

RAIPUR BRANCH

OF CENTRAL INDIA REGIONAL COUNCIL OF

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

MARCH - APRIL 2013

FOR MEMBERS ONLY



*Chairman
Writes...*

EDITORIAL BOARD

Editor : CA Prafulla Pendse
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Dear Professional Colleagues,

I am extremely happy and feel proud in bringing out this newsletter. I express my heartfelt gratitude and congratulate entire team of editorial board who have put in their efforts to bring out this edition of Raipur Branch's e-news Letter.

CIRC had organised Chairman Meet on 27th and 28th of April 2013 at Bhopal. Various issues were discussed at a broader platform. The representatives of your branch were the second in the entire group of forty two branches to get the opportunity to express their views, share their problems and offer suggestions. The key focus area for us was the formation of the branch building advisory committee and you would be happy to note that the Regional council and the central council members advised us to form the same. The process would now be taken ahead and Branch building advisory committee would take up its shape and constituent soon. We invite the members to be part of this entire process and contribute upto the maximum possible extent.

The Raipur Branch has also successfully conducted ISA PT classes. In total 39 members participated in these classes. The Eligibility Test (ET) was held on 11th May 2013. The branch also relayed teleconferencing programmes organized by the Institute.

In the month of May we had organised a two day workshop on enabling Service tax Practise on 25th and 26th May. Trainers/Faculties from Delhi, Kolkata, Mumbai were invited to deliberate on the issue. The branch received an overwhelming response from the members not only from Raipur but even from Chindwara, Wardha, Baikunthpur and members from Industry.

Unfortunately our state Chhattisgarh has been victim of one of the most barbarian attack by the naxalities on 25th May on the Paivartan Yatra. Its time for all of us to get serious and rethink on the ways to deal with such incidents. Such attacks not only terrifies the residents of the state but is also detrimental to the pace of social and economic developments, prosperity and furtherance of our state. Such incidents put the progress on the backtrack and create hinderance in overall developments.

In view of the any possible mishap we had to reschedule the second day of the workshop. The faculties and members have been extremely courteous and cooperative to show their presence on the rescheduled date. We regret any inconvenience that may have been caused to the members due to this rescheduling but it was necessary keeping in view the safety measures.

The branch has also organised its First GMCS-1 in May 2013. The branch is regularly organising the GMCS, OTC and ITT Classes for CA Students

The branch is planning to organise the following programmes during the month of June which welcomes the monsoon

- Seminar on Voluntary Compliance Encouragement Scheme, 2012 on 8th June
- Workshop on the critical issue of Domestic Transfer Pricing on 9th of June.
- Full day seminar on Fresh Members in Practice under aegis of Committee for Capacity Building Of CA Firms

We have just started and we have so many goals to accomplish. I am reminded of the famous lines of the poem by William Wordsworth in Stopping by woods on a snowy evening "the woods are lovely dark and deep but I have to miles before I sleep and miles to go before I sleep."

We request the members to be part of this journey and to give us continuous feedback on the branch activities and programmes so that we can deliver in more efficient and emphatic manner which we are expected to do.

CA Sidharth Parakh
(Chairman)





NEWS LETTER



Direct Taxes : Selected Judicial Updates

Complied by : CA Prafulla Pendse

Land was acquired in 1958 and 1959 in urban area which was sold in pieces between 1984 to 1991 by 43 sale transactions. The Income Tax authorities rightly concluded that capital asset was converted into stock-in-trade and sale of plots would be treated as business activity as such Sec 45(2) was rightly invoked. Rajendra Kumar Dwivedi vs CIT (2013) 257 CTR (All) 263.

Assessee inherited ancestral agricultural land in their individual capacity with definite and defined shares. There was nothing on record to show that they had acted as AOP therefore, rental income from plinths constructed on such land was assessable in their individual status and not in the status of AOP that too under the head as 'income from other sources' and not 'income from house property'. Sudhir Nagpal vs. ITO (2013) 257 CTR (P&H) 253.

The ACIT's complete focus in the impugned order was with respect to the assessee's neglect in functioning of the company when the company was functional. However, there was no finding regarding the gross negligence on part of the assessee due to which the tax dues from the company could not be recovered. Sec.179 employs the words "tax dues" and it would therefore, not be possible to stretch the language of Sec 179(1) to include interest and penalty also in the expression 'tax due'. Therefore, non-recovery could not be attributed to any gross negligence or breach of duty on the part of assessee director and therefore order u/s 179 was liable to be quashed. Maganbhai Hasrajibhai Patel vs. Asstt. CIT (2013) 256 CTR (Guj) 269.

Payment to assessee partner on dissolution of firm towards his capital contribution did not constitute "transfer" so as to attract capital gains tax. Chalasani Venkateswara Rao vs. ITO (2013) 257 CTR (AP) 39.

Assessee though engaged in several lines of business activities and distributorship contracts could not establish that its trading structure was adversely affected by non-renewal of the distributorship agreement with one company or it was either prevented or otherwise unable to enter into similar agreements in respect of similar products manufactured by other enterprises, the consideration received by the assessee under a memorandum of settlement for not insisting upon renewal of the said distributorship agreement constituted revenue receipt. Larsen & Turbo Ltd vs. CIT (2013) 256 CTR (Bom) 253.

An Educational institution does not deprive of its character as an entity existing solely for the purpose of education if there is violation of the prescribed rules and regulations in the matter of admission of students and, therefore, approval for exemption u/s 10(23C)(vi) cannot be denied to the assessee-trust which is running educational institutions on the mere ground that the method of admission of students followed by it has been held to be illegal by the Court. CCIT vs. Geetanjali University Trust (2013) 257 CTR (Raj) 239.

Provisions of s. 40(a)(ia) are applicable to the amounts already paid during the year as also to amounts "payable" as at the end of the year. Decision of Special Bench in Merilyn Shipping 146 TTJ 1 (Viz) reversed. CIT vs. Md. Jakir Hossain Mandal (Cal) dated 13-04-2013. Relied on CIT Kolkata XI vs. Crescent Exports Syndicates ITAT 20 of 2013. dt. 04.04.2013. Also refer CIT vs. Sikandarkhan N. Tunwar dt. 02.05.2013.

In this case Hon'ble Allahabad High Court held that when the partnership deed specifically provided for payment of remuneration to the working partners, which was within the statutory limit, disallowance under Section 40A(2)(a) cannot be made on the ground of remuneration paid was highly excessive. [2013] 351 ITR 156 (All - HC); CIT and Anr v. Great City Manufacturing Co.

In the instant case Hon'ble Madras High Court held that mere circumstance that amount in excess of Rs. 10,000/- had been remitted to the bank account of payee would not absolve assessee from rigour of Section 40A(3). [2013] 213 Taxman 180 (Mad. - HC)(Mag.); CIT v. Venkatadthri Constructions.

In the instant case ITAT Mumbai held that transferable occupancy rights of a flat given to shareholders by a Company on perpetual basis subject to deposit of a meagre sum, are to be considered as deemed dividend under section 2(22)(a) and not as perquisite/benefits under Section 2(24)(iv) of the Act. [2013] 22 ITR (Trib) 246 (Mumbai) Shantikumar D. Majithia v. Dy. CIT.

In this case Hon'ble Bangalore Tribunal dealing in respect of Section 206AA has held that where the income is chargeable to tax in India, irrespective of residential status of recipient, he has to obtain PAN and provide the same to the deductor. [2013] 141 ITD 38 (Bang.); Bosch Ltd. v. ITO (International Taxation) -

In this case Hon'ble Madras High Court held that insertion of words 'or assessable' in section 50C by Finance (No. 2) Act, 2009 with effect from 01.10.2009 is introducing new class of transactions namely transfer of properties without or before registration and which have prospective application only. [2013] 352 ITR 488 (Mad. - HC CIT v. R. Sugantha Ravindran.

In the instant case Hon'ble Calcutta High Court held that the expression 'transfer' defined under Section 2(47) was made before section 50C was introduced to the Income-tax Act. After section 50C was introduced in the year 2003, the value of the land or building or both sold or otherwise transferred has to be the value assessed by the authority of the State Government for the purpose of stamp valuation. The intention of the Parliament is that where the land or building or both are sold or otherwise transferred, such transfer shall be deemed to have taken place only after the stamp duty has been assessed by the State Government, because it is on the valuation made for the purpose of stamp duty that the tax is payable under the Income-tax Act. The amendment made in the year 2009 may have made the things simpler, but the intention of the Legislature was very clear from the beginning that the value for the purpose of income tax shall be the same as the value for stamp duty. By adopting devices to counter such provision, the assessee cannot contend that section 50C would not be applicable only because the Conveyance Deed had not at that time been executed or registered. [2013] 214 Taxman 305 (Cal. - HC) 31 taxmann.com 39 (Cal. - HC) Bagri Impex (P.) Ltd. v. Asstt. CIT.



NEWS LETTER



Direct Taxes : Selected Legal Updates

AMENDMENT IN RULES 31A & 31AA, SUSTITUTION OF TDS FORMS AND RETURNS AND INSERTION OF NEW FORM 26B { 213 TAX MANN (ST.) 200 }

The Notification No. 11/2013 dated 19/2/2013 gives the Income-tax (second amendment) Rules, 2013. It amends Rule 31A, whereby, it requires to furnish the statement of deduction of tax u/s 200(3) electronically under digital signature or verified through an electronic process in accordance with the procedures, formats and standards specified in Rule 31A(5) of the Income-tax Rules.

A new sub-rule 3A to Rule 31A has been inserted to provide for a claim for refund, for sum paid to the credit of the Central Government under Chapter XVII-B, should be furnished by the deductor in Form 26B electronically under digital signature. The Rule 31AA in relation to the statement of collection of tax, under section 206C(3), is also amended so as to provide for furnishing of such statement electronically under digital signature or verified through an electronic process.

In nutshell, all quarterly TDS/TCS returns (except those who are permitted to file in paper form) are now required to be furnished electronically either under digital signature or without digital signature verified through an electronic process.

The Rule 31ACB and Rule 37J has been substituted prescribing the form for furnishing of certificate of accountant under first proviso to Section 201(1) and section 206C(6A) respectively. It substitutes the new Form Nos. 15G, 15H, 16, 16A, 24Q, 26Q, 27C, 27D, 27Q and 27EQ.

It inserted new Form 26B to be filled up by deductor for claim of refund of sum paid under Chapter XVII-B of the Income-tax Act.

NOTIFICATION New Delhi, 15 April 2013 [INCOME TAX]

AMENSTY SCHEME FOR NON FILERS AND STOP FILERS OF SERVICE TAX ASSESSEE

Compiled by : CA Sanjay Jain

Introduction :

The honourable Finance Minister in the Finance Bill, 2013 stated as under :

"V. Amnesty Scheme for Non Filers and Stop Filers:

To encourage voluntary compliance and broaden the tax base, it is proposed to provide one time amnesty by way of (i) waiver of interest and penalty; and (ii) immunity from prosecution, to the stop filers, non-filers, non-registrants or service providers (who have not disclosed true liability in the returns filed by them during the period from October, 2007 to December, 2012) who pay the "tax dues".

Reason : According to the honourable Finance Minister Union Budget speech 2013-14, there are nearly 17,00,000 registered assessee under service tax, only about 7,00,000 file returns. To say it differently, remaining about 10,00,000 assessee have either have not filed their service tax returns at all or have stop filing their service tax returns. In order to encourage such non-filers or stop filers of service tax returns to voluntarily comply with various applicable statutory provisions pertaining to service tax. The prime intention of the scheme is to reduce litigation and making tax collections faster and better. This is one of the rarest schemes wherein evaders are granted immunity of interest also along with penalty.

Title : Chapter VI of the Finance Act, 2013 has brought about a scheme called the Service Tax Voluntary Compliance Encouragement Scheme, 2013.

Date of Application of the Scheme : The Scheme has come into force w.e.f. 10.05.2013.

Applicability of Scheme - Period : The scheme is applicable in respect of the service tax (including cess) due/payable (i.e. 'tax due') between 1.10.2007 to 31.12.2012. However, service tax return for the half year 1.10.2007 to 31.03.2008 was required to be filed by 25.04.2008. Thus department cannot issue a show cause notice in respect of said half year after the expiry of five years from the relevant date in terms of proviso to Section 73(1) of the Finance Act, 1994.

Important terms used in the Scheme

Tax Due :

'Tax Dues' [Section 105(e)] means

- The service tax due and payable under the Finance Act, 1994 or
- Any other amount due or payable under section 73A thereof,
- Including education cess and secondary & higher education cess leviable thereon,
- But not paid as on 1.3.2013.

Designated Authority : An officer not below the rank of Assistant Commissioner of central excise as notified by the Commissioner of central excise for the purpose of this Scheme. In the case of Raipur, the designated authority is the Assistant Commissioner, Service Tax, Raipur.

Eligible persons (Section 106):

- Any person may declare his tax dues in respect of which no notice or an order of determination u/s 72 (best judgment) or 73 (recovery of service tax not levied or paid or short levied or short paid or erroneously refunded) or 73A (service tax collected but not deposited) of the Finance Act, 1994 has been issued or made before 1.3.2013.
- Any person who has filed return u/s 70 and disclosed his true liability but not paid disclosed amount of service tax – Not eligible.
- Issue for which notice/adjudication order u/s 72, 73 or 73A already passed for prior period shall not be eligible for this scheme for subsequent period. Issue not covered in an SCN, benefit of the scheme is available.

Circumstances where declaration shall be rejected :

- An enquiry or investigation in respect of a service tax not levied or not paid or short levied or short paid has been initiated by way of –
 - o Search of premises u/s 82
 - o Issuance of summons u/s 14
 - o Requiring production of accounts, documents or other evidence u/s 72 (best judgment assessment) or u/r 5A. No other communication from the department would attract.
- An audit has been initiated
- Such enquiry, investigation or audit is pending as on 1.3.2013.



NEWS LETTER



Procedure for making declaration and payment of tax dues (Section 107) :

☞ If not registered	: Take registration
☞ Declaration to be made to	: Designated Authority
☞ Last date for making declaration	: On or before 31.12.2013.
☞ Form	: Form VCES-1
☞ Acknowledgment	: Acknowledgment by designated authority in Form VCES-2 within a period of 7 working days.
☞ Payment	: At least 50% of tax due by 31.12.2013
☞ Balance payment	: On or before 30.06.2014 (without interest)
	: On or after 1.7.2014 to 31.12.2014 (with interest u/s 73B or 75)
☞ Details of payment to furnish	: From time to time
☞ Acknowledgment of Discharge	: On furnishing of full payment of declared tax dues and interest, if any, acknowledgment of discharge in Form VCES-3 within a period of 7 working days.
☞ Cenvat Credit	: Cenvat credit cannot be utilized for payment of tax dues.
☞ No refund of tax paid	: Tax paid under the scheme shall not be refundable.
☞ Tax dues	: To be recovered as per Section 87.

Immunity under the Scheme :

- Interest
- Prosecution
- Penalty
- Late Fee
- Other proceedings
- Matter shall not reopen before any authority or court.

False Declaration :

- Service of notice of demand by the Commissioner if declaration substantially false.
- Time limit of 1 year for issuing notice from the date of declaration.
- Notice issued is deemed to be notice issued u/s 73 or 73A.

... MEMORABLE INDIANS ...

Veer Savarkar - Radiant embodiment of blazing Nationalism !

(28/05/1883 – 26/02/1966)



- The **first** Indian political leader to daringly perform a bonfire of foreign (English) clothes (1905).
- The **first** Indian to organize a revolutionary movement for India's Independence on an international level (1906).
- The **first** Indian law student who was not called to the English Bar despite having passed his examination and observed the necessary formalities, for his activities to seek India's freedom from the British (1909).
- The **only** Indian leader whose arrest in London caused legal difficulties for British Courts and whose case is still referred to in the interpretations of the Fugitive Offenders Act and the *Habeas Corpus* (Rex Vs Governor of Brixton Prison, ex-parte Savarkar)
- The **first** Indian historian whose book on the 1857 War of Independence was prescribed by British Authorities in India even before its publication. The Governor General had asked the Postmaster General to confiscate copies of the book six months before the book was officially banned (1909).
- The **first** political prisoner whose daring escape and arrest on French soil became a *cause celebre* in the International Court of Justice at The Hague. This case was mentioned in many International Treaties at that time (1910).
- The **first** graduate whose degree was withdrawn by an Indian University for striving for India's freedom (1911).
- The **first** poet in the world who, deprived of pen and paper, composed his poems and then wrote them on the prison walls with thorns and nails, memorized ten thousand lines of his poetry for years and later transmitted them to India through his fellow-prisoners who also memorized these lines.
- The **first** revolutionary leader who within less than 10 years gave a death-blow to the practice of untouchability in the remote district of Ratnagiri while being interned there. He also opened the gates of "Patitpavan Mandir", open to all Hindus including ex-untouchables (22 February 1931).
- The **first** political prisoner in the world who was sentenced to Transportation for Life **Twice**, a sentence unparalleled in the history of the British Empire.
- The **first** political leader to embrace death voluntarily by way of *Atma Samarpan* in the highest tradition of Yoga (1966)

'VEER SAVARKAR' : Vinayak Damodar Savarkar was a fearless freedom fighter, bold warrior, ardent patriot, social reformer, prolific writer, dramatist, historian, political leader and philosopher. Savarkar's thoughts touch upon virtually every aspect of nation-building and are relevant even today. He was also an extraordinary scholar who coined Indian words for telephone, photography, the parliament, among others. He set up the Abhinav Bharat Society, which preached a revolutionary struggle against the British. He also won a scholarship that took him to Britain to study Law in 1906 on the recommendation of Lokmanya Bal Gangadhar Tilak.

This young Lion was charged by British for waging war against the British for delivering seditious speeches four years earlier in India. In order to sentence him for all his life, he had to be extradited in India. When he was being taken back to India he jumped into the ocean from the ship S.S. Morea and swam single-mindedly--- amidst the shouts of alarm and the bullets with the guards chasing after him and landed the French soil. By International Law, he now had a right to asylum here in France but the British dragged him back to ship. His plan had failed, but in this failure was also success! Savarkar's heroic escape and the treachery of the British received worldwide publicity. Such gross miscarriage of justice would not, *could not* be swept under the rug! International hue and cry was raised but to no avail. After a formal trial, Savarkar was charged with serious offences of illegal transportation of weapons, provocative speeches and sedition and was sentenced to 50 years' (Two Life Sentences) in succession and deported to the kalapani at Andaman cellular jail.

His life sketch either frames him a literary genius of unparalleled repute or a revolutionary of uncompromising principles and ideals. Savarkar left his mortal coil on 26th February 1966 after 21 days fast through great yogic tradition 'prayopवेशan'. He did this with a sense of deep contentment at having fulfilled his worldly duties that too only after having spelt out the difference between suicide and self-sacrifice in a article the english rendering of Savarkar's article is ...

*Blessed am I, blessed am I, I know of no duty now,
Blessed am I, blessed am I, I have fulfilled what I wished to achieve*