

RAIPUR BRANCH

OF CENTRAL INDIA REGIONAL COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

JULY - AUGUST 2013

FOR MEMBERS ONLY



*Chairman
Writes...*



EDITORIAL BOARD

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NEWS LETTER

Dear Professional Colleagues,

The month of June and July has always been hectic for us. Nevertheless thanks to the technological up-gradation where we are no more required to the income-tax offices to file the paper returns. The e- filing of the Audit report in the month of the September is standing next to us to test us as to how abreast we are with the technological up-gradation.



We celebrated 1st July as CA day. To mark the day the branch organized a marathon race of the members and students. The students and members were carrying flex and placards which gave message to conserve nature.

The month of June and July has always been very crucial for the students of chartered Accountancy course as June witnesses the CPT exams and July sums up efforts of the students. The students appearing for the CA exams at CPT level has increased tremendously. Every attempt is witnessing appearance of 900 -1000 students. The rising number of students and eventually the membership is perfect reflection of rise in level of knowledge and intellect in the students.

We are planning to escalate the students activity at a larger level so as to give the students the maximum exposure. We also plan to hold seminars and lecture meetings for the students, Inter firm debate competition for the articles, Industrial tours, career counseling programmes in various schools apart from the General Management and Communication Skills and Orientation Programme.

The managing committee is committed to deliver results and come upto the expectations of the members. We request the members to send us their feedback on the events organised and also send their suggestions on the same. Further we also request the members to send articles for the newsletter so that we can enhance and enrich the quality and content of the newsletter.

CA Sidharth Parakh
(Chairman)





NEWS LETTER



SELECTED LEGAL UPDATES

Compiled by : CA Manish Agrawal

Commissioner of Income Tax v Airline Allied Services Ltd, 23 August 2013 High Court of Delhi, ITA No 13/2013,

In favour of: Assessee; Accounts — Method of accounting — Government Grants — AO held that grant from government was sanctioned to assessee to improve air connectivity — Assessee had taken on lease four aircrafts for five years and had spread this grant over period of five years over lease period — AO bought entire amount of grant to be taxed in year of receipt — CIT(A) deleted addition made by AO — ITAT upheld CIT(A)'s order — Held, CIT(A) and tribunal had observed that grant of Rp X was made for operational expenses for 60 months — As assessee was utilising said grant over period of five years, they had followed AS-12 — CIT(A) and tribunal had held that said standard recognises that while computing profit and gains, account should be prepared on systematic and rational basis so as to match receipt or grant with related cost — Standard followed by assessee was as per AS-12 prescribed by Institute of Chartered Accountants — Said method of accounting could not be faulted or ignored — There was no dispute that grant given to assessee was based upon operations from which income had to be arrived at after deducting expenditure — Grant had to be utilised over five years — Accordingly, out of grant, amount declared by assessee was accepted to be treated as income of A. Y. — Revenue had not been able to point out and state, how and why reasoning can be faulted as assessee had followed AS-12

August 2013 ITAT Agra Bench, ITA No 299/Agr/2012

In favour of: Assessee; Rectification of mistake — Obvious and patent mistake — Assessee filed its return declaring loss — AO made addition on account of provisions of interest written back and relief in loan from bank and financial corporation — CIT(A) deleted addition by passing order u/s 250 — AO observed that assessee was no more a sick company in — and therefore order of CIT(A) was mistaken in not assessing income u/s 115JB — AO issued show cause notice u/s 154 as according to AO mistake was very obvious and patent — CIT(A) stated that provision of section 154 was not applicable and cancelled order of AO — Held, Section 154 provides that with a view to rectifying any mistake apparent from record, Income Tax Authority may amend any order passed by it — In case of ITO v Volkart Brothers & Ors (1971) 82 ITR 50 (SC), it was held that a mistake apparent on record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions — Assessee had filed return declaring loss accompanied by Auditor's report certifying that tax payable u/s 115JB for under appeal was Nil — Assessee had disclosed all particulars regarding income to be computed u/s 115JB while filing return — Certificate regarding assessee being sick industrial company issued by BIFR was also filed at assessment stage — Therefore, when AO applied his mind to all facts and circumstances of case and passed assessment order by making certain additions which have been deleted by CIT(A) and while giving appeal effect, ultimately loss declared by assessee had been accepted — There was no scope for AO to resort to provision of Section 154 for purpose of enhancing income of assessee — AO on long drawn process of reasoning should not have passed order u/s 154 — Issue raised by AO in proceeding u/s 154 was highly debatable which required issue to be reconsidered by AO about applicability of provision of Section 115JB which was not raised by AO in assessment — AO had no power to review his entire assessment order and to make certain additions which were not part of record — CIT(A) correctly cancelled order u/s 154.

Vaghjibhai S Bishnoi v Income Tax Officer, 22 August 2013 High Court of Gujarat, Special Civil Application No 6726 of 2013,

In favour of: Assessee; Return of income — Failure of revenue to give credit of TDS — Assessee



NEWS LETTER



had filed return electronically u/s 139 declaring income and claimed refund on adjustment of tax deducted at source — Revenue failed to give credit of TDS amount — Application for rectification u/s 154 was preferred requesting for credit of TDS — Request was not accorded to — Special Civil Application filed by assessee — Held, Form 26AS clearly reflected different dates on which payment had been credited and total tax deducted at source by various companies — In details available with Department from Form 26AS, amount of TDS was Rs 4,00,647.36 and in return claim was Rs 3,78,608 — Assessee was unable to explain as to why he had claimed less amount of TDS — Revenue had not succeeded in bringing anything on record to indicate any default on part of assessee to furnish any of documents that have been directed — Assessee had made rectification application which CPC attended to and passed order, which was not brought on record — It was not convincing as to in which manner assessee failed in furnishing necessary details which entitled Department to discard total amount of TDS, while computing return of assessee, when all details of TDS were available with Department — Computerisation in every Department was objected with view to facilitate easy access to assessee and make system more viable and transparent — In event of any shortcoming of software programme or any genuine mistake, Department was expected to respond to such inadvertence spontaneously by rectifying mistake and give corresponding relief to assessee — Instead of that, even when it was being brought to notice of Department by assessee, by rectification application and subsequent communication, not only it had chosen not to rectify mistake, but, lack of inter departmental coordination had driven assessee to Court.

Commissioner of Income Tax v Rama Rani Kalia, 27 August 2013

Capital gain — Sale — Long term or short term capital gain — Assessee filed its return in compliance to notice u/s 148 declaring income — Assessee had sold property in AY in question - AO found that assessee had purchased property in 1984 — Thereafter, lease hold rights were converted to free hold right — AO concluded that since property was converted and sold within three days it was short term capital gain — CIT(A) denied AO's view and treated Capital gain as long term — ITAT upheld CIT(A)'s order — Held, difference between short-term and long-term capital asset is period over which property had been held by assessee and not nature of title over property — Lessee of property had rights as owner of property subject to covenants of lease, for all purposes — Conversion of rights of lessee in property from having lease hold right into free hold is only by way of improvement of her rights over property, which she enjoyed — It would not have any effect on taxability of gain from such property, which is related to period over which property was held — Property was held by assessee as a lessee since 1984, and lease hold rights were converted and property was transferred in same year — Conversion was by way of improvement of title.

Kamdhenu Builders & Developers v Addl. Commissioner of Income Tax, 21 August 2013 ITAT Mumbai Bench "A", ITA No 6622/Mum/2012, High Court of Allahabad, ITA No 56 of 2013.

In favour of: Assessee; Deduction u/s 80-IB — Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings — Allowability — Assessee acquired development rights of plot under tripartite agreement — Said plot was acquired by Centurion Bank Ltd from CIDCO under agreement of lease for only residential use — Commencement certificate for residential building was granted — Subsequently, assessee became entitled for additional FSI on payment of certain premium — Apart from residential building, a separate commercial building was approved for construction by CIDCO — Development right in respect of said commercial building was sold by assessee to a developer under registered development agreement for consideration — Profit from sale of development rights was offered to tax — AO disallowed claim u/s 80IB on reason that housing project was same in which commercial area exceeded 2000 sq ft or 5 percent of built up area whichever is less — CIT(A) affirmed AO's order — Held, in case of Bengal Ambuja Housing Development Ltd v DCIT, it was held that section 80IB(10) had been enacted with a view to provide incentive for businessmen to undertake construction of residential accommodation for smaller residential units and deduction is intended to be restricted to profit derived from construction of smaller units and not from larger residential units — AO had denied claim of assessee observing that larger units were also constructed by assessee — Provision as laid down in section 80IB(10) does not speak regarding such denial of deduction in case of profit from a housing complex containing both smaller and large residential units — Since assessee had only claimed deduction on account of smaller qualifying units by fulfilling all conditions as laid down u/s 80IB(10), denial of claim to assessee was on account of rather restricted and narrow interpretation of provisions — There is no definition of housing project in provisions and there can be more than one approval for project and even if there is common approval, assessee is entitled for deduction on project undertaken by it, provided project satisfies other conditions — Assessee constructed only residential block — Commercial project developed by other party, had been completed much later — Project was entirely separate block and in no way connected to assessee's project, except approved on same plot of land — Nothing was brought on record to indicate that assessee developed commercial project as well — Therefore, as assessee had completed residential project which satisfied conditions, it was eligible for deduction u/s 80IB(10) — AO after satisfying conditions had in fact allowed deduction in AY 2007–2008 and AY 2008–2009 on same project — Thus, AO directed to allow deduction.



NEWS LETTER



RAIPUR BRANCH OF CIRC OF ICAI			
Reports of Activities carried out by RAIPUR BRANCH			
IN THE MONTH OF JULY, 2013			
SR.NO	DATE	PROGRAMME	TOPICS
1	01.06.2013 To 15.06.2013	GMCS-I	
2	01.06.2013 To 29.06.2013	ITT Class	
3	07.06.2013	Teleconference	E-filing of Tax Audit Report etc. & changes in New TDS Statements, TDS Certificates, ITR's
4	08.06.2013	Half Day Seminar	"Service Tax Voluntary Compliance Scheme & Other
5	14.06.2013	Lecture Meeting Organised By Raipur Branch with IT Bar	Sec.40 (ia) Income Tax Act, 1961
6	10.06.2013 To 14.06.2013	OTC	
7	16.06.2013 To 30.06.2013	GMCS-I	
8	16.06.2013 To 20.06.2013	OTC	
9	19.06.2013	Teleconference	"Independent Auditor's Report " & "Auditors Rotation & Restricted Advisory services
10	21.06.2013	Lecture Meeting Organised By Raipur Branch with IT Bar	Discussion on ITR April & May 2013
11	26.06.2013	Teleconference	"Service Tax Voluntary Compliance Scheme & Other
12	29.06.2013	Workshop	One Day Professional Training Workshop on Members in Practice

RAIPUR BRANCH OF CIRC OF ICAI			
Reports of Activities carried out by RAIPUR BRANCH			
IN THE MONTH OF AUGUST, 2013			
SR.NO	DATE	PROGRAMME	TOPICS
1	01.08.2013 To 03.09.2013	ITT Class	
2	10.08.2013	Students (CICASA) Lecture Meeting	"Tips for success in CA Exams & LLP"
3	14.08.2013	Teleconference	"Recent issues in Real Estate Transactions"
4	15.08.2013	Students (CICASA) Quiz & Elocution Contest	
5	16.08.2013	SLCC Meeting	
6	22.08.2013 To 05.09.2013	GMCS (Final)	
7	23.08.2013	Teleconference	Overview of Corporate Social Responsibilities"
8	23.08.2013	Study Circle Meeting	ITR-July13
9	24.08.2013	Students (CICASA) Debate Competition	Social Media wheather A Boon or A Ban
10	31.08.2013	Seminar	National Tax Seminar

... MEMORABLE INDIANS ...

'LOKMANYA' BAL GANGADHAR TILAK

(1856 – 1920)



Ardent patriot, social reformer, research scholar, mathematician, sanskritist, educationalist, astronomer, journalist-editor, lawyer who practiced law as an instrument of freedom struggle & court room as the battle field. He was a multifaceted genius who inspired millions of Indians in the freedom movement with his electrifying words "Swaraj is my birth right and I shall have it!! Britishers called him 'Father of Indian Unrest' while Gandhiji treated him to be 'The Maker of Modern India'.

It is said that the British made an extraordinary request to hand over Tilaks' brain to them so that it could be studied, preserved and exhibited, which was not complied with.

He advocated in his treatise 'Bhagavad-Gita Rahasya or Karma Yoga Shashtra':

The most practical teaching of the 'Gita', and one for which it is of abiding interest and value to the men of the world with whom life is a series of struggles, is not to give way to any morbid sentimentality when duty demands sternness and the boldness to face terrible things.