



The Institute of Chartered Accountants of India  
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Chairman

CA. C.M. Ravi Prasad

Secretary

CA. M.K. Kumar

Editor

CA. Sudheer Motamarri



# 2011

## HAPPY NEW YEAR



ICAI - the Second largest accounting body in the world



Dear Esteemed Member,

I have great pleasure in wishing each of you and your family members a very Happy, Prosperous and Blissful New year and MakaraSankranthi. We are entering into the first year of a new decade in the millennium. The new year is of course an occasion to celebrate but at the same time to ponder over the year gone by and plan for the coming year. I pray the Almighty that this year and the coming decade be professionally promising for we Chartered Accountants individually and the profession as a whole globally.

The two day Regional Residential Seminar on Cruise at Papikondallu was a grand success. Members of our branch and other places like Hyderabad,

Rajamundry, Cadappah, Bellary, Raigada etc enjoyed the nature at its best and rejoiced. I take this opportunity to thank the Resource persons CA.V.S.N.Murty, CA. V.Chandrsekhar and CA.I.Kamasastry for the excellent presentations.

As the members have completed the assignment of scrutiny assessments, it is the time to advice our clients on the provisions of TDS and planning for the financial year closing. We are organising a Half Day seminar on "Provisions on TDS" on Saturday, 22nd January, 2010. Full details are given in the pages inside. I request all the members to attend the seminar.

I once again wish all the members a very joyous new year and pongal.

Jai Hind Jai ICAI

With warm regards,

Yours affectionately

**CA C.M.Ravi Prasad**  
Chairman

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## **NEWS YOU CAN USE**

Complied by **CA. P.V.S.P. Kumar, FCA**

### **CENTRE PLANS TO BRING IN MORE SERVICES UNDER TAX NET NEXT YEAR**

In a move that could put burden on some service providers in the health and education sector, the Budget next year may widen the service tax ambit to include at least five to eight new services in the two sectors in the tax net. The Centre plans to bring more services in the tax net next year, finance ministry officials told FE. Currently, 117 services attract 10% service tax and the Centre wants to expand this list before the goods and services tax (GST) is adopted nationally.

### **NON-PROFIT ENTITIES ALLOWED TO ESTABLISH TECHNICAL INSTITUTIONS**

Companies registered as non-profit entities under section 25 of the Companies Act will now be able to establish technical institutions in the country but joint ventures will not be allowed. Besides, 241 districts of the country where no All India Council for Technical Education (AICTE) approved institutes exist, it will be possible to set up such institutes in the public-private partnership and build operate transfer modes.

### **DEPOSITS SHRINK, LOANS SURGE IN DEC 1 FORTNIGHT**

Bank deposits fell for a consecutive fortnight, while credit expanded by a little over Rs 45,000 crore, according to the latest data published by the Reserve Bank of India. The growing credit-deposit growth gap, on which the central bank has already raised concern, has widened further.

### **SRI PRANAB MUKHERJEE TO MAKE BIG BUDGET CHANGE IN DIRECT TAX LAWS.**

Delhi : Saddled with huge tax arrears of Rs 2,50,000 crore -- more than half of the total tax collection projected for 2010-11 -- finance minister Pranab Mukherjee is likely to introduce in the forthcoming Budget some major changes in direct tax laws that could help in swift recovery of a significant portion of the arrears. The changes proposed include reducing the limits to approach Income Tax Settlement Commission (ITSC), allowing those who have faced I-T raids to approach the commission even if the demand raised against them is not hefty.

### **BANKS ASKED TO CLOSE 15-YR OLD PPF A/C OF HUFs**

The Reserve Bank today directed banks to close the public provident fund (PPF) accounts of Hindu undivided families (HUFs) which have completed 15 years and refund the money by March 2011. The directive to the banks follow a notification by the finance ministry that said that all PPF accounts opened by HUFs which have completed 15 years should be closed. The HUFs henceforth will not be allowed keep their accounts functional for the extended period of five years after completion of 15 years.





General Circular No: 5/2010

No.17/75/2010-CL.V

## Government of India

Ministry of Corporate Affairs

5th floor, 'A' Wing, Shastri Bhavan,  
Dr. Rajendra Prasad Road, New Delhi-110 001.

Dated: 22nd November, 2010

To

All Regional Directors

All Registrars of Companies

**Subject:- Reopening/revision of annual accounts after their adoption in the annual general meeting.**

Sir,

Your attention is drawn to the provisions of section 220 of the Companies Act, 1956 which provide for the manner in which annual accounts (viz balance sheet and profit and loss account etc) are laid before annual general meeting for adoption by shareholders and filed with Registrar. This Ministry, vide General Circular Number 1/2003 (F. No. 17/75/2002) dated 13.01.2003 had directed the grounds and manner in which accounts can be re-opened/ revised by companies and thereafter adopted by shareholders. A copy of such circular is attached.

It has now come to the notice of the Ministry that few companies have been filing their annual accounts under section 220 more than once resulting into filing/availability of more than one such accounts in the Registry for a particular financial year.

The matter has been examined in the Ministry in detail and it has been concluded that keeping in view the provisions of section 220 of the Act read with Ministry's General Circular 1/2003, a company cannot lay more than one set of annual accounts for a particular financial year unless it has reopened/ revised such annual accounts after their adoption in the Annual General Meeting on the grounds specified in Ministry's circular Number 1/2003.

Accordingly, it is hereby directed that ROCs should keep a watch on such kinds of repeat filings of annual accounts and such accounts should not be accepted except in accordance with provisions of section 220 read with Ministry's General Circular 1/2003.

Yours faithfully,

(E. Selvaraj)

Director (inspection & Investigation)

(Ph: 2338 4502)





## Circulars & Notifications

CA Rama Krishna Sangu Mcom, ACA  
Consultant - Indirect Taxation

### **AP VAT**

#### **WAY BILLS**

The Government of Andhra Pradesh vide its Circular dated 12-11-2010 withdrew the guidelines issued earlier relating to validity period of waybills to avoid hardship to traders. Henceforth, Deputy Commissioners and Assessing Authorities should dispense with affixing validation stamps on waybills while issuing waybills to the trades.

#### **SUBMISSION OF CERTIFIED FINANCIALS**

As per Rule 25 (10) of the AP VAT Rules, every VAT dealer shall furnish for every financial year the statements of trading account, p&l account and balance sheet duly certified by a Chartered

Accountant. In this regard the Government of Andhra Pradesh vide its Circular dated 24-11-2010 clarified that small VAT dealers whose turnover is less than Rs. 40 lakhs and who are not liable for statutory audit under the provisions of the Income Tax Act, 1961 can file such documents as required under Rule 25 (10) either certified by a Chartered Accountant or Sales Tax Practitioners or SELF CERTIFIED.

### **CENTRAL EXCISE**

#### **TRANSACTION VALUE TO INCLUDE BONUS AND QTY DISCOUNTS**

CBEC has issued a Circular clarifying applicability of larger bench decision in Indica Laboratories vs. CCE, Ahmedabad - 2007-TIOL-713-CESTAT-AHM-LB on inclusion of bonuses; discounts etc for valuation under section 4 in absence of stay by the high court - therefore quantity discounts, bonus quantities are

not deductible from MRP under for goods falling under MRP based assessment.

### **SERVICE TAX**

#### **INSTALLATION OF ELECTRICITY METERS ELIGIBLE FOR EXEMPTION**

The scope of notification regarding exemption on transmission or distribution of electricity has been clarified to be applicable to even electricity meters installed at premises of consumers. This has been viewed as an activity in relation to distribution and transmission of electricity and is held to be exempted from tax under Notification 11/10-ST dated 27.02.2010 and 32/2010-ST dated 22-06-2010...

### **FOREIGN TRADE POLICY**

#### **DUTY FREE IMPORT OF SAMPLES**

Foreign trade policy has been amended permitting Duty free import of samples up to value of 300000.

### **SPECIAL ECONOMIC ZONE (SEZ)**

#### **MONITORING OF BOND CUM LEGAL UNDERTAKING**

Clarification has been issued to the effect that the obligation to monitor amount under bond cum legal undertaking is on the developer or unit themselves and it is their obligation to intimate the concerned authority if there is a shortfall, the developer or unit is required to execute an additional bond cum legal undertaking. The same circular also clarifies that the bond can be executed for import or procurement of raw materials for a period of one year or three years - please refer Instruction number 72 dated 30-11-2010.

## **MEMBERS DIARY FOR THE MONTH OF JANUARY - 2011**

Date	Venue & Time	Meeting	Subject & Speaker
5th Jan. 2011 Wednesday	ICAI Bhawan 10.30 am to 12.30 pm	<b>Teleconference</b> CPE 2 hrs	Introduction to International Taxation CA. M.P. Sarada, FCA, Mumbai
22nd Jan.2011 Friday	ICAI Bhawan 05.00 pm to 08.00 pm	<b>Half Day Seminar</b> CPE 3 Hrs	Seminar on Provisions on TDS (Details printed elsewhere)
26th Jan.2011 Wednesday	ICAI Bhawan 09.00 am	<b>Republic Day Celebrations - Flag Hoisting</b>	
28th Jan. 2011 Friday	ICAI Bhawan 06.30 pm to 08.00 pm	<b>Study Circle Meeting</b>	An overview of Project Finance CA. M. Chalapathy, FCA, Vizag





# Compliance Recent Income Tax Case Laws

Complied by  
CA. P.V.S.P. Kumar, FCA

## S. 2(14): Agricultural Land - Capital Gains - No Agricultural Income

Land which was shown as agricultural land in the revenue records and never sought to be used for non agricultural purposes by the assessee till it was sold has to be treated as agricultural land, even though no agricultural income was shown by the assessee from this land, and therefore, no capital gain was taxable on the sale of the said land.

*CIT vs. Debbile Alemao (Smt.) (2010) 46 DTR 341 (Bom.)*

S. 2(22)(e) : Deemed Dividend - Applicable only to loans given in the year. Section 2(22)(e) not applicable if lending is not "trivial" part of business

S. 2(22)(e) covers only the amount received during the previous year by way of loans / advances and not amounts received in an earlier year. The second condition, the expression "substantial part" does not connote an idea of being the "major part" or the part that constitutes majority of the whole. Any business which the company does not regard as small, trivial, or inconsequential as compared to the whole of the business is substantial business.

*CIT vs. Parle Plastics Ltd. (2010)*

*236 CTR 382 (Bom.)*

## S. 4 : Capital or Revenue Receipt - Transfer or Assignment of Marketing Rights - Non-compete Fee

Amount received on account of transfer or assignment of marketing rights in exchange of source of income is a capital receipt. Amount received as non-compete fee is a capital receipt. Capital gains not taxable where cost of acquisition not determined.

*BASF India Ltd. vs. Addl. CIT (2010) 6 ITR 156 (Mum.)(Trib.)*

S. 4 : Income - Gift by devotees on birthday of assessee -Vocation - Profession - [S. 2(36), 28(i)]

Where the devotees out of natural love and affection and veneration used in large numbers on the birthdays of the assessee and voluntarily made gifts, it cannot be said that the amount received by the assessee by way of gift would amount to vocation or profession since it is not the case of the Department that the devotees were compelled to make gifts on the occasion of the birthday of the assessee and therefore the same were not taxable as income in the hands of the assessee.

*CIT vs. Gopala Naicker Bangaru (2010) 46 DTR 280 (Mad.)*

## S. 5 : Accrual of Income - Interest - Interest on NPA not assessable on "accrual" basis

Under section 45Q of the RBI Act read with the NBFCs Prudential Norms (Reserve Bank) Directions 1998, it was mandatory on the part of the assessee not to recognize the interest on the ICD as it had become a NPA. The assessee was bound to compute income having regard to the recognized accounting principles set out in Accounting Standard AS-9. AS-9 provides that if there are uncertainties as to recognition of revenue, the revenue should not be recognized. Accordingly, the argument of the revenue that the interest on the NPA can be said to have accrued despite it being a NPA is not acceptable.

*CIT vs. Vasisth Chay Vyapar (Delhi High Court)*

S. 10(14) : Exemption - Special Allowance or Benefit - MLA - MP - Conveyance Allowance -

Clerical Allowance - Telephone Allowance - Medical Expenditure - Constituency Allowance - [S. 10(17)]

Only those allowances are exempt which are specified in section 10(14), or section 10(17), or in Rule 2BB. Conveyance allowance or clerical allowance received by an MLA are exempt under section 10(14) r.w. Rule 2BB, subject to proof that the same were incurred in the performance of duties of the





office. Telephone allowance and constituency allowance are not exempt under section 10(14), in the absence of specific clause in Rule 2BB(1). If the medical allowance is reimbursement of medical expenditure exemption can be allowed and not otherwise, as it does not find place in Rule 2BB(1).

**M. Venkata Subbaiah vs. ITO (2010) 47 DTR 403 (Visakha)(Trib.)**

**S. 12AA : Charitable Purpose - University - Artificial Juristic Person - [S. 2 (15), 2(31)]**

University, incorporated under Haryana private Universities Act, 2006, is an artificial juristic person within the meaning of term "person" under section 2(31)(vii), hence, it is entitled to make an application for registration under section 12AA. The object of the university were granting fellowship, freeship, scholarship, etc. to students belonging to weaker sections of society, it could be concluded that assessee was a charitable institution.

**O. P. Jindal Global University vs. CIT (2010) 127 ITD 164 (Delhi)**

**S. 15 : Salary - MLA - MP - Income from Other Sources - (S. 56)**

Remunerations received by the MLAs and MPs cannot be taxed under the head income from salary but can only be taxed under the head income from other sources.

**M. Venkata Subbaiah vs. ITO (2010) 47 DTR 403 (Visakha)(Trib.)**

**S. 28(i) : Business Income - Capital Gains - Sale of Shares - (S. 45)**

Assessee carrying on jewellery business invested in shares and treated shares as investment in the books. The Tribunal on the basis of facts found viz. that the investment is out of own fund and not borrowed fund, that investment is not rotated frequently, that the total number of transactions are very few, that all the shares purchased are not sold and rather held for quite number of days, held that the transactions are to be treated as giving rise to the capital gain and cannot be held as trading in shares. High Court in appeal confirmed the decision of Tribunal.

**CIT vs. Rohit Anand (2010) 46 DTR 236 (Delhi)**

Editorial Note: ITO vs. Rohit Anand (2010) 127 TTJ 122 (Del.)(UO) / 34 DTR 89 (Delhi)(Trib.) Affirmed

**S. 28(i) : Business Income - Capital Gains - Transaction in Shares**

Assessee company having not engaged itself in the business of buying and selling shares after 1st

April 1997, though entitled to deal in shares as per the object incorporated in its memorandum of association, income earned by assessee from the sale of shares held by it as an investment for seven years was assessable as capital gains and not as business income.

**CIT vs. PNB Finance & Industries Ltd. (2010) 46 DTR 345 (Del.)**

**S. 28(i) : Business Income - Capital Gains - Shares - Short Period of holding shares does not perse suggest business activity - Share Broker - (S. 45)**

The intention with which an assessee starts his activity is the most important factor. If shares are purchased from own funds, with a view to keep the funds in equity shares to earn considerable return

on account of enhancement in the value of share over a period then merely because the assessee liquidates its investment within six months or eight months would not lead to the conclusion that the assessee had no intention to keep the funds as invested in equity shares but was actually intended to

trade in shares. Mere intention to liquidate the investment at higher value does not imply that the intention was only to trade in security. However, it cannot be held that in all circumstances if assessee

has used its own funds for share activity then it would only lead to inference of investment being the

sole intention. In such circumstances, frequency of transactions will have to be considered to arrive at proper conclusion regarding the true intention of the assessee. However, if the assessee, on the other hand, borrows funds for making investment in shares then definitely it is a very important indicator of its intention to trade in shares; On facts, the Assessing





Officer proceeded on the assumption that borrowed funds had been utilized for buying shares on the ground that funds were common and could not be segregated. However, it was categorically pointed out before the CIT(A) that no part of the borrowed funds was utilized for acquisition of shares on investment account. Nothing was brought on record by the department to controvert this fact;

**ACIT vs. Vinod K. Nevatia (ITAT) (Mumbai)**

**S. 28(1) : Business Income - Capital Gains - Sale of Shares - Multiple orders for purchase/sale of shares may constitute one transaction - (S. 45)**

The Assessing Officer had not correctly calculated the number of transactions because sometimes a single transaction is split by the computers trading of the stock exchanges into many smaller

transactions but that does not mean that assessee has carried so many transactions. If someone places an order for purchase of 1000 shares and the same is executed by the electronic trading system of

stock exchange into 100 smaller transactions, it does not mean that 100 transactions have been entered

into. The assessee had carried out only 31 purchase and 25 sale transactions which cannot be said to be a great volume of transactions. At the end of the year, the assessee was holding shares

worth Rs. 11.56 crores with a market value of Rs.17.69 crores. If assessee was a trader, he would have definitely realized the huge profit of almost

Rs. 6 crores immediately and not carried out the stock to the next year. The transactions in which no delivery was taken and it was settled in the same day appear to be cases where the particulars were wrongly carried out on behalf of the assessee by the broker & that's why assessee got them settled on the same day. The assessee has not borrowed any money and he was occupied full time in the business of garments.

**Mehal V. Shah vs. ACIT (Mumbai) (ITAT)**

**S. 37(1) : Business Expenditure - Lease Rental for Dozers**

As long as an expenditure is incurred bona fide in pursuit of business and not by way of diversions of funds, it has to be allowed as a deduction. Entire lease rent paid by the assessee for hiring the dozers for using them in its business was allowable as a business expenditure even though assessee did not actually use 3 out of the hired dozers.

**CIT vs. Salitho Ores Ltd. (2010) 236 CTR 53 / 46 DTR 377 (Bom.)**

**S. 40(a)(ia) : Business Expenditure - Payment to Goods - Freight Charges - (S. 194C)**

Where the Tribunal has recorded a categorical finding fact that there

was no material on record to prove any written or oral agreement between the assessee and recipients of goods for transportation and that such payment of freight had not been shown to have been made in pursuance to a contract of transportation of goods for a specific period, quality or price and further, none of the individual payment exceeded Rs. 20,000/-, there was no liability to deduct tax under section 194C and disallowance under section 40(a)(ia) was rightly deleted.

**CIT vs. Bhagwati Steels (2010) 47 DTR 75 (P&H)**

**S. 45 : Capital Gains - Sale of land with trees and plants**

The assessee, a Chartered Accountant by profession, sold land with trees and claimed Rs. 14.92 lakhs as expenses from the sale consideration of Rs. 10 lakhs as exempt agricultural income. The Assessee contented that the vendee had paid a sum of Rs. 10 lacs towards the total reimbursements of sale proceeds of the trees, plants and other existing crops and horticulture and it was included in the total value. The Assessing Officer held that it was a composite sale along with the land. Hence, it could not be treated separately as agricultural income. He made addition of Rs. 10,03,814/-. CIT(A) confirmed the assessment order. The Tribunal held that, although this amount was part of sale deed





under which the land was sold, the part of sale proceeds was not agricultural income. Deduction was allowed on entire indexed cost of acquisition.

**Abhinav Ajmera vs. ACIT (2010) 6 ITR 482 (Delhi)(Trib.)**

**S. 45(4) : Capital Gains - Conversion of firm in to company - Part IX**

Provisions of section 45(4) is not attracted to conversion of partnership firm in to company under the provisions of part IX of Companies Act.

**CIT vs. Rita Mechanical Works (2010) 46 DTR 133 (P&H)**

**S. 45 : Capital Gains - Tax Avoidance - Colourable Device**

Assessee transferring the shares to another group of companies at prevailing market rate, to reduce its taxable income, cannot be dubbed as colourable device to evade taxes.

**CIT vs. Pivet Finance Ltd. (2010) 46 DTR 339 (P&H)**

**S. 48 : Capital Gains - Computation - Market Value - Cost of Construction**

Assessee had sold land to the builder-developer. Only the cost of construction of proposed building allotted to the assessee in the ultimately constructed area and not the market value of such share of constructed area, has to be reckoned as consideration for the purpose of computation of capital gains.

**Dy. Director of IT vs. G. Rahguram (2010) 46 DTR 136 (Hyd.)**

**S. 49(1)(iii) : Capital Gains - Cost of Acquisition - Fair Market Value as on 1st April, 1981 - Sale of Land - Dismantling the Building - [S. 48, 55(2)(b)]**

Though the assessee had sold land by second sale deed after dismantling the building, the fair market value for the purpose of computation of capital gain should be taken, of the land as well as the construction thereon since as on 1st April 1981, building was existing over the plot. Assessing Officer was not justified in taking the fair market value of land only.

**Subash Chand Kapoor vs. ITO (2010) 46 DTR 314 (Agra)(Trib.)**

**S. 54 : Capital Gains - Exemption - Sale of house or land - Land appurtenant to the building : (S. 54)**

Assessee is entitled to exemption under section 54 in respect of capital gains on sale of the land appurtenant to the building. Such land is sold separately, after dismantling the existing building. What is sold is only land and hence, exemption under section 54 will not be allowable.

**Subhash Chand Kapoor vs. ITO (2010) 46 DTR 314 (Agra)(Trib.)**

**S. 54F : Capital Gains - Exemption - Purchase of Flat**

Assessee had purchased a flat, prior

to sale of land after demolition of building on the land and therefore neither proviso to section 54F(1) nor section 54F(2) attracted and the assessee was entitled to exemption under section 54F.

**Subhash Chand Kapoor vs. ITO (2010) 46 DTR 314 (Agra)(Trib.)**

**S. 68 : Cash Credits - Gift**

In order to establish that the money received by assessee to be a gift, it should be proved to be voluntary and at the instance of the donor out of love and affection. Gift being as per advice of donor's brother-in-law and not voluntary out of love and affection, addition under section 68 was sustainable.

**Vimaladevi S. Garg (Smt) vs. ITO (2010) 46 DTR 294 (Mum.)(Trib.)**

**S. 68 : Cash Credit - Share Transactions - Capital Gains - (S. 45)**

Assessee having established the genuineness of purchase and sale of shares by producing documentary evidence and declaring the purchase and sale price of shares in conformity with market rates prevailing on the respective dates, the finding of the Tribunal that transactions were genuine is a finding of fact based on documentary evidence on record and therefore no substantial question of law arises from the order of the Tribunal deleting the addition under section 68. Statement of broker that the transaction was bogus was not relevant, transaction being off market the assessee produced





relevant documents.

***CIT vs. Jamnadevi Agrwal & Sons (2010) 46 DTR 271 (Bom.)***

**S. 69 : Income from Undisclosed Source - Addition - Alleged bogus purchase - Non filing of confirmation - Certificate from Bank - (S. 145)**

Assessing Officer was not justified in making the disallowance of purchases made by the assessee merely due to non filing of confirmation from suppliers especially when assessee has filed certificate from the bank indicating the facts that cheques issued by it were cleared and no defects in the books of account was pointed out.

***YFC Projects (P) Ltd. vs. Dy. CIT (2010) 46 DTR 496 (Delhi)(Trib.)***

**S. 71 : Loss - Set of loss - Year of Allowability**

Stock stored in State warehousing corporation was destroyed by fire in the year 1978. Suit was filed to reimbursement of loss. Suit was dismissed in the year 1982. Loss was allowable in the year 1983- 84.

***New Diwan Oil Mills vs. CIT (2010) 328 ITR 432 (P&H)***

**S. 72(1) : Losses - Carry forward and set off of business losses - Remission or Cessation of Trading Liability - [S. 41(1)]**

In order to allow business loss under section 72(1)(i) condition is that assessee should carry on business in year under appeal and it is only against profits of such business that brought forward loss can be set off.

Where assessee's profits were assessed under section 41(1) as business income, said profits did not represent profits and gains of any business carried on by assessee and therefore, brought forward business loss was not allowable against profits assessed under section 41(1).

***Karnataka Intrade Corporation Ltd. vs. ACIT (2010) 127 ITD 74 (Bang.)***

**S. 74 : Capital Gains - Capital Loss - Carried Forward and set off-Non-resident**

Claim of carry forward of capital loss brought from earlier years by the assessee, a company, taxresident of Mauritius, could not be rejected by the Assessing Officer while making assessment of subsequent year on the ground that since the assessee company was not liable to tax on the capital gains under Art. 13 of DTAA between India and Mauritius, such capital loss was also exempt.

***Flagship Indian Investment Co. (Mauritius) Ltd. vs. ADIT (2010) 133 TTJ 792 / 46 DTR 166 (Mum.)(Trib.)***

**S. 80HHC : Deduction - Export - New Industrial Undertaking - S. 80IA(9) - S. 80-IA deduction to be reduced for S. 80HHC deduction - [S. 80IA(9)]**

The expression "deduction to the extent of such profits" signifies that if an assessee is claiming benefit of deduction of a particular amount of profits and gains Under section 80IA, to that extent profits and

gains are to be reduced while calculating the deduction under Chapter VI A (C). The word "and" is disjunctive and means that the other provision is independent. The provision aims at achieving two independent objectives and cannot be limited to second objective alone thereby annihilating the first altogether and making it otiose. Even under the purposive interpretation, the purpose behind introducing section 80IA(9) is to ensure that an assessee does not get deduction on the amount of profits and gains accorded in one provision. The argument that where the Legislature intended to deduct the amount out of some other deduction a different phraseology was used is also not acceptable. Merely because section 80-IB is not worded in a similar fashion does not mean that one has to do violence with the plain language of the provision, which is capable of only one meaning

***Great Eastern Exports vs. CIT (Delhi High Court)***

**S. 80HHC : Export - Deductions - Calcined Petroleum Coke - (CPC) - Mineral Oil**

Assessee Company manufacturing and exporting CPC, would be entitled to deduction under section 80HHC in respect of profits arising out of export of CPC. Calcined Petroleum Coke (CPC), produced from raw petroleum coke by subjecting same to a manufacturing process called as "calcining process"





cannot be called "Mineral Oil".

**Goa Carbon Ltd. vs. CIT (2010) 195 Taxman 1 (Bom.) / (2010) Vol. 112 (10) Bom. L. R. 4477**

**S. 80-O : Deduction - Royalties - Foreign Enterprises**

Amount allowable under section 80-O of the Income Tax Act, is restricted to the total income and not to the income computed under the head business.

**CIT vs. J. B. Boda & Co. Ltd. (Bombay High Court) ITA No. 3224 of 18-10-2010 [307 (2010) 42-BBCAJ (December 2010 P. 35]**

**S. 90 : Double Taxation Relief - India-USA - DTAA - Income deemed to accrue or arise in India**

- Business Connection - Service rendered through Indian subsidiary- (S. 5(2), 9(1)(i), Art. 5, 7, 27)

Assessee a US company, providing IT enabled services to its clients by assigning or sub-contracting execution of the contracts to its wholly owned subsidiary EFI and supplying the relevant software and database to the later, free of charges, has business connection in India within the meaning of section 9(1)(i), as well as a PE in the form of EFI, as per Art 5 of the Indo-USA DTAA. Profits attributable to the PE are to be worked out by applying the proportion of Indian assets to global assets including EFI's assets, to the aggregate of global profits and reducing the resultant figure by the assessed profit of EFI.

**eFunds Corporation vs. Asst.**

**Director IT (2010) 134 TTJ 1 (Delhi)**

**S. 92C : Transfer Pricing - Arm's Length Price - International Taxation - Operational Cost - Comparable**

Comparables of extreme cases both on higher side and lower side to be avoided. Foreign exchange fluctuations cannot be excluded. Income tax refund cannot be included. Donations to be included.

Compensation for termination of agreement to purchase property to be excluded. Shifting from one process to another in selection process permissible.

**Sap Labs India Pvt. Ltd. vs. ACIT (2010) 6 ITR 81 (Bang.)(Trib.)**

**S. 92C : Transfer Pricing - Arm's Length Price - International Taxation - Custom Valuation - Chapter X**

Data for comparison to be data relating to year in which international transaction entered into. Exclusion of reimbursement of advertisement expenditure for determining profit level indicator not proper. Advertisement expenditure of comparables operating profits to be adjusted to bring it at par with tested party.

**Panasonic India Pvt. Ltd. vs. ITO (2010) 6 ITR 502 / 46 DTR 433 (Delhi)(Trib.)**

**S. 92C : Transfer Pricing - Associated Enterprise - Arm's Length Price**

Proprietor of the foreign concern

being a relative of the two brothers who are controlling the assessee firm, cl. (j) of section 92A(2) is applicable to the facts of the case and the said foreign concern constituted an AE of the assessee. Since the word "or" is appearing between each sub clause of section 92A(2), the requirement of deeming provision is satisfied even if one of the sub clauses is applicable. Items sold by the assessee to the AE not being comparable with the items sold to other enterprises, the GP rate of the sales made to other concerns cannot be applied for computation of ALP.

**ITO vs. V. Rajendra Exports (2010) 46 DTR 193 (JP)(Trib.)**

**S. 92C : Transfer Pricing - Computation - Arm's Length Price - Payments to personnel deputed by AE and Royalty**

As there was no reason for the TPO to hold that expenditure on the deputation of technical adviser ought to be incurred by AE and not by the assessee, and the fees paid for technology agreement was recovered by assessee from the AE, as part of sale price, such fee paid became revenue neutral, transaction were at ALP hence no addition was called for. On the facts the CIT(A) has rightly deleted the addition of Rs 43,68,838 made by the Assessing Officer, being the difference in the ALP on account of royalty and payments to personnel deputed by AE.

**ACIT vs. Sona Okegawa Precision Forgings Ltd. (2010) 47 DTR 187**





(Delhi)(Trib.)

**S. 115JAA : Book Profit - MAT Credit to be set off before computing Advance Tax shortfall and liability for section 234B, 234C - Interest**

The scheme of section 115JA(1) and 115JAA shows that right to set-off the tax credit follows as a matter of course once the conditions of section 115JAA are fulfilled. The grant of credit is not dependent upon determination by the Assessing Officer except that the ultimate amount of tax credit to be allowed depends upon the determination of total income for the first assessment year.

Accordingly, the assessee is entitled to take into account the set off while estimating its liability to pay advance tax. If this interpretation is not given, there will be absurdity.

The amendment to Explanation 1 to section 234B by FA 2006 w.e.f. 1.4.2007 to provide that MAT credit under section 115JAA shall be excluded while calculating advance-tax liability is to remove the immense hardship that would result if this was not done.

**CIT vs. Tulsyan NEC (Supreme Court)**

**S. 115JB : Book Profit - State Electricity Board**

State Electricity Board is not company bound by the provisions of Companies Act, as to manner of drawing up profit and loss account or obligation to lay before company

in general meeting. Provision of section 115JB is not applicable.

**Kerala State Electricity Board vs. Dy. CIT (2010) 329 ITR 91 (Ker.)**

**S. 115WB(2)(H) : Fringe Benefits - Repairs, Running, etc., of Motor Cars - Interest on loan**

Expenditure incurred on payment of salary to driver is to be included in computing the expenses on running of car within the meaning of the provision of section 115WB(2)(H), however, the expenditure on payment of interest on loan taken for purchase of motor cars cannot be included to compute fringe benefits.

**Brihan Maharashtra Sugar Syndicate Ltd. vs. Dy. CIT (2010) 134 TTJ 98 / 46 DTR 157 / 46 DTR 157 (Pune)(Trib.)**

**S. 133A: Survey - Addition on the basis of Statement was deleted - Discrepancy in Stock and Cash**

Statement made under section 133A is not conclusive proof. Assessee was able to explain discrepancy in stock by production of relevant record. Addition was deleted.

**CIT vs. Dhingra Metal Works (2010) 328 ITR 384 (Delhi)**

**S. 133A : Survey - Addition on the basis of Statement - Cross Examination - (S. 131)**

Addition on the basis of admission during the survey without any supportive material not sustainable, further there was no substantive evidence on record except

statement of assessee and third party in support of addition of Rs. 25 lakhs and Rs. 2.55 crores made by Assessing Officer for the Asst. Year 2007-08 and 2008-09 respectively. Non providing of cross examination of witness clearly constitutes infraction of the right conferred on the assessee and that vitiated the order of the assessment made against the assessee.

**B. Ramakrishnaiah vs. ITO (2010) 46 DTR 406 (Hyd.)(Trib.)**

**S. 153A : Search and Seizure - Assessment of any other person - (S. 153C)**

Seized documents not belonging to assessee, assessment not pending on date of search, original assessments not abated. Assessment under section 153A was set aside.

**Meghmani Orgaics Ltd. vs. Dy. CIT (2010) 6 ITR 360 (Ahd.)(Trib)**

**S. 153A : Search and Seizure - Assessment of Third Party - Neither books of account nor documents belonging to assessee was seized - (S. 153C)**

No amount of money, bullion, jewellery or other valuable article or thing or books of account or documents seized belonged to assessee. Assessing Officer does not assume jurisdiction for framing assessment under section 153C.

**ACIT vs. Gambhir Silk Mills (2010) 6 ITR 376 (Ahd.)(Trib.)**

**S. 158BC : Search and Seizure -**





**Block Assessment - Undisclosed Income - (S. 132, 69C)**

Sums found entered in regular books, enquiry in regular assessment permissible, however, in block assessment not permissible.

**Dy. CIT vs. Radhe Developers India Ltd. and Another (2010) 329 ITR 1 (Guj.)**

S. 158BD : Block Assessment - Recording of Satisfaction in writing Statement recorded in search cannot form sole basis for initiation under section 158BD, addition made without recording the satisfaction is held to be bad in law.

**CIT vs. Raj Pal Bhatia (Delhi High Court)**

**S. 214(IA) : Advance Tax - Refund - (S. 143(3), 251)**

Assessee entitled to receive interest under section 214(IA), on difference between advance tax and assessed under section 251 from the first day of assessment year till day of passing regular assessment under section 143(3).

**Dy. CIT vs. Simbholi Sugar Mills Ltd. (2010) 6 ITR 247 (Delhi)(Trib.)**

**S. 263 : Revision - Assessing Officer taking possible view - Housing Project - Commercial Construction - [S. 80IB(10)]**

The view that an element of commercial construction per se would not vitiate the claim of deduction under the pre-amended section 80IB(10), is not only a possible view of the matter, it is a

view adopted by the Special Bench of the Tribunal and therefore, assessment order allowing assessee's claim for deduction under section 80-IB(10) on residential-cum-commercial project cannot be said to be erroneous and prejudicial order and cannot be revised under section 263.

**Anik Development Corporation vs. ACIT (2010) 134 TTJ 17 (Mum.)(UO)**

**S. 263 : Revision - Erroneous and Prejudicial Order - Lack of proper enquiry**

Order under section 263 passed by the CIT setting aside the assessment order on the ground that the Assessing Officer has not made enquiries in respect of certain issues, without stating as to how the order of the Assessing Officer is erroneous and prejudicial to the interests of revenue cannot be sustained, more so when the issues pointed out by the CIT do not in fact, merit further investigation.

**CIT vs. Leisure Wear Exports Ltd. (2010) 46 DTR 97 (Delhi)**

**S. 271(1)(c) : Penalty - Concealment - Survey - Amount disclosed in the course of Survey - (S. 133A)**

In the course of survey, assessee declared unaccounted income of Rs. 32.84 lakhs, thereupon assessee filed his return of income wherein amount declared in survey was included. Assessing Officer completed assessment on basis of return of income. He also levied the

penalty under section 271(1)(c). The Tribunal held that since the Assessing Officer had accepted income declared in return of income, in view of aforesaid legal position, assessee could not be charged for any contumacious conduct, therefore, the impugned penalty order was set aside.

**Dy. CIT vs. Satish B. Gupta (Dr.) (2010) 42 SOT 48 (Hyd.)**

**General - High Court - Appeal by Department - Revenue Secretary & CBDT Chairman summoned for turning "deaf ear" to inefficiencies redressal**

The department filed an appeal in the High Court and claimed that as the Tribunal's order was received on a particular date, the appeal was on time. However, the assessee obtained information from the Tribunal under the Right to Information Act and pointed out that the order was served on an earlier date and that the appeal was belated. The Court taking a serious view of the matter summoned the Revenue Secretary and Chairman CBDT to be present before the court on 01-12-2010.

**CIT vs. Preeti N. Aggarwala (Delhi High Court)**

\* \* \* \* \*



### For Information of the Members

This is for information of all the members that the Council of the Institute has decided as follows:

1. An online e-learning module would be developed and implemented by ICAI for the all the members shortly. Under the cited e-learning module, the members would be required to answer on-line such number of questions as may be decided by the Council. On successful completion of the prescribed e-learning module, a credit of 3 CPE hours would be granted to the members under structured learning instead of the present category of Unstructured learning
2. A list of members who have completed the prescribed requirement of CPE hours for the block of 3 years (2008-10) may be hosted on the website of the Institute. The members are requested to verify whether the correct CPE hours have been clocked against their respective names and if there are any variation, kindly inform the CPE Secretariat with supporting evidence for making appropriate correction at their end , if necessary.
3. It may be noted that the Council at its next meeting scheduled in the middle of January, 2011 would deliberate on dealing with the cases of non-compliance with CPE specified requirements in respect of period 2008-10.

Secretary  
Continuing Professional Education Committee



Complied by **CA. P. Vikram**



### 5 WAYS TO PREVENT DATA LOSS

- Never store your documents on the same drive as your operating system
- Back up your files regularly, no matter where they're stored
- Beware of email attachments
- Beware of user error
- Keep hardcopies of your documents



### Do you Know? What is ...

#### “Account Harvesting ”

Account Harvesting is the process of collecting all the legitimate account names on a system.

#### “Ciphertext”

Ciphertext is the encrypted form of the message being sent.

#### “Data Mining”

Data Mining is a technique used to analyze existing information, usually with the intention of pursuing new avenues to pursue business.

#### “Piggybacking”

**Piggybacking** refers to access of a wireless internet connection by bringing one's own laptop computer within the range of another's wireless connection, and using that service without the subscriber's explicit permission or knowledge.

### ATTENTION PLEASE

All your suggestions and comments shall be sent to the following e-mail IDs only : visakhapatnam@icai.org / vsp.sirc.icai@gmail.com . All reminders for the programmes or any activity of the branch shall be communicated to you only by e-mail or SMS alerts on your mobile.



# SEMINAR ON TDS

Organised by

## VISAKHAPATNAM BRANCH OF SIRC OF ICAI

On Saturday, 22nd January, 2011 at ICAI Bhawan, Visakhapatnam  
between 05.00 pm to 08.00 pm

Timing	Topic	Resource Person
04.30 pm to 05.00 pm	Registration & Fellowship	
05.00 pm to 07.00 pm	Issues on TDS provisions Income Tax Act.	<b>CA Chandrasekhar Gokela</b> , FCA Hyderabad
07.00 pm to 08.00 pm	Issues on TDS Returns & Credit	<b>CA V. Chandrasekhar</b> , FCA Visakhapatnam

### DINNER FOLLOWS

- Note :** (1) Seminar is covered by One Time Payment 2010-11  
(2) For others Sport Registration Rs. 250/-  
(3) CPE Credit 3 hrs

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