry" ares liable to tax @ 5.5% as per Sl. No. 8 of Third Schedule to KVAT Act, 2003 with effect from 01.08.2012. **(CLARIFICATION NO. CLR. CR.131/2014-15 DATED: 02-02-2015)**
- The rate of Entry tax is 5% on "EXXSOL D95 FLUID" (which is petroleum product) vide Sl. No. (1)(viii)(e) of the Table to the Notification No. FD 11 CET 2002, dated 30.03.2002. **(CLARIFICATION NO.KTEG/ CLR/CR-02/2013-14 DATED: 22-09-2014)**

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Recent Decisions of The Income Tax Appellate Tribunal

CA K.S. Satish, *Mysore*

BUSINESS INCOME

Income by way of interest earned by the assessee-company engaged in the business of leasing, financing, etc., is assessable as income from business even though the Reserve Bank of India had declined to register it as a Non-Banking Financial Company opined the Mumbai 'C' Bench in Preimus Investment & Finance Ltd. v. DCIT (2015) 171 TTJ (Mum) 794.

SECTION 43B

The Panaji Bench has in Good Luck Kinetic v. ITO (2015) 172 TTJ (Pnj) 268 taken the view that the Assessing Officer can disallow statutory liabilities under section 43B even where the income of the assessee has been assessed under the provisions of section 44AF.

CAPITAL GAINS

In Natural Gas Company (P) Ltd. v. DCIT (2015) 171 TTJ (Mum) 278 where the assessee-company borrowed monies for making investment in shares during the financial year 1980-81 and claimed the interest paid thereon as a revenue expenditure up to the financial year 1996-97, the Mumbai 'B' Bench observed that while interest cost is towards the retention of the borrowing, the retention or holding of the shares is a function of the holding period and held that the interest paid for the financial year 1997-98 onwards could not be treated as cost of acquisition and/or improvement in the computation of capital gains arising on the sale of shares during the financial year 2006-07.

INCOME FROM OTHER SOURCES

The Mumbai 'C' Bench has in Panna S. Khatau v. ITO (2015) 172 TTJ (Mum) 160 expressed the view that outstanding liabilities written back by the assessee to her capital account without any explanation constitute income and are assessable under section 56.

CASH CREDITS

In Subhlakshmi Vanijya (P) Ltd. & Ors. v. CIT (2015) 172 TTJ (Kol) 721, the Kolkata 'B' Bench has opined that addition of share capital can be made under section 68 in the hands of a company in its first year of incorporation.

CHAPTER VI-A

The Mumbai 'D' Bench has in Dwarakadas G. Panchmatiya v. ACIT (2015) 172 TTJ (Mum) 70, where the assessee filed his return of income for the assessment year 2008-09 electronically under the Electronic Furnishing of Return of Income Scheme, 2007 on 30.9.2008 being the due date for filing the return of income under section 139(1) but submitted Form ITR-V on 16.10.2008 beyond the permitted period of 15 days from the date of filing the e-return as per the scheme, taken the view that the return of income filed by the assessee could not be treated as filed within the due date specified under section 139(1), that the assessee did not comply with the requirements of section 80AC read with sections 139(1) & 139(1B) and consequently, the assessee was not entitled to the deduction under section 80-IB.

APPEAL

An order passed by the Commissioner (Appeals) rejecting the stay petition filed by the assessee is an order under section 250 and an appeal thereagainst is maintainable to the Tribunal under section 253(1)(a) opined the Delhi 'F' Bench in Employees' Provident Fund Organisation v. Addl. CIT (2015) 172 TTJ (Del) 140.

TRIBUNAL

The Mumbai 'E' Bench has in Times Guaranty Ltd. v. ACIT (2015) 171 TTJ (Mum) 387 held that rule 34(5) of the Income Tax (Appellate Tribunal) Rules, 1963 does not prescribe a limitation for pronouncement of the order and that an order pronounced beyond the period of 90 days is not vitiated, does not cease to have the force of law and cannot be termed as barred by limitation.

TAX DEDUCTION AT SOURCE

In ITO v. Earnest Towers (P) Ltd. (2015) 171 TTJ (Kol) 319 where the facts were that the Mumbai Metropolitan Region Development Authority allotted land admeasuring 8,076.38 square meters to the assessee on lease for 80 years on an annual rent of Rs. 8,077 and the assessee paid lease premium for grant of lease amounting to Rs. 1,041.42 crores before execution of the lease deed, the Kolkata 'C' Bench while observing that only payments for the use of land fall within the purview of section 194-I and that the huge lease premium paid by the assessee was for acquiring rights in the leasehold land rather than use of land, expressed the view that the assessee was not liable to deduct tax at source in respect of the lease premium paid under section 194-I.

(Contd. on page 18)

When can a Sale be said to have taken place inside or outside a State

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Introduction.

On May 8, 2015, in B.G. Exploration and Production India Ltd. v. State of Gujarat, (2015) 84 VST 1, a Division Bench of the Gujarat High Court passed an elaborate judgment regarding the levy of tax under the Gujarat Sales Tax Act, 1969, on the sale of natural gas by three gas exploration and production companies to Gas Authority of India Ltd. ("GAIL"), who was appointed by the Government as its nominee to receive the natural gas on its behalf. The question that arose for the Court's consideration was, *inter alia*, whether the sale of natural gas to GAIL can be said to have taken place within the State of Gujarat, thereby being amenable to tax in the State, or whether the State of Gujarat is divested of the power to levy tax on the sale by virtue of the fact that the sale took place outside the State. After a lengthy analysis of the relevant provisions of law and numerous judgments of the Courts, the Gujarat High Court held that the appropriation of goods, namely natural gas, to the contract of sale had taken place outside the State of Gujarat and that, therefore, the sale cannot be said to have taken place in Gujarat, The Court, accordingly, held that the State of Gujarat is not authorized or empowered to levy sales tax on the said sale. While it may not be necessary or useful to analyze the judgment in its entirety, particularly in light of the highly peculiar facts involved therein, this article briefly delves into the law relating to when a sale can be said to have taken place inside a State and when it is said to take place outside the State.

Constitutional and Statutory Provisions.

Article 286(1) of the Constitution, after its amendment in 1956,mandates that no law of a State shall impose a tax on the sale or purchase of goods where such sale or purchase takes place: (a) outside the State; or (b) in the course of import of goods into, or export of goods out of the territory of India. Article 286(2) states that Parliament may by law formulate principles for determining when a sale or purchase takes place outside the State or in the course of import or export.

In accordance with the Constitutional mandate, Section 4 of the Central Sales Tax Act, 1956 ("CST Act"), prescribes when a sale or purchase of goods is said to take place outside the State. Section 4(2) of the CST Act prescribes when a sale or purchase is deemed to take place inside a State, and Section 4(1) states that when a sale or purchase is determined in accordance with sub-section (2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States. Section 4(2) of the CST is, therefore, the relevant provision that determines when a sale or purchase of goods takes place inside a State and, as a corollary, when a sale or purchase takes place outside a State. The said provision reads as under:

"Section 4(2). A sale or purchase of goods shall be deemed to take place inside a State if the goods are within the State –

(a) *in the case of specific or ascertained goods, at the time the contract of sale is made; and*

(b) *in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether the assent of the other party is prior or subsequent to such appropriation."*

Therefore, the physical location of the goods at the different time-periods specified under clauses (a) and (b) is the determinative factor that decides whether a sale of goods takes place inside a State or not. In short, by introducing Section 4(2), the Parliament formulated a single and simple formula to determine the locus of the sale of goods and, accordingly, the State that has the power to tax the sale. Pertinently, as a result of the deeming fiction introduced by Section 4(2), where the property in the goods passes is of no consequence for the purpose of determining the State in which the sale takes place.

While prescribing the formula to determine the State in which the sale takes place, Section 4(2) makes a distinction between specific or ascertained goods, on one hand, and unascertained or future goods, on the other.In the case of ascertained goods, a sale would be deemed to take place inside a particular State if the goods are physically located within the State at the time the contract is made. In the case of unascertained goods, a sale would be deemed to take place inside a State if the goods are physically located within the State at the time of appropriation of the goods to the contract of sale by either the buyer or the seller. Clause (2) further makes it clear that it is the time of appropriation of the goods to the contract of sale by the buyer or the seller that is the relevant moment in time, irrespective of whether the assent of the other party is prior or subsequent to such appropriation.

Therefore, in order to answer the question of whether a sale of goods takes place inside a State or not, it would be crucial to determine: (a) whether the goods contracted to be sold are ascertained or unascertained goods; and (b) if the goods are unascertained, when the goods can be said to be appropriated to the contract of sale.

Difference between Ascertained (Specific) and Unascertained (Future) Goods.

Section 2(14) of the Sale of Goods Act, 1930 ("Sale of Goods Act") defines "specific goods," which is used interchangeably with the term "ascertained goods," to mean "goods identified and agreed upon at the time a contract of sale is made." "Future goods," which is used interchangeably with the term "unascertained goods," has been defined under Section 2(6) of the Sale of Goods Act to mean "goods to be manufactured or produced or acquired by the seller after making of the contract of sale."

The Bombay High Court, in Emperor v. Kunverji Kavasji Kavarana, AIR 1941 Bom 106, observed that the expression "specific goods" means goods capable of being ascertained with certainty and whose delivery can be demanded in specie. The Bombay High Court went on to hold that a contract to sell some liquor out of a big cask containing a much larger quantity, with the required quantity not being separated or bottled, cannot be said to be a contract for sale of ascertained goods. The Court, accordingly, held that the contract in question would be a contract for sale of unascertained goods.

In State of Karnataka v. West Coast Paper Mills, AIR 1986 Kar 103, the Respondent-company was permitted by contract to remove bamboo from a designated forest area. After analyzing the relevant provisions of the Sale of Goods Act, the Karnataka High Court held that "unless and until the company chooses to sever and separate the bamboos standing on the forest land, the goods are not ascertained." According to the Court, it is only when the company actually cuts and extricates the bamboo, the goods become ascertained because until then neither the buyer or the seller could say which of the unascertained bamboo (goods) from the forest would be sold or purchased.

In B.G. Exploration, the Petitioners contended that at the time of entering into the contract for the sale of natural gas, the natural gas was specific or ascertained because the exact volume of gas to be produced, sold, and delivered was captured in the contract. The Gujarat High Court rejected the Petitioner's contention in this regard and held that, at the stage of entering into the contract, the natural gas was not yet discovered and, therefore, the goods cannot be said to be ascertained despite the fact that the contract specified the exact volume of natural gas to be delivered.

On a reading of the above judgments, it emerges that unless the goods contracted to be sold can be specified with certainty and exactitude, the goods cannot be said to be ascertained. Consequently, a contract for sale of goods that cannot be specified with certainty would be a contract for sale of unascertained goods.

Appropriation of Goods.

The term "appropriation" has not been defined under the provisions of the Sale of Goods Act or the CST Act. Therefore, the meaning of the said term can only be discerned from case law. It is interesting to note that the term "appropriation" used in the Sale of Goods Act has been construed by the Courts to be in a context different from that contemplated under Section 4(2)(b) of the CST Act.

Section 23 of the Sale of Goods Act states that, "where there is a contract for sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer." Thus, Section 23 of the Sale of Goods Act relates to the passing of property in unascertainedgoods, and the said provision states that property in the goods is said to pass when either the buyer or the seller, with the assent of the other party, "unconditionally" appropriates the goods to the contract. Crucially, for the passing of property in goods, an unconditional appropriation is required by either the buyer or the seller with the assent of the other party.

On the other hand, Section 4(2)(b) of the CST Act does not make any reference to passing of property in goods, nor does it refer to unconditional appropriation of goods. As discussed earlier, the said provision merelystates that in the case of unascertained goods, the sale would be deemed to take place inside a State if the goods are physically located within the State at the time of appropriation of the goods to the contract of sale by either the buyer or the seller. Pertinently, the "appropriation" contemplated under Section 4(2)(b) is irrespective of whether the assent of the other party is prior or subsequent to the appropriation of the goods to the contract. Here again, there is a marked difference between the appropriation contemplated under Section 23 of the Sale of Goods Act and Section 4(2)(b) of the CST Act.

The question as to when goods can be said to have been appropriated to a contract for the purpose of Section 4(2)(b) of the CST Act has been discussed in a number of judgments. In Bengal Corporation Ltd. v. State of Madras, (1965) 16 STC 62 (Mad), the Madras High Court held that the appropriation referred to in Section 4(2)(b) of the CST Act "signifies and

connotes the earmarking and setting apart of goods as specified goods to be delivered under the contract of sale and does not signify an appropriation carrying with it the idea of passing of property." Therefore, as early as in 1965, the Madras High Court made it clear that the appropriation contemplated under Section 4(2)(b) isnot related to the passing of property in goods.

In Indian Wood Products Co. Ltd. v. Sales Tax Officer, (1968) 21 STC 437, the Delhi High Court succinctly observed that "the term appropriation may be used in the sense that the goods are identified by the agreement of the parties as the goods about which they are contracting, so that the contract can never apply to any other goods." According to the Court, the goods can be said to be appropriated to a contract when "the goods are so far appropriated that the seller would, by delivering any other goods, break the contract though the goods still remain the seller's property." Here again, the Delhi High Court held that the term "appropriation" as used in Section 4(2)(b) of the CST Act does not relate to passing of property in the goods. In this regard, the Court observed that "the scheme of the Sales Tax Act goes to show that the Parliament left out of account the element of passing of property as of any relevance in determining the situs of sale and the question of appropriation of goods has to be decided, irrespective of the passing of property."

In K.G. Khosla v. Chief Commissioner, (1972) 30 STC 13 (Del.), the Delhi High Court observed as follows:

> *"It is to be borne in mind that the term 'appropriation' may be used in two senses. It may either mean simply the identification of the goods by agreement of parties as the goods by agreement of parties as the goods to which the contract of sale relates or it may mean the passing of property in the goods from the seller to the buyer by such means as delivery to the carrier, etc. The scheme of the Act shows that the element of passing of property is not of relevance in determining the situs of the sale. The question of appropriation of goods has to be decided, therefore,irrespective of the passing of property. In other words, the appropriation referred to in Section 4(2) (b) connotes the setting apart of goods as specific goods to be delivered under the contract of sale and not an appropriation linked with passing of property."*

The primary principle that emerges from the above judgments is that the term "appropriation" connotes the setting apart of certain specific goods to be delivered under a contract of sale. Therefore, if goods are separated and earmarked as goods to be delivered under the contract of sale in a manner that the contract can never relate to any other goods, then the goods can be said to have been appropriated to the contract. Another important principle that emerges from the judgments referred to above is that for the purpose of Section 4(2)(b) of the CST Act, the term "appropriation" does not in any way whatsoever relate to the passing of property in the goods. Therefore, goods can be said to have been appropriated to the contract of sale for the purpose of Section 4(2)(b) even though property in the goods still vests with the seller.

Conclusion.

In sum, in order to discern whether a sale of goods takes place within a State or not, it is first critical to determine whether the goods contracted to be sold are ascertained or unascertained. If they are ascertained, then the sale is said to take place in the State in which the goods are physically located at the time of entering into the contract of sale, and the said State would have the power to levy tax on the sale of such goods. On the other hand, if the goods are unascertained, then the sale is said to take place in the State in which the goods are located at the time the goods are appropriated to the contract of sale, that is,,when specific goods are set apart and earmarked to be delivered under a contract of sale. As discussed earlier, appropriation can take place even before the property in the goods passes from the buyer to the seller.

Note that the principles of law discussed in this article are not to be confused with interstate sales of goods, which are to be determined in accordance with the provisions of Section 3 of the CST Act. Therefore, if a sale or purchase occasions the movement of goods from one State to another, or is effected by a transfer of documents of title to the goods during their movement from one State to another, the provisions of Section 4 would not be relevant and, as per Section 9(1) of the CST Act, tax would be leviable by the Government of India and collected in the State from which the movement of goods commenced.

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OBITUARY

We deeply regret to

inform sad demise of

CA Chandrakant S Halli

on 2nd October 2015.

May his soul rest in peace.

Indirect Taxes Update – Sept 2015

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

A. Notifications and Circulars

a) **Classification of services provided by GTAs:**

On the issue of composite services provided by GTAs which may include various ancillary services such as loading/ unloading, packing/unpacking, transshipment, temporary storage etc., it is clarified that whether these services are provided by GTA or through a subcontractor, all these services shall be classified under the heading GTA services and not under respective headings.

It is also clarified that , if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on it.

It is further clarified that transportation of goods by road by a GTA in cases where GTA undertakes to reach/deliver the goods at destination within a stipulated time, should be considered as 'services of goods transport agency in relation to transportation of goods' for the purpose of notification No. 26/2012-ST dated 20.06.2012,

[Source: Circular No. 186/5/2015-ST dt. 05.10.2015]

b) Vide Notification No. 20/2015 -CEN.T.), Central Government has issued conditions, safeguards and procedures for supply of items like tags, labels, printed bags, stickers, belts, buttons and hangers produced or manufactured in an EOU and cleared without payment of duty to a DTA unit in terms of Para 6.09 (g) of Foreign Trade Policy, 2015-20, for the purpose of their exportation out of India.

c) Vide Notification No. 21/2015-CE (NT) dt. 07.10.2015, Rule 6 of Cenvat Credit Rules, 2004 has been amended to provide that supply of Ethanol produced from molasses generated from cane crushed in the sugar season 2015-16, to the public sector oil marketing companies, namely, Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd. or Bharat Petroleum Corporation Ltd., for the purposes of blending with petrol, in terms of the provisions of S.No.40A of Notification No. 12/2012 CE, shall not be termed as exempted clearances. Therefore, such clearances would not attract the requirement of reversal of proportionate credit or payment of 6% of value of exempted goods.

B. Important Decisions

1. **Mangalore Ref And Petrochemicals Ltd Vs CC 2015-TIOL-199-SC-CUS**

Issue: Appellants were importing crude oil during the period from 13.1.1996 to 15.3.1998. Differential duty was demanded by the Customs Department on the basis of the allegation that that the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty, and not the quantity actually received into the shore tanks in India. This was stated on the basis that since duty was now levied on an ad valorem basis and not on a specific rate, the duty should be paid on the bill of lading quantity when the goods were loaded on the vessel in the country of export. It was contended by the appellant that it makes no difference as to whether the basis for customs duty is at a specific rate or is ad valorem, inasmuch as under the various judgments of the Tribunal upheld by the Supreme Court, the quantity of goods at the time of import alone is to be looked at. However, Commissioner of Customs confirmed the demand of differential duty on the basis that full payment for the goods has to be made by the importer only on the basis of the quantity mentioned in the bill of lading. Therefore the "transaction value" of the said goods would only be as per the payment made of the amounts stated in the bill of lading and not the quantity received ultimately in the shore tanks at ports in India. On appeal filed before CESTAT, the Commissioner's finding was accepted by CESTAT and appeal was dismissed. Hence, appeal is filed before Supreme Court against the CESTAT order.

Held: Supreme Court held that as regards the goods imported into India, the Customs duty is payable on the quantity received in India and not on the quantity exported from another country. It is clear that the levy of customs duty under Section 12 is only on goods imported into India. Goods are said to be imported into India when they are brought into India from a place outside India. Unless such goods are brought into India, the act of importation which triggers the levy does not take place. If the goods are pilferred after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. This is for the reason that the import of

goods does not take place until they become part of the land mass of India and until the act of importation is complete which under Sections 13 and 23 happens only after an order for clearance for home consumption is made and/or an order permitting the deposit of goods in a warehouse is made. Under Section 23(2) the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon. In short, he may abandon the said goods even after they have physically landed at any port in India but before any of the aforesaid orders have been made. This again is for the good reason that the act of importation is only complete when goods are in the hands of the importer after they have been cleared either for home consumption or for deposit in a warehouse. Further, as per Section 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for home consumption. Obviously, the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption. Accordingly, Supreme Court allowed the appeal filed by the appellant.

2. **CCE Bangalore Vs M/s Otto Bilz (India) Pvt Ltd 2015-TIOL-217-SC-CX**

Issue: The assessee had availed the benefit of SSI exemption Notification No.1/93-CE dated 28.02.1993. However, Department demanded duty on the respondent alleging that they are not entitled to the benefit of exemption notification by virtue of Paragraph 4 of the Notification which provided that SSI exemption would not apply to the specified goods bearing a brand name or trade name of another person. On confirmation of demand, assessee filed appeal before CESTAT, which allowed the appeal. Aggrieved by the order of CESTAT, Revenue is in appeal before the Supreme Court.

Held: Supreme Court observed that the respondent is using the brand name 'BILZ' of a foreign company, however, on the basis of the submissions of the respondent it was held that it has come on record that foreign company has assigned the trade mark 'BILZ' in favour of the assessee under Agreement dated 18.06.1996 with right to use the said trade mark in India exclusively. As the trade mark 'BILZ' has been assigned to the respondent, they are entitled to use the trade mark as its own trade mark and therefore it cannot be said that it is using the trade mark of 'another person'. Accordingly, Supreme Court agreed with the decision of the Tribunal that the assessee is entitled to the SSI exemption notification. Further, it was also held that show cause notice is barred by limitation and finding of the Tribunal on this issue is also without any blemish. Accordingly, the Departmental Appeal was dismissed.

3. **Eblitz Inc Vs ADDL CST 2015-TIOL-2119-HC-KAR-ST**

Issue: The petitioner had filed the appeal before Commissioner Appeals with delay of six months and it was contended that the delay was due to the fact that the impugned order dated 31.01.2012 was served on petitioner on 11.09.2012 and hence the said period has to be excluded for computation of time for filing of appeal before Commissioner Appeals. The appeal had been dismissed by Commissioner Appeals as being filed beyond the statutory time period of 90 days and therefore, petitioner had filed Writ Petitioner for exclusion of the time period between the date of the impugned order and the actual date on which they received the order.

Decision: Hon'ble High Court held that except self serving statement of petitioner there is no material whatsoever available to arrive at a conclusion that order in original dated 31.01.2012 came to be served on petitioner on 11.09.2012 so as to exclude the period from date of order till date of service. In the absence of any proof being tendered, petitioner cannot be heard to contend that the High Court in exercise of power under Article 226 of Constitution of India can condone such delay. High Court held that when the statue prescribes the period of 90 days as the limitation to file an appeal and there is no provision under the Finance Act, 1994 to condone the delay by first appellate authority, the question of entertaining such application for condonation of delay will not be in the domain of appellate authority. Further High Court held that since the express provision has stipulated for filing of appeals by fixing the limitation, it would override the provision of Limitation Act, 1963 which is the general law and hence even if there is sufficient cause for condonation of delay beyond six months (in the said case) such delay cannot be condoned. Accordingly, Karnataka High Court dismissed the writ petition holding that there is no merit.

4. **M/s Jaiprakash Associates Ltd Vs UoI 2015-TIOL-2013-HC-ALL-CX**

Issue: The petitioner had purchased the assets of one Corporation under the winding up order passed by the High Court and had not taken over the business of the said Corporation. Department had issued notice to the petitioner for recovery of excise duty dues of the Corporation under Section 11 of Central Excise Act, 1944. Hence, petitioner had filed writ against the said recovery proceedings.

Held: Hon'ble High Court held that under proviso to Section 11 of Central Excise Act, 1944 only provides for recovery of dues from the successor only where there is 'transfers or otherwise disposes of his business or trade in whole or in part,

or effects any change in the ownership thereof'. Therefore, High Court held that as the petitioner had only purchased the assets of the Corporation in pursuance of the winding up order passed by the High Court and had not taken over a running business of the Corporation, the liability of past CE dues payable by the Corporation cannot be fastened nor recovered from petitioner.

5. **CCE Vs Modernova Plastyles Pvt Ltd 2015-TIOL-2045-HC-MUM-CX**

Issue: Assessee had availed cenvat credit of duty paid on Moulds as 'Capital goods'. SCN was issued for the reason that the respondent is neither owner of the capital goods nor has it hired the same on lease, hire purchase or loan agreement from the financer. Subsequently, demand confirmed by the original authority and on appeal, the CESTAT allowed the appeal filed by the assessee after taking into account various decisions of the Supreme Court as well as the High Court holding that the question which has been posed is no longer res integra, and also with reference to the decision in the case of German Remedies Ltd. - 2002-TIOL-30-CESTAT-MUM. Hence, the Department is before High Court.

Held: High Court held that on perusal of MODVAT Rules before and after amendment indicates that the requirement of ownership was in the erstwhile regime upto 1994 as governed by then subsisting rules. Consequent to the amendment in 1994, sub rule 3 of Rule 57R having undergone amendment to it, removed such requirement of ownership/acquisition from financing agency, therefore after the amendment, for taking credit of duty paid on said goods, it would not be necessary that capital goods shall either be owned by the assessee or those shall be acquired by finance from financing agency. Therefore, denial of credit based on such ground is unsustainable. Accordingly, the appeal of Revenue is dismissed by High Court.

6. **M/s Maruti Suzuki India Ltd Vs CCE 2015-TIOL-1889-CESTAT-DEL**

Issue: The appellant, is a manufacturer of Motor Vehicles, availed cenvat credit of ST paid on Mandap Keeper service and rent-a-cab service. Department issued show cause notice demanding reversal of cenvat credit of input services and the Commissioner confirmed the demand holding that these services are not covered by the definition of input services. Hence, the assessee filed an appeal before CESAT.

Held: Hon'ble Tribunal held that there is no dispute that the assessee has utilised the Mandap Keeper services for organising meetings with the dealers, vehicle launch events and other promotional activities. This issue stands decided in favour of the appellant by the judgments of the Tribunal in the cases of Tradex Polymers Pvt. Ltd. - 2011-TIOL-710-CESTAT-AHM, Jaypee Rewa Plant - 2009-TIOL-1565-CESTAT-DEL, Idea Cellular Ltd. - 2011-TIOL-1111-CESTAT-DEL, and Endurance Technologies Pvt. Ltd. - 2013-TIOL-587-CESTAT-MUM. As regards the credit taken on Rent-a-cab service is utilised for transportation of the employees from their residence to the factory and back, travel in connection with business meetings, visit to Government authorities and promotional activities etc. and this issue also stands decided in favour of the appellant by the judgment in cases of Stanzen Toyotetsu India (P) Ltd. - 2011-TIOL-866-HC-KAR-ST, Lupin Ltd. - 2012-TIOL-2099-CESTAT-MUM, HEG Ltd. - 2010-TIOL-1260-CESTAT-DEL and J.K. Cement Works - 2009-TIOL-411-CESTAT-DEL. In view of the above referred precedent case laws, the impugned order is not sustainable and same set aside and the appeals allowed.

7. **CCE Vs. Hyundai Motor India Engg. (P) Ltd. 2015 (39) S.T.R. 984 (A.P.)**

Issue: What is the relevant date for filing refund claim by service exporters. Is it date of provision of service(invoice date) or date of receipt of the consideration.

Held: Agreeing with the view of the Tribunal that the relevant date for computing the limitation for filing refund by service exporters is date of realisation of consideration, the High Court observed that there is no illegality in the order of the Tribunal

8. **Mundra Port & Special Economic Zone Ltd Vs CCE, 2015 (39) S.T.R. 726 (Guj.)**

Issue: Whether Cement and Steel used and steel used in construction of new jetties and other commercial buildings would qualify as inputs.

Decision: Relying in the decision of the High Court in the case of Sai Samhita, 2011 (23) S.T.R. 341 (A.P.), the Court held that the appellant being a taxable service provider under the heading port services, is eligible to avail cenvat credit on goods used for construction of new jetties which is essential in providing the services.

The Court observed that the view of the Larger Bench of the Tribunal in the case of Vandana Global holding that the amendment to definition of input vide notification dt. 7-7-2009 has to be given retrospective effect, is incorrect and not sustainable. The said amendment restricting the credit on cement and steel used for construction of factory would be retrospective.

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Management of Co-operative Society and Audit Engagement – Fraud and Audit Risk under the Karnataka Co-operative Societies Act, 1959

CA G. Sathyanarayana

(Continued from previous issue)

Fraud and Irregularities in a Co-operative Society:

All the entities are prone to frauds. It cannot be presumed that an organization cannot be attacked by frauds committed either by insiders or outsiders, the reason for fraud, modes operandi, the execution, detection and prevention of frauds varies from entity to entity and during various happening. Fraud may happen in any co-operative society either small or medium or large society committed by a single person or group of people. The fraud originates from irregularities. Hence all frauds are irregularities and all irregularities are may not be frauds. The irregularities may be errors and deviations from the standards. Irregularities may happen knowingly or unknowingly. But the fraud is committed by the person knowingly it is an irregularity. Therefore the distinguishing factor between fraud and error is whether the underlying action that results in the misstatement of the financial statements is intentional or unintentional.

The fraud is a broad legal concept in the study; the auditor is concerned with fraud that causes material misstatements in the financial statements of a co-operative society. These intentional misstatements are of two types resulting from fraudulent financial reporting and resulting from misappropriation of assets.

Definition of fraud:

Fraud can loosely be defined as "any behavior by which one person intends to gain dishonest advantage over another". In the other words fraud is an act or omission which is intended to cause wrongful gain to one person and wrongful loss to the other, either by way of concealment of facts or otherwise.

For accounting terminology of a fraud is an intentional act by one or more individuals among management, those charged with the governance, employees or third parties, involving the use of deception to obtain an unjust or illegal advantage.

Fraud risk factors:

Events or conditions that may indicate an incentive or pressure to commit fraud or provide an opportunity to commit fraud. The auditor has to study and understand the provisions of the co-operative societies act and rules with respect to its management, nature and size of business, details and background of the employees, persons involved in charge of governance, level of authority in the management etc. in order to assess the fraud risk factors.

Persons those may be involved in fraud in a co-operative society:

Most of the cases persons involved in a fraud in a co-operative society commit the fraud for personal gain by using the authority/ opportunity lack of central system, etc., which is vested with persons in charge of governance. The following these conditions required for fraud to occur;

(1) Need: There could be many reasons for a person's overpowering need to commit a fraud. E.g., Medical/Family emergency, debt, living beyond one's means, gambling, greed to make more wealth etc.,

(2) Opportunity: The relative case of committing fraud and remaining undetected in universally proportional strength of the safeguards/ frameworks put in place around preventions and detection.

(3) Rationalization of the Act: A person with a strong enough need and reasonable window of opportunity commit fraud find ways to rationalize his/her act. "The organization owes me as I am underpaid/overworked or both". I am only taking a temporary loan, and will repay the organization, I will not be caught, as this can be detected only after years, others have done it and got away with it etc.,

The general governance structure of a co-operative society where frauds can occur.

Designation	Nature of Fraud
President	Exploit/Influence on internal control, abuse of powers, misstatement, corruption, misuse of assets
Director	Exploit/Influence in internal control, abuse of powers, misstatement, corruption, misuse of assets
Secretary/ CEO	Exploit/Influence in internal control, abuse of powers, misstatement, corruption, misuse of assets, wreck less dishonesty, forgery
Store Keeper	Wreck less dishonesty, adulteration, stealing, forgery
Other Employees	Wreck less dishonesty, adulteration, stealing, forgery

Misappropriation cases reported during audit reported in co-operative societies in Karnataka.

Year	No., of cases	Amount (Rs. in Lacks)
2009-10	104	663.30
2010-11	253	1218.22
2011-12	112	564.20
2012-13	99	1876.27
2013-14	?	6500.00+

(Continued to next issue)

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Karnataka High Court Order dt.28.09.2015

31238/15

- 1 -

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF SEPTEMBER, 2015

PRESENT

THE HON'BLE MR. SUBHRO KAMAL MUKHERJEE
ACTING CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

Writ Petition Nos.41109 and 41110 of 2015 (T-IT-PIL)

Between:

1. Karnataka State Chartered Accountants Association
Represented by its President
Sri.Dileep Kumar T.M.
Aged about 49 years
No.7/8, 2nd Floor, Shoukath Building
SJP Road, Bangalore – 560 002

2. Sri.Raveendra S.Kore
Chartered Accountant
Aged about 36 years
Son of Sangappa Kore
F-203, Maruthi Enclave
Balaji Layout, Malathahalli
Nagarghavi, Bangalore – 560 056

... Petitioners

(By Sri.D.N.Nanjunda Reddy, Senior Advocate
for Sri.Shankar, A, Advocate)

And:

1. Union of India
Represented by its Secretary
Ministry of Finance
Department of Revenue
South Block
New Delhi – 110 001

2. Central Board of Direct Taxes
Represented by its Chairman
Department of Revenue
4th Floor, Jeevan Deep Building
Parliament Street
New Delhi – 110 001

... Respondents

(Sri.Prabhuling K.Navadgi, Assistant Solicitor General
for respondent No.1
Sri.K.V.Aravind, Standing Counsel for respondent No.2)

HIGH COURT OF KARNATAK BENGALURU

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- 2 -

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India praying to declare the decision of the respondent Nos.1 and 2 vide its press release dated 9.9.2015 vide Annexure-A as null and void and in contravention of the provisions of Part III of the Constitution of India, by virtue of which, the respondent Nos.1 and 2 has not extended the date of filing of returns due by 30.9.2015 for assessment year 2015-16 for certain categories of assessee's including companies and firms and individuals engaged in proprietary business/profession, etc., whose accounts are required to be audited in terms of the Income Tax Act, 1961, and, etc.

These petitions coming on for Orders this day, ***the Acting Chief Justice*** made the following:

ORDER

In these writ petitions, the writ petitioners are asking for some extension of time for submission of income tax returns in

HIGH COURT OF KARNATAK BENGALURU

- 3 -

respect of certain categories of assesses, including the companies, firms and individuals, engaged in proprietary business/profession, whose accounts are required to be audited in terms of the Income Tax Act, 1961.

2. It is a domain of the Indian Government and the Central Board of Direct Taxes.

3. We direct the Central Board of Direct Taxes to consider the representation at Annexure-'C' to these writ petitions dated September 15, 2015, peremptorily by September 29, 2015.

4. With this direction, the writ petitions stand disposed of.

5. We make no order as to costs.

Sd/-
ACTING CHIEF JUSTICE

HIGH COURT OF KARNATAK

a) The date on which the application was made 28/9/15
b) The date on which charges and additional Charges if any are called for
c) The date on which the charges and additional Charges if any are deposited/Paid
d) The date on which the copy is ready 29/9/15
e) The date of notifying that the copy is ready For delivery 29/9/15
f) The date on which the applicant is required to appear on or before 3/10/15
g) The date on which the copy is delivered to the Applicant 30/9/15
h) Examined by

Sd/-
JUDGE

TRUE COPY

Section Officer 29.9.15

High Court of Karnataka
Bengaluru-560 001

Recent Decisions of The Income Tax Appellate Tribunal

(Contd. from page 10)

PENALTY

Where the Assessing Officer made a disallowance of 25% out of various expenditure aggregating to Rs. 4,15,95,755 and the Commissioner (Appeals) restricted the disallowance to 5% of the direct expenses which worked out to Rs. 16,00,000, the disallowance having been made on ad hoc and estimate basis without bringing on record any clinching material suggesting concealment of income or furnishing inaccurate particulars of income, penalty under section 271(1)(c) could not be levied ruled the Lucknow 'B' Bench in ACIT v. Vision Research & Management (P) Ltd. (2015) 171 TTJ (Luck) (UO) 40.

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Representation to Central Board of Direct Taxes on Extension of Due Date for Tax Audit

Meeting with Principal Chief Commissioner of Income Tax

Meeting with Chief Commissioner of Income Tax

KSCAA Members at Income Tax Department for submission of Representation

Mentors Meet on 5th October 2015 at Century Club, Bengaluru

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Karnataka State Chartered Accountants Association *Organises,*

Jointly with Bangalore Branch of SIRC of ICAI

SPORTS AND TALENT MEET

On **29th November 2015, Sunday** Timings : **9:00 am - 6:00 pm**

Venue: **KGS Club** (opp to MS Bldg) Cubbon park, Bengaluru.

Events CA'S

Shuttle Badminton (Single)
Shuttle Badminton (Double)
Chess
Table Tennis (Single)
Carrom
Tennis

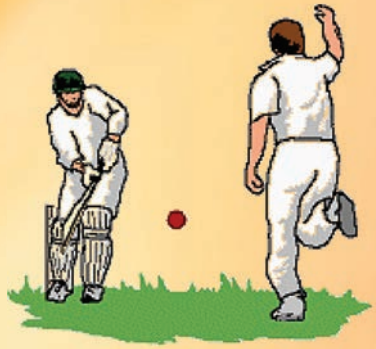
Family Members & Children

Shuttle Badminton (Double)
Chess, Carrom
Singing Competition, Musical Chair
Drawing Competition for Children
Rangoli/ Flower Decoration
Instumental / Dance

Events Fees: For CA's : ₹ **100/-** *For Each Event,* Family Members & Children : ₹ **50/-** *For Each Event*

Registration closes on 21st November 2015.

CRICKET LEAGUE



Date : **22nd November 2015, Sunday**
Time : **8:00 am – 6:00 pm**
Venue : **Bangalore University Ground**
Fees : ₹ **3000/-** *Per Team*

Tournament Format
8 to 10 Overs per side,
Tennis Ball
Restricted to 10 Teams only.

Registration closes on 14th November 2015.

Participants are requested to contact & send their details to
KSCAA office: Tel - **080-22222155, 22274679**, Email: **kscaablr@gmail.com**
Ms. Geetanjali - 080-30563500 / 513, Email: **blrregistration@icai.org**

CA. Allama Prabhu M.S.
Chairman, Bangalore Branch

CA. Raghavendra Puranik
Vice President, KSCAA, 9632245475

CA. Geetha A.B.
Secretary, Bangalore Branch
9845526327

CA. T.N. Raghavendra
Secretary, KSCAA
9880187870

CA. Ramesh Sharma
Chairman, Sports & Public Relations
Committee, KSCAA, 9900503905