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## **NEWS LETTER** **JAGRUTHI**

### ***THE ANANTAPUR BRANCH OF SIRC OF ICAI***

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**EDITORIAL**

The long awaited GST is still in the air. It is quite unfortunate that the Law-makers are not sincere in convincing the opposition to get the Act into live at the earliest to reap the benefits of such a new legislature. The very purpose of new enactment is to streamline the tax structure in India through which many different taxes are consolidated and in the process more tax payers will come in to the tax net and ultimately the quantum of tax collections under GST will be very substantial to meet the Govt. budget. For the period April to November 2015, the Indirect Tax Collections have gone up by 34%. In case GST is introduced from 01.04.2016, definitely, Indirect Direct Tax collections will shoot up and the Govt. can reap the benefits of such collections.

The chief economic advisor Mr.Aravind subramanyan in his report on the ***“REVENUE NEUTRAL RATE”*** and ***“STRUCTURE OF RATES”*** for the Goods and Services tax has suggested that exemptions list should be narrowed and restricted to a few goods such as food items consumed by the poor. He has recommend a ***“REVENUE NEUTRAL RATE”*** of 15% - 15.5% and standard rate between 16.9% and 8.9%.

***“The Goods and Services tax (GST) is absolutely a good thing for the country”*** as per the statement made by the RBI Governor – Raghu Ram Rajan. As per his opinion, imposition of GST would lead to an increase in the tax net and this would not necessarily mean higher tax rates. He maintains that more people coming under the tax ambit would mean more revenues and people sharing the revenue burden which is a good thing for the country.

Let us wish that, judicious thinking prevails and GST will come into effect from 01<sup>st</sup> of April, 2016.

With Best Wishes,

**CA DR. D.HARISCHANDRA RAMA**  
**CHAIRMAN**  
**NEWSLETTER COMMITTEE**  
**ANANTAPUR BRANCH OF SIRC OF ICAI**

**Chairman Speaks.....**

***RESPECTED MEMBERS,***

Wishing all the Members, Staff and Students Happy Christmas and Advance Greeting for Happy and Prosperous NEW YEAR 2016

The Income-tax Department is committed to the 'Digital India' initiative of the Government of India. The Finance Minister launched an "e-Sahyog" pilot project which furthers the Department's commitment to work in an e-environment and reduces the need for the taxpayer to physically appear before tax authorities.

The Central Board of Direct Taxes has notified use of emails as the new mode of communication between the taxman and taxpayers, as part of the government's e-initiative to reduce human interface and complaints of harassment and corruption in conducting tax related jobs. The amendment in the Income Tax Act was also required as the I-T department has recently launched a 'pilot project' of sending email queries, notices and summons to taxpayers while processing cases of scrutiny.

The CBDT has issued a press release dated 20.11.2015 stating that the Finance Minister in his Budget Speech, 2015 has indicated that the rate of corporate tax will be reduced from 30% to 25% over the next four years along with corresponding phasing out of exemptions and deductions. This is a step towards simplification of tax laws, which is expected to bring about transparency and clarity. The CBDT has identified the precise provisions that will be affected as a result of the phasing out plan. The CBDT has invited comments on the aforesaid phasing out plan.

*"Nothing is certain except death and taxes."* Thus spake Benjamin Franklin in his letter of November 13, 1789 to Jean Baptiste Leroy. To tax the dead is a contradiction in terms. Tax laws are made by the living to tax the living. What survives the dead person is what is left behind in the form of such person's property. This appeal raises questions as to whether the dead person's property, in the form of his or her estate, can be taxed without the necessary machinery provisions in a tax statute which is decided. IN THE SUPREME COURT OF INDIA, CIVIL APPELLATE JURISDICTION, CIVIL APPEAL NO.5802 OF 2005, SHABINA ABRAHAM & ORS. ... APPELLANTS VERSUS COLLECTOR OF CENTRAL EXCISE & CUSTOMS ...RESPONDENT, Judgement dated 29<sup>th</sup> July 2015.

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The CBDT has issued a press release dated 27.10.2015 stating that a Committee comprising of eminent legal luminaries has been set up to simplify the provisions of the Income-tax Act. The Committee comprises of luminaries such as Justice R.V. Easwar, (Retd.), former Judge, Delhi High Court and former President, ITAT and other eminent advocates and lawyers. The terms of reference to the Committee have been clearly spelt out:

- i) To study and identify the provisions/phrases in the Act which are leading to litigation due to different interpretations;
- ii) To study and identify the provisions which are impacting the ease of doing business;
- iii) To study and identify the areas and provisions of the Act for simplification in the light of the existing jurisprudence;
- iv) To suggest alternatives and modifications to the existing provisions and areas so identified to bring about predictability and certainty in tax laws without substantial impact on the tax base and revenue collection.

Only enrolled Advocates are licensed to practice Law in India- Not to allow Chartered Accountants/ Non- Advocates for practice of law in the course of proceedings before revenue authorities falling under the jurisdiction of Principal Commissioner of Income Tax and Commission of Income Tax, Amritsar, Jammu etc. The Institute representation letter dated 27-11-2015 addressed to the Principal Chief Commissioner of Income tax ,Income Tax, Chandigarh is available in the Institute web site.

Rule 126 of Income tax Rules amended regarding service of Notice, Summons, requisition, Order and other communications; with effect from 2<sup>nd</sup> December 2015 address includes the address for electronic mail or electronic mail message. We have to advise to verify the mails by the clients suitably.

## THE ANANTAPUR BRANCH OF SIRC OF ICAI

As per Notification No. 4/2015 dated 01-12-2015, for the purpose of 15G & 15H Declarations UIN shall consists of :

- a) 10 alphanumeric starting with G OR H as the case may be followed by 9digits
- b) Financial Year for which declaration is being furnished
- c) TAN of the paye

The Ministry of Corporate Affairs has issued General Circular No.15/2015 dated 30-11-2015 to extend the due date of filing of Forms AOC-4, AOC-4 XBRL and MGT-7 and relax the additional fees for the forms filed till 30thDecember 2015.

The CBTD has consistently been advising the field authorities to be fair, objective and rational while framing scrutiny assessment orders and in this connection Instruction No.17/2015 dated 09-11-2015 issued Constitution of Local Committees to deal with taxpayers' grievance from high pitched assessments.

The elections of SIRC in some places including Anantapur postponed to 19-12-2015, due to non receipt of Election Materials as Heavy downpour in Chennai, which was unprecedented in the last100 years, has consequently dislocated normal life and has severely interrupted air, rail and road traffic to and out of Chennai.

Let me conclude with our our Respected President CA Manoj Fadnes message in December 2015 Journal extracts

Let us revise our actions and respect our fundamentals-*sarva dharma sambhava* (all religions are equal) and *vasudhaiva kutumbakam* (whole earth is a family). Through '*sarva dharma sambhava*', we had been advised to treat people of all religions with equal respect, since all religions have same spiritual goals. And we got the supreme message of love and unity through '*vasudhaiva kutumbakam*'. Let us continue to respect each other, protect each other's existence and feel responsible for each other's dignity. . Let us live together with more love, peace and kindness.

JAI HIND

**B SREENIVASA KUMAR**  
**CHAIRMAN**  
**ANANTAPUR BRANCH OF SIRC OF ICAI**

**IMPORTANT CASE LAWS**

**INCOME FROM HOUSE PROPERTY:**

In CIT v. Sane & Doshi Enterprises (2015) 377 ITR 165 (Bom) where the assessee firm utilised the capital contributed by its partners for construction of a commercial complex, the Bombay High Court held that the interest paid by it on the capital contributions of the partners was deductible under section 24(b) as the interest paid on the capital contributions of the partners was related to the commercial complex which was let out.

**INCOME:**

The Kerala High Court in The South Indian Bank Ltd. v. CIT (2015) 279 CTR (Ker) 179 has taken the view that the excess amount found in the course of cash transactions at the branches and in the case of automatic teller machines of the assessee-bank constituted its income.

**SECTION 40A(3)** The Madras High Court has in CIT v. Amman Steel & Allied Industries (2015) 377 ITR 568 (Mad) expressed the view that where the income of the assessee was arrived at by applying a gross profit rate on the estimated turnover, the Assessing Officer could not scrutinise the amount incurred by the assessee on purchases for the purposes of disallowance under section 40A(3).

**CHAPTER VI-A:**

In Guttigedarara Credit Co-operative Society Ltd. v. ITO (2015) 377 ITR 464 (Kar) where the assessee, a co-operative society engaged in the business of providing credit facilities to its members, deposited the interest income derived from business and the capital not immediately required to be lent to the members in short-term deposits in banks so as to earn interest, the interest earned by the assessee-society on such deposits in banks is attributable to the profits and gains of the business of providing credit facilities to its members and, therefore, is entitled to deduction under section 80-P(2)(a)(i) held the Karnataka High Court.

**ASSESSMENT:**

Where the notice under section 143(2) was served upon the assessee beyond the period of limitation, that is, beyond the period of twelve months from the end of the month in which the return of income was filed, the assessment order passed under section 143(3) was void ab initio ruled the Gujarat High Court in CIT v. Gujarat Foils Ltd. (2015) 377 ITR 324 (Guj).

**FEE UNDER SECTION 234E:**

The Karnataka High Court has in Lakshminirman Bangalore (P) Ltd. & Ors. v. DCIT & Ors. (2015) 279 CTR (Kar) 245 held that section 234E does not suffer from any vices for being declared to be ultra vires of the Constitution of India and that it is intra vires the Constitution of India.

**TDS U/S 194H**

2015(10)TMI 2255-ITAT PANAJI DCIT,Circle (1),Panaji versus M/s Demo Industries (P) Ltd

Non deduction u/s 194H-commission paid to News Paper Vendors-CIT(A) deleted the addition-Held that-there is no error in the order of the Commissioner of Income-tax(Appeals) in deleting the disallowance on account of Commission paid to the news paper vendors and towards payment of commission to advertising agents under Section 40(a)(ia). See Bharati Airtel Vs DCIT (2014(12) TMI 642-Karnataka High Court

**SECTION 14A DISALLOWANCE**

Disallowance u/s 14A cannot exceed the amount of exempt income. The Hon'ble Delhi High Court in the case of Joint Investment Pvt Ltd. Vs CIT and in the case of Holcim Indi Pvt Ltd., reported in (2014)272 CTR 282(Del)

PENALTY UNDER SECTION 271(1)(C)

It is a Civil Liability held in the Income tax Appellate Tribunal, Kolkata Bench "B" in ITA NO.1303/KOL/2010 PRONOUNCED ON 06-11-2015 in the case of Suvaprasanna Bhattacharya Versu ACIT, Circle 55 Kolkata. Concealment/furnishing in accurate particulars more clearly explained.

**COMPLIED BY  
CA B SREENIVASA KUMAR  
CHARTERED ACCOUNTANT**

**Some issues regarding Income Tax Act, 1961**

**INCOME-CHARGEABILITY-INTEREST EARNED ON FIXED DEPOSITS MADE FROM  
GOVERNMENT GRANTS**

Assessee, a Government owned company, being engaged in trading in agricultural produce, was sanctioned a grant for the scheme of increasing export of horticultural produce. The grant was kept in fixed deposits by the assessee till utilization and interest was earned on the same. Interest earned was sought to be taxed treating it as revenue receipt.

**Held:** Since purpose of sanctioning the grant to the assessee was that it would act as nodal agency for the scheme and there was no profit motive as entire amount of interest was only to be used for the purpose of the scheme, interest was, therefore, considered to be capital in nature and not revenue receipt.

**HEAD OF INCOME-BUSINESS INCOME OR CAPITAL GAINS-INCOME FROM SALE  
TRANSACTION OF PLOTS**

Assessee sold 2 plots during relevant year in question. The assessee claimed income from sale of plot under the head "Business Income". However, AO treated sale consideration as short term capital gain and accordingly, based on market value adopted by stamp duty authorities, arrived at the purchase cost and consequently worked out capital gain and assessed under the head "Capital Gains".

**Held:** There was no frequent buying and selling in the A.Ys. 2008-09 to 2010-11. The purchased land is held for considerable period of time to make some improvement. The holding period is long which clearly shows that intention is to hold, cannot be considered as business activity, as the intention of assessee clearly shows the land was purchased for investment purpose and hence, it is a case of capital accretion.



**DEPRECIATION-ALLOWABILITY-GAS CYLINDERS GIVEN ON LEASE**

Assessee had set up its unit to carry on the business of manufacturing and for running the said unit, it purchased 1,250 gas cylinders. Since the unit had not started functioning, these gas cylinders were leased out and depreciation on the ground that hiring business was not proved. CIT(A) allowed the claim of assessee as income from leasing would be treated as business income, therefore, he allowed depreciation. ITAT and High court both rejected the depreciation claim of assessee.

**Held:** It was not disputed that these gas cylinders were purchased for business purpose. In fact, the plea of the assessee that since manufacturing unit had not started functioning and his necessitated the assessee to lease out these gas cylinders to the aforesaid two parties to enable it to earn some income, rather than keeping those gas cylinders idle, was also not in dispute. Once the income from leasing those gas cylinders was accepted as the “business income”, which was taxed in the hands of the assessee as such, there was no reason how the depreciation on these gas cylinders could be disallowed on the ground that the cylinders were not purchased for “leasing business”. Moreover, assessee had proved ownership of these gas cylinders for business purpose. Therefore, the assessee was entitled to depreciation u/s.32.

**BUSINESS DEDUCTION UNDER SECTION 36(1)(VII)-BAD DEBTS-ESTABLISHMENT OF DEBT AS BAD BY DOCUMENTARY EVIDENCE**

During the course of assessment proceedings, AO noticed that assessee has claimed bad debts of Rs. 49,55,000/-. AO was of the view that assessee has not substantiated its claim of the efforts made for the recovery of bad debts nor has furnished any documentary evidence in support of the claim of bad debts. He accordingly denied the claim of bad debts Aggreived by the AO, assessee carried the matter in appeal before CIT(A) who deleted the addition.

**Held:** After the amendment of sec. 36(i)(vii), with effect from 01-04-1989, in order to obtain a deduction in relation to bad debts, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable, it is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. Revenue has not brought any contrary binding decision in its support nor has controverted the findings of CIT(A). Therefore, respectfully following the decision of Apex Court in the case of TRF Ltd. (supra), there was no reason to interfere with the order of CIT(A) and thus, this ground of revenue was dismissed.

**CAPITAL OR REVENUE EXPENDITURE-INTEREST ON TERM LOAN-CAPITALISES BY ASSESSEE UNDER THE HEAD 'WORK-IN-PROGRESS'**

Assessee had incurred interest expenses on term loan from Central Bank of India for the purpose of construction of building. The interest was capitalized by assessee under the head 'work-in-progress'. AO was of the view that interest had not been incurred for the purpose of business, therefore, he disallowed the claim of capitalization of interest. CIT(A) deleted the disallowance.

**Held:** The interest had not been claimed by the assessee as deduction while computing the income under the head income from the head "work-in-progress", i.e., the expenditure had been capitalized by the assessee. Once the assessee itself had not claimed the interest as revenue expenditure, therefore, no disallowance of claim of capitalization of interest on term loan should have been made. Therefore, no illegality or infirmity was not found in the order of the CIT(A).

**BUSINESS DISALLOWANCE UNDER SECTION 40(A)(IA) –NON DEDUCTION OF TDS ON PAYMENT TO RESIDENTS- PAYMENT OF TRANSPORTATION EXPENSES**

During the course of assessment proceedings, it was noticed by the AO that the assessee had deducted an amount to the P&L account, out of certain sum for transportation expenses. When asked for details of transportation expenses, it was stated that the entire money was paid by assessee to her employee to meet the transportation expenses. According to the AO, while making payment, the assessee was required to deduct tax at source as per provisions of Chapter XVII-B. Since the assessee had failed to deduct tax at source, the AO disallowed the entire transportation expenses u/s 40(a)(ia) and added to the income returned by the assessee.

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**Held:** In the present case, the payment was made by the assessee to her employee on various occasions and in turn, he had made payments to the truck owners/drivers and the assessee had not furnished any details of the truck owners/drivers to the lower authorities. Moreover, assessee had always taken a plea that the payment had been made to her employee who had undertaken the responsibility of transporting cylinders and the truck owners gave the bills to her employee and in turn he made payments to the truck owners. It means that her employee acted as a sub-contractor to the assessee and as soon as she entered into sub-contract with the assessee, the assessee's case came under the purview of sec.194C(1). Thereafter, it was not required to see whether the assessee paid charges to the transporter or not. The activity carried on by her employee on behalf of the assessee would be simply an activity of transportation of cylinders by truck and the assessee was liable to deduct TDS u/s. 94C.

**COMPLIED BY  
CA D.ARAVIND RAMA  
CHARTERED ACCOUNTANT**

**FLASH...FLASH...FLASH...**

1. Elections of Institute which were scheduled on 5<sup>th</sup> of December, 2015 are postponed to 19<sup>th</sup> of December, 2015 and it is advised that all the members may please exercise their franchise.
2. CPT exam scheduled on 13<sup>th</sup> of December, 2015 is postponed to 27<sup>th</sup> December, 2015.

**QUOTATIONS FOR THE MONTH**

"Always carry a heart that never hates; Carry a smile that never fades;  
Carry a touch that never hurts; Carry a relationship that never breaks"

"Life is chemistry; Just dilute your sorrows; evaporate your worries;  
Filter your mistakes; Boil your ego; You will get clear crystals of happiness"

"If our looks (eyes) are positive, we will like all the people in the world;  
If our words (tongue) is positive, all the people in the world will like us"

" Do all the good you can, in all the ways you can, in all the places you can,  
to all the people you can for as long as you ever can"