



The Institute of Chartered Accountants of India

(Setup by an Act of Parliament)

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NEWS LETTER

THE ANANTAPUR BRANCH OF SIRC OF ICAI

CONTENTS

1.	Editorial
2.	Chairman speaks....
3.	Know your ethics
4.	Case laws
5.	Circular
6.	Points to be noted
7.	Announcement
8.	Felicitation to the Branch Chairman
9.	Quotations for the month



EDITORIAL

01.06.2016 is a day on which many amendments and tax rules came in to play. The very important tax element introduced by the finance minister is income declaration scheme 2016. It is an opportunity for all those persons who have undeclared income and assets to declare the same under the scheme. The scheme will be valid from 01.06.2016 to 30.09.2016, wherein a person can disclose his income and pay 45% tax on undeclared income. The scheme is expected to bring in huge revenue to the government which can be used for public benefit.

Income tax department has given one more boon to the assessee who have missed sending ITR-V i.e., Acknowledgement for income tax return filed for the A.Y.2009-10, 10-11,11-12,12-13,13-14 & 2014-15 either through Electronic verification code by 31.08.2016 or sending the same physically signed to CPC Bangalore by 30.11.2016.

Another major amendment is regarding service tax wherein every assessee for whom service tax applies should collect and remit additional 0.5% on value of all taxable services as "*Krishi kalyan cess*" which is meant to provide financial assistance for agriculture and farmers welfare, there by the total service tax rate comes to 15%.

With Best Wishes,

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



CHAIRMAN SPEAKS...

Hope all our members must have geared up for Income Tax Returns filing work since July, 2016 and September, 2016 are fast approaching. All the members must have thorough knowledge in I.T. Amendments of 2015 Finance Act for filing I.T. Returns for the Asst.Year:2016-17. The Income Declaration scheme is also in force from 01.06.2016 and will exist up to 30th September,2016 and the members are requested to educate and encourage their clients to unearth the Black money simply by paying 45% overall tax so that such assesseees shall get all immunities. The members must also enrich the knowledge in CARO-2016 changes, The Audit of Financial controls over Financial Reporting and Income Computation Disclosure standards (ICDS) for finalizing the accounts, Audit report and computation of Total Income statement etc.,

With the announcement of ITRs this year by the first day of the fiscal, the foremost signal for the profession is that there would not be extension of the Tax Audit due date and we can't scout for the same on the ground of belated announcement of the Return forms. We also await changes in Form.3CD to align with the amendments in the Statute, particularly in the wake of mandatory ICDSs for the just concluded financial year, we are planning a one-day workshop on ICDS in this month.

We have conducted Mock Test for CPT on 28.05.2016 for JUNE, 2016 Exam and the response was good. We are also going to conduct ITT 29th, 30th and 31st batches from 21.06.2016 To 22.07.2016, 11th Batch of OP from 20.06.16 TO 25.06.16 and 12th Batch of Orientation Program from 27.06.16 TO 02.07.2016.

CA.Dr.A.G.VENUGOPAL REDDY
CHAIRMAN

KNOW YOUR ETHICS

- Whether a Chartered Accountant in practice can accept audit in case the audit fee of the previous auditor remains unpaid?

No, in case the undisputed audit fees for carrying out the statutory audit under the Companies Act, 1956 or various other statutes have not been paid, the incoming auditor should not accept the appointment unless such fees are paid. In respect of other dues, the incoming auditor should in appropriate circumstances use his influence in favor of his predecessor to have the dispute as regards the fees settled. The council has taken the view that the provisions of audit fee made in accounts signed by both the auditor and the auditee shall be considered as 'undisputed' audit fees. In this connection, attention of members is invited to the council general Guidelines, 2008 dated 08.08.2008.

- Whether communication with previous auditor is necessary in case of banks other than nationalized banks also?

Yes, Clause (8) of Part I of the First schedule to the Chartered Accountants Act, 1949 is equally applicable in case of nationalized and other banks and also in case of Government agencies.

- Whether a Chartered Accountant will be deemed to be guilty of professional misconduct if he accepts his appointment as an auditor immediately after intimating his appointment over the phone to the previous auditor?

Yes, the member would be held guilty of professional misconduct for the following reasons:

- a) That he had failed to communicate with the retiring auditor in writing; and
- b) That he did not wait for a reasonable length of time for a reply to be received from him.

- Whether communication by the Incoming auditor is mandatory with the previous auditor in respect of various audit assignments, like the concurrent audit, revenue audit, tax audit etc.?

Yes, the requirement for communicating with the previous auditor would apply to all types of audits viz., statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit. The Council has laid down detailed guidelines in this regard and the same are appearing in the Code of Ethics, 2009 edition.

- Whether a member in practice can be a director of a company?

Yes. A member in practice is permitted generally to be a Director simplicitor in a company provided he is not a Managing Director or Whole time Director and is required only in the Board meetings of the company and not paid any remuneration except for attending such meetings.

- Can a member in practice render Management Consultancy and Other services?

Yes, however, the areas covered under the Management Consultancy and Other Services have been summarized by the council. The “Management Consultancy and other services” may be referred at pages 103-105 of the Code of Ethics, 2009 edition.

- Whether a Chartered Accountant in practice is required to obtain any trade license for practicing?

No, the explanation to Clause (XIX) of the definition of “Management Consultancy and Other Services” expressly bars the activities of broking, underwriting and portfolio management.

- Can a CA in practice work as a ‘Collection agent/Recovery agent’?

No, a Chartered Accountant in practice cannot work as a collection agent. However, he can act as a Recovery Consultant as provided in clause (XXV) of “Management Consultancy and Other Services”

- Whether a practicing CA can agree to select and recruit personnel, conduct training programmes and work studies for and on behalf of a client?

Yes, the expression “Management Consultancy and Other Services” defined by the council includes both personnel recruitment and selection and conducting training programmes and work studies. Therefore, a Chartered Accountant in practice shall not commit any professional misconduct by rendering such services for and on behalf of the client.

- Whether Code of Ethics is applicable outside India?

The Code of Ethics of the Institute is applicable to all its members even outside India.



LEGAL DECISIONS:

1. ALLOWABILITY OF INTEREST FOR CAPITAL GAINS:

Ishkiaque Ahmed , Sahara India Bhawan Vs Asst CIT, Lucknow ITA NO. 863/D/09 ITAT, New Delhi

Interest paid on borrowed fund for purchase of land after its actual purchase constituted cost of the land. Conditions are interest had not been claimed by the Assessee in the respective Assessment Years in any manner in computing total income. Interest paid by the Assessee in different years represents cost of the land, deductible in computing the capital gains. Further in terms of second proviso to Section 48, the cost has to be indexed for working out the capital gains.

2. COST INFLATION INDEX FOR INHERITANCE:

Commissioner of Income tax Vs Smt.Nita Kamlesh Tanna 2013-14 Taxmann.com 542

Where the Assessee inherited certain property which was originally acquired prior to 01-04-1981. while computing capital gain, cost of acquisition with reference to cost of inflation index for the year 1981 has to be taken into consideration.

3. AUDIT OBJECTION:

In the ITAT G BENCH SHRI SUNIL GAVASKAR Vs Income tax Officer ITANO. 3970/MUM/2016

The jurisdictional requirement to re-open an assessment is:

- i) The AO must have reason to believe that the income chargeable to tax escaped assessment
- ii) The AO in the regular assessment proceedings had not formed an opinion in regard to the issue on which the re-opening notice is issued and
- iii) There has been a failure on the part of the Assessee to truly and fully disclose all necessary facts for the Assessment

Reopening of Assessment on account of Audit objections, the corrective measure under Sections 147 or Section 263 of Income tax Act is held to be invalid by courts. Where the correction of Audit objections required reopening or revision of completed assessments, the same would not be permitted since it amounts change of opinion and creates uncertainty for the tax payer.

4. TAXATION ON MUTUALITY:

In the Supreme Court of India in the case of Bangalore Club Vs Commissioner of Income tax Civil Appeal No. 124 of 2007

An amount received from oneself is not regarded as income. Therefore, it is not subject to tax; only the income which comes within the definition of Section 2(24) of the Act is subject to tax. Income from Business involving the doctrine of mutuality is denied exemption in special cases covered under Clause vii of Section 2(24) of the Act. If the position of the Assessee was no different from an ordinary bank except that it lent money and received deposits from its share holders. This does not by itself make its income any less income from business. If established taint of commerciality, fatal to the principle of mutuality.

5. PENALTLY U/S 271(1)(C)

Bhavya Anant Udeshi, Hyderabad Vs Income tax Officer, International Taxation 1, Hyderabad in ITAT NO. 565/Hyd/2015

Unless there is positive evidence to indicate receipt of money to the extent of valuation made by SRO by the assessee, penalty under Section 271(1)(c) cannot be imposed.

6. LIP paid and Allowability of Derivative Loss:

Cotton Blossom India P Ltd., Vs Joint Commissioner of Income tax, Tirupur ITAT CHENNAI BENCH A 2016(68) TAXMANN.COM

Where an Assessee Company paid premium to Life Insurance Corporation of India under Employment-Employee Scheme for two Directors of a company, impugned payment met was allowable as business expenditure under Section 37(1) of Income tax Act

Where an Assessee was engaged in business of manufacturing garments and generation of wind power and during the year it suffered a certain loss on cancellation of foreign currency forward contract. Tribunal made it clear that total consideration for determining this business loss from derivative transactions cannot be more than the total export turnover of the Assessee. If the derivative transactions are in excess of export turnover, then that loss suffered in respect of that portion of excess transactions to be considered as speculative loss.

7. ONUS ON THE ASSESSING OFFICER TO ESTABLISH BOGUS TRANSACTIONS:

ARVIND ASHMAL MEHTA Vs ITO, MUMBAI ITA NO.2799/MUM/2015

There is no clinching material to say that impugned transactions were bogus. Onus on the Assessing Officer to establish purchase and sale of the shares was bogus.

8. CAPITAL GAINS ON RECEIPT BASIS IF NOT ACCRUED:

In the High Court of Judicature at Bombay Appeal No. 2348 of 2013
Commissioner of Income tax Vs Mrs Hemal Raju Shetty

Assessee mode of offering capital gains on receipt basis in various assessment years. Section 45(1) of Income tax Act, transfer of capital asset would attract capital gains, which is not dependent upon receipt of consideration. Section 45(1)A and Section 45(5) of the Act which in contrast bring to tax capital gains on amount received. Accrual would be right to receive and in the said case capital gains for tax on receipt basis in various Assessment years.

9. DEVELOPMENT OF PROPERTY FOR THE LANDLORD:

N.BALA BASKAR Vs UNION OF INDIA LTD/64/140

It is held that development of property for the Landlord in a Joint Development is a construction service. Since the cost of construction could not be paid by the owner in the form of cash, they agreed to exchange the undivided share of the land with the contractor. What the developer had done is actually the service of construction. Therefore, it is not an easy proposition that it was a transfer of immovable property by way of sale or exchange and held that levy of service tax on the Landlord portion is valid.

10. SERVICE TAX AUDIT:

MEGA CAABS PVT Vs UNION OF INDIA AND ORS 2016(6) TMI 163

Honorable Delhi High Court has given judgment that the officers of the Service Tax Department have no power to conduct audit at all. Similarly the CAG Officers also have no power to conduct audit of the Assessee records. The Court held that verification in clause (k) of Sub-section (2) of Section 94 of the Finance Act 1994 cannot be construed as audit which is a specialized function otherwise clause (k) suffered from the vice of excessive delegation of legislative power by Parliament. Again amendment in the Finance Act is necessary to regularize the position.

11. INTEREST ON COMPENSATION

Section 2(24) – Definition of “Income” Urvi Chirag Shah Vs. ITO [(2016) 70 taxmann.com 33, ITAT Ahmedabad bench, dated. 31.05.2016, in favor of assessee] Interest on compensation paid to accident victim is tax free. Where accident compensation is a capital receipt, the interest on said compensation cannot be characterized as income unless interest itself is a kind of statutory interest. The accident compensation is a capital receipt and, thus, not taxable as income of the assessee. The interest on said compensation cannot be characterized as income unless interest itself is a kind of statutory interest at the prescribed rate. In instant case, however, interest was awarded by the Supreme Court in its complete and unfettered discretion. If compensation itself is not taxable, the interest on account of delay in payment of compensation cannot be taxable either.

12. COMPENSATION TO RETIRING PARTNER AND CLAIM OF DEPRECIATION:

Section 32 – Depreciation. Principal Comm. of IT Vs. Swastik Industries [(2016) 68 taxmann.com 329, Gujarat High Court, dtd. 21.03.2016, in favour of assessee] Compensation paid by firm to its retiring partner is treated as goodwill, eligible for depreciation Payment of compensation made by assessee-firm to its retiring partners was to be treated as goodwill and, since, goodwill is an asset under Explanation 3(b) to section 32(1), assessee's claim for depreciation on said payment was to be allowed.

13. SECTION 54 RELIEF:

Section 54 – Profit on sale of property used for residence CIT Vs. Girish L. Ragha [(2016) 69 taxmann.com 95, Bombay High Court, dtd. 17.03.2016, in favour of assessee.

No denial of sec. 54 relief if house is purchased within 2 years, though occupancy certificate is received later on.

Where assessee sold residential property and entered into an agreement with a builder for purchasing flat for which he invested sale proceeds within prescribed period of two years, merely because assessee got occupancy certificate after 4 years and such delay was beyond control of assessee, assessee's claim for deduction under section 54 was to be allowed.

CIRCULAR

Circular No 22/ 2016

F.No 370142/17/2016-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

Dated 8th, June 2016

Sub: Amendment in Section 206C vide Finance Act 2016 - Clarifications regarding

Section 206C of the Income-tax Act, 1961 (hereafter referred to as 'Act'), prior to amendment by Finance Act, 2016, provided that the seller shall collect tax at source at specified rate from the buyer at the time of sale of specified items such as alcoholic liquor for human consumption, tender leaves, mineral being coal or lignite or iron ore etc. It also provided for collection of tax at source at the rate of one per cent on sale in cash of bullion exceeding 2 lakh rupees and jewellery exceeding 5 lakh rupees.

In order to reduce the cash transactions in sale of goods and services, Finance Act 2016 has expanded the scope of section 206C (1D) to provide that the seller shall collect tax at the rate of one per cent from the purchaser on sale in cash of any goods (other than bullion and jewellery) or providing of any services (other than payment on which tax is deducted at source under Chapter XVII-B) exceeding two lakh rupees. So far as sale of Jewellery and bullion is concerned, the provisions of sub-section (1D) of section 206C prior to its amendment by the Finance Act, 2016 shall continue to apply. Further, with a view to bring high value transactions within the tax net, it has been provided in sub-section (1F) of section 206C of the Act that the seller who receives consideration for sale of a motor vehicle exceeding ten lakh rupees, shall collect one per cent of the sale consideration as tax from the buyer. Any person who obtains in any sale, the goods of the nature specified in sub-section (1D) or (1F) of section 206C is a buyer. The seller for the purposes of collection of tax under section 206C shall be –

- (i) A Central Government or a state Government,
- (ii) Any local authority, or corporation or authority established under any Central, State or Provincial Act,
- (iii) Any company, firm or cooperative society,

- (iv) An individual or Hindu undivided family who is liable to audit as per provisions of section 44AB during the financial year immediately preceding the financial year in which the goods are sold or the services are provided.

The amendments brought in section 206C by Finance Act, 2016 are applicable from 1st June 2016.

In this regard a number of queries have been received about the scope of the provisions and the procedure to be followed. The board has considered the same and decided to clarify the points raised by issue of a circular in the form of questions and answers as follows:

Question 1: Whether tax collection at source ('TCS') at the rate of 1% is on sale of Motor Vehicle at retail level or also on sale of motor vehicles by manufacturers to dealers/distributors.

Answer: To bring high value transactions within the tax net, section 206C of the Act has been amended to provide that the seller shall collect the tax at the rate of one per cent from the purchaser on sale of motor vehicle of the value exceeding ten lakh rupees. This is brought to cover all transactions of retail sales and accordingly it will not apply on sale of motor vehicles by manufacturers to dealers/distributors.

Question 2: Whether TCS at the rate of 1% is on sale of Motor Vehicle is applicable only to Luxury Cars?

Answer: No. As per sub section (1F) of Section 206C of the Act the seller shall collect the tax at the rate of one per cent from the purchaser on sale of any motor vehicle of the value exceeding ten lakh rupees.

Question 3: Whether TCS at the rate of 1% is applicable in the case of sale to Government Departments, Embassies, Consulates and United Nation Institutions for sale of motor vehicle or any other goods or provision of services?

Answer: Government, institutions notified under United Nations (Privileges and Immunities) Act 1947, and Embassies, Consulates, High Commission, Legation, Commission and trade representation of a foreign State and shall not be liable to levy of TCS at the rate of 1% under sub-section (1D) and (1F) of section 206 C of the Act.

Question 4: Whether TCS is applicable on each sale of motor vehicle or on aggregate value of sale during the year?

Answer: Tax is to be collected at source at the rate of 1% on sale consideration of a motor vehicle exceeding ten lakh rupees. It is applicable to each sale and not to aggregate value of sale made during the year. This can be explained by way of an illustration:

Illustration: Motor vehicle worth 20 lakh is sold and for which payments are made in instalments, one at the time of booking and the other at the time of delivery . At the time of booking 5 lakh rupees are paid and 15 lakh rupees are paid at the time of delivery. Tax at the rate of 1% on 5 lakh rupees at the time of booking and at the rate of 1 % on remaining 15 lakh rupees at the time of delivery shall be collected at source.

Similar will be the position with regard to collection of tax at source under sub-section (1D) of section 206C.

Question 5: whether TCS at the rate of 1% on sale of motor vehicle is applicable in case of an individual?


Answer: The definition of "Seller" as given in clause (c) of the Explanation below sub-section (11) of section 206C shall be applicable in the case of sale of motor vehicles also Accordingly, an individual who is liable to audit as per the provisions of section 44AB of the Act during the financial year immediately preceding the financial year in which the motor vehicle is sold shall be liable for collection of tax at source on sale of motor vehicle by him.

Question 6: How would the provisions of TCS on sale of motor vehicle be applicable in a case where part of the payment is made in cash and part is made by cheque?

Answer: The provisions of TCS on sale of motor vehicle exceeding ten lakh rupees is not dependent on mode of payment. Any sale of Motor Vehicle exceeding ten lakh would attract TCS at the rate of 1%.


Question 7: As per section 206C(1D) , tax is to be collected at source at the rate of 1% if sale consideration received in cash exceeds 2 lakh rupees whereas as per section 206C(1F) tax is to be collected at source at the rate of 1% of the sale consideration of a motor vehicle exceeding 10 lakh rupees . Whether TCS will be made under both sub-section(1D) and (1F) of the section 206C @ 2% ,where part of the payment for purchase of motor vehicle exceeds 2 lakh rupees in cash?

Answer: Sub-section (1F) of the section 206C of the Act provides for TCS at the rate of 1% on sale of motor vehicle of value exceeding 10 lakh rupees. This is irrespective of the mode of payment. Thus if the value of motor vehicle is 20 lakh rupees, out of which 5 lakh rupees has been paid in cash and balance amount by way of cheque, the tax shall be collected at source at the rate of 1% on total sale consideration of 20 lakh rupees only under sub-section (1F) of section 206C of the Act. However, if a vehicle is sold for 8 lakh rupees and the consideration is paid in cash, tax shall be collected at source at the rate of 1% on 8 lakh rupees as per sub-section(1D) of section 206C of the Act.


Lakshmi Narayanan
Under Secretary TPL-III
CBDT

Copy To:

1. The Chairman, Members and officers of the CBDT of the rank of Under Secretary and above.
2. OSD to Revenue Secretary
3. All principal commissioners of Income-tax & all Director General of Income-tax with the request to bring to notice of all officers.
4. The Pr. Director General of NADT, Nagpur
5. The Pr. Director General of Systems, ARA, Jhandelwan Extension, New Delhi
6. The Pr. Director General of Vigilance,
7. The ADG (PR, PP&OL), Mayur Bhawan, New Delhi for printing in the quarterly tax bulletin and for circulation as per mailing list.
8. Comptroller and Auditor General of India.
9. ADG (Systems) for uploading on ITD website.
10. The Guard File.


Lakshmi Narayanan
Under Secretary TPL-III
CBDT

POINTS TO BE NOTED

- Members who are interested to attend to “**Residence Refresh Course**” at Hampi on 18th and 19th of this month may please contact secretary of the branch, CA R.Gangadhar Gupta immediately for further details.

Contact number: **94402 85617**

- The members in practice may inform their articled students about the following programs:
 - ✓ ITT will start from 21st June, 2016.
 - ✓ 1st batch of Orientation program starts from 20th and 2nd batch starts from 27th of this month.
 - ✓ GMCS 1 will start from 20th June.
- Registration u/s 12AA cannot be denied for mere non-filing of ITR- **Shri shiridi Sai Darbar charitable trust (Dharmashala) v. CIT (Exemptions)- (ITAT Chandigarh)**.
- Cost Inflation Index for Capital Gains purpose for the FY 2016-17 is notified as 1125.
- CA professionals providing accounting entries, defrauding revaluations deserves to be debarred from practice for lifetime- **ICAI v. Vivek Kapoor & Others (Punjab & Haryana High court)**
- No Service tax on sale of under construction flats if contract price includes land value- **Suresh kumar Bansal v. UOI (Delhi High court)**

ANNOUNCEMENT

It is my pleasure to inform you that CA Day will be celebrated on 1st July, 2016 at HORSELEY HILLS, Madanapalli. I, hereby request you to participate in CA Day Celebrations along with family members without fail. A bus will be arranged to Horseley Hills which will start at 6 am on 01.07.2016 from our CA branch office and will be back at 9 pm on the same day. Games will be conducted for the members, ladies and children and prizes will be distributed apart from the memento to each family.

Breakfast, Lunch and Snacks will be arranged.

Request to participate in large number without fail.



- CA DR A.G.Venugopal Reddy
Chairman

FELICIATATION

Felicitation to the Branch Chairman at orientation programme conducted for managing committee members of branches on 25th and 26th April, 2016 in Tirupathi.



Quotations for the month

- ❖ Hard words cannot touch any soft heart but soft words can touch any hard heart. So, speak in a soft way then, world will be yours. **WORDS WIN WORLD.**
- ❖ Start everyday with a new hope, leave bad memories behind and have faith for a better tomorrow.
- ❖ Prayer will never solve your problem; but it will definitely give peace of mind and of course peace of mind will give the power to solve the problem.
- ❖ Tolerance is the highest degree of your *strength* and desire to take revenge is the first sign of *weakness*.