



ASC Times

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Solving any tax puzzle

Tax saving advice across all the taxes



From the CEO's Desk



Friends,

We all celebrated our 65th Republic Day on 26th January 2015. And the guest of honor was none other than US President Mr. Barack Obama. One way we all were happy as we count it as an achievement on part of our own Prime Minister Mr. Narendra Modi. But the flip side was that we all were scared because there was a lot of threatening about a possible attack or riots. We were skeptical in sending our kids to school and we thought for hundred times before stepping out for a late night drink till the time he was in the country. Nothing comes Free!!!!

Same goes for the impact, Mr. Obama's visit will have on Indo-US ties and US's stand for getting us a VETO in the security council and majorly it's role in Indo-Pak border problems and terrorism. Yes, Mr. Obama amused us all with his speech in the Siri Fort Auditorium when he chose to say dialogues from SRK movie or when he mentioned Sri Vivekanand and motivated us by mentioning about Milkha Singh and Marry Kom. He also stated that we are the biggest democracy and have a maximum no of youths.

Well of course we know all that, but it kind of reinforces our faith and belief in our own talents. What I am worried most about the financial ties and developments his visit will bestow on us. Positivity is in the air and all the stats are in favor of India and its future. We are the biggest consumers and now we should focus on producing as much. Make In India initiative will surely have it's bearing. Soon we shall produce our own weapons with the technological support from US. Keep your fingers crossed.

Nonetheless, we are advancing and contributing, in any way, to the society and economy should remain our focus and priority. We at ASC try to do as much as possible by genuinely taking interest in our clients' interests.

Stay Fit and Have fun!!!

CEO
ASC Group

TAX CALENDAR

Due Date	Compliances from 01/02/15 to 06/02/15
6th Feb	Online Payment of Service Tax and Central Excise for the month of Jan.,2015 (Mandatory as per Finance Budget, 2014)

Country Wide Holidays for the Week

Date	State	Occasion/Festival
3rd Feb	Haryana, Punjab Himachal Pradesh	Guru Ravidas Birthday
7th Feb	Delhi	State Elections

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CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

BOARD OF CONTROL FOR CRICKET IN INDIA V/s COMMISSIONER OF SERVICE TAX, MUMBAI-I (Supreme Court)

BRIEF: Non-resident service providers were required to telecast the coverage of the cricket matches conducted by BCCI for the viewers of the cricket match all over the world. The department levied service tax along with interest thereon on the consideration paid for the services received as it was of the view that the appellant came within the purview of "programme producer's service" and the service was taxable on reverse charge basis. However, the appellant filed an appeal against the same.

OUR TAKE: In the above case, the Hon'ble Supreme Court held that the assessee's services were rightly classified under 'programme producer's services as defined in sections 65 (86a), 65 (86b) read with 65 (105) (zzu) of the Finance Act, 1994 and the appellant is liable to pay service tax along with interest. Thus the appeal filed by the assessee was dismissed.

COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX KERALA V/s M/s. KUTTUKARAN TRADING VENTURES (Supreme Court)

BRIEF: The assessee was engaged in the business of reconditioning engines and parts thereof and repairs of other parts of vehicles. Service Tax along with interest and penalty was levied on the assessee in one instance where the Commissioner contended that the said service was for reconditioning of motor vehicle engines/repairing vehicle engines and the same was included in the purview of service tax liability.

OUR TAKE: In the above case, the Hon'ble Supreme Court agreed with the stand taken by the Hon'ble Kerala High. Held that the assessee was rightly entitled to exclusion of the service from service tax, as the assessee had themselves dismantled the engine and repaired it and then refitted it to

the motor vehicle. Therefore, if any service centre or maintenance centre or workshop does maintenance or repairs to any part of the motor vehicle, it is also entitled to get the benefit of exclusion, as provided under Section 65(64) of the Finance Act, 1994. Thus, the appeal filed by the Revenue was dismissed.

BHARAT SANCHAR NIGAM LTD. VS. COMM. OF C.EX., & ST (CESTAT Delhi)

BRIEF: CENVAT Credit was denied on the ground that service tax registration number of service provider was not mentioned on the invoice. Adjudicating authority though observed the fact of deposit of tax by service provider in the ST-3 returns denied CENVAT Credit.

OUR TAKE: In the above case the Hon'ble CESTAT Delhi held that production of ST-3 returns rectified the defects made in the invoice, and thus the assessee was entitled to CENVAT Credit.

COMMR. OF CUS., C. EX. & SERVICE TAX, TIRUPATI V/s MAGHAM PULLAIAH (Andhra Pradesh HC)

BRIEF: The question under review is "Whether the billing activity calculation undertaken at the behest of Chartered Accountant amounts to practising of registered Chartered Accountancy in order to levy Service Tax? "

OUR TAKE: : In the above case the Hon'ble Andhra Pradesh High Court held that the billing activity, which is undertaken on behalf of a Chartered Accountant, is not the job of Chartered Accountant professionals. The Chartered Accountant starts his functioning the moment accounts are complete. If the accounts are not complete, the Chartered Accountants ordinarily advise their clients to prepare proper accounts, and in support of these accounts vouchers and bills are required to be prepared and this is not the job of the Chartered Accountants. Hence, such services are liable to service tax.

CENTRAL EXCISE

COURT DECISIONS

SHAMLI PAPER MILLS LTD. V/S COMMISSIONER (Allahabad HC)

BRIEF: The assessee was engaged in manufacture of printing and writing paper as well as news print. The CESTAT had decided that there was clandestine clearance of goods in the name of closed unit and there was evasion of duty. The appellant comes with the case before higher Court that the grounds urged have not been considered.

OUR TAKE: In the above case the Hon'ble Allahabad High Court held that where any ground has been omitted for consideration, then the remedy is to approach the same Court for consideration in accordance with law.

CUSTOMS

COURT DECISIONS

ANIS MODH AKHTAR MOTIWALA V/s UNION OF INDIA (Bombay HC)

BRIEF: The petitioners were apprehended at the International Airport and on examination of their baggage, goods were recovered. The goods brought by the passengers were imitation of reputed brands and, therefore, the import being of prohibited goods were confiscated absolutely. The penalty of 5,000/- each was imposed. The petitioners argue that these goods have been brought not for any commercial venture or sale but for the purposes of use of the family members and close friends.

OUR TAKE: In the above case, the Hon'ble Mombay High Court held that considering the quantity, it can never be said that the goods are brought for personal consumption or use. Thus, the writ petitions were dismissed with costs of 25,000/- to be tendered to the respondents.

COMMISSIONER OF CUSTOMS (EXPORTS) V/S I. SAHAYA EDIN PRABHU PATRIOT FREIGHT LOGISTICS SYSTEMS (Madras HC)

BRIEF: The assessee is a Customs House Agent. The goods sought to be exported were declared as Potassium Feldspar Lamps. On search by the officers it was found that instead

of the declared cargo of Potassium Feldspar Lamps wooden logs were found stacked inside the container. Thus, a penalty of 50,000/- was imposed as per Section 114(i) of the Customs Act. and the Red Sander Wooden Logs were directed to be confiscated.

OUR TAKE: In the above case, the Hon'ble Madras High Court held that there was a failure to discharge functions on the part of the Custom House Agent and thus the penalties are to be provided as per the Customs House Agents Licensing Regulations. Therefore, imposition of penalty under Section 114(i) of the Customs Act is unwarranted.

RAJESH PAWAR V/s UNION OF INDIA (Calcutta HC)

BRIEF: The petitioner was carrying on the business of jewellers. The Revenue seized gold bars from the possession of the appellant on the basis that they were illegally imported or "smuggled" and penalty has been ordered. However, at the point of import, import of gold was free.

OUR TAKE: In the above case, the Hon'ble Calcutta High Court held that there was no dispute that the petitioner was carrying on the business of jewellers. When the situation is that importation of gold was free, a higher onus was on the Revenue to prove that the gold bars were illegally imported. The appellant was able to show some evidences regarding the legal source of the goods under Section 123 of the Customs Act, 1961 under which the petitioner had the burden of proof. Since the Revenue could not disprove the facts brought on record by the petitioner, the High Court set aside the order by exercising powers under Article 226 of the Constitution of India.

INCOME TAX

NOTIFICATIONS, CIRCULARS & INSTRUCTIONS

Notification No. 04/2015

The CBDT vide Notification No. 04/2015 dated 20th January 2015 hereby provides that the Central Govt. has approved the "Indian National Group of the International Association for Bridge and Structural Engineering, IDA Building, Jamnagar House, Shahjahan Road, New Delhi-110011" for the purpose of clause (23A) of section 10 of the Income-tax Act, 1961 (43 of 1961), for the Assessment Years 2013-14 to 2015-16 subject to the following conditions, namely:-

- i) the assessee shall apply its income, or accumulate the income for application, in accordance with the provisions

of the said clause (23A), solely to the objects for which it is established

- ii) the assessee shall not be eligible for exemption under the said clause (23A) in respect of income chargeable under the head "Income from House Property" or any income received for rendering any specified services or income by way of interest or dividends derived from its investment.

OUR TAKE: Section 10(23A) deals with any income (other than income chargeable under the head "Income from house property" or any income received for rendering any specific services or income by way of interest or dividends derived from its investments) of an association or institution established in India having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture or such other profession. **Such incomes do not form part of Total Income.**

Notification No. 06/2015, Notification No. 07/2015 & Notification No. 08/2015

The **CBDT vide Notification No. 06/2015 dated 20th January 2015** hereby provides that the Central Govt. has notified for the purposes of clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961) 'Gujarat State Council for Blood Transfusion', a trust constituted by the Government of Gujarat in respect of the following specified income arising to the said trust, namely :-

- a) grants from Government of Gujarat and the Government of India;
- b) donations; and
- c) income arising or by way of interest.

This notification shall be applicable for the financial years 2013-14 to 2017-18.

The **CBDT vide Notification No. 07/2015 dated 20th January 2015** hereby provides that the Central Govt. has also notified '**Karnataka Livestock Development Agency**', a body constituted by the Government of Karnataka, for section 10(46) in respect of the following specified income arising to the said body, as follows:-

- a) amount received in the form of grants-in-aid from Government of India; and
- b) income arising out or derived from interest on grants-in-aid.

This notification shall be applicable for the financial years 2012-13 to 2016-17.

The **CBDT vide Notification No. 08/2015 dated 20th January 2015** hereby provides that the Central Govt. has also notified

"National Council of Science Museums" an autonomous body under the Ministry of Culture, Government of India for section 10(46) in respect of the following specified income arising to the said body, as follows:-

- a) amount received in the form of grants-in-aid and subsidies from Government of India;
- b) fees or subscription by sale of tickets;
- c) charges for maintenance recovered for use of auditorium and other public facilities for scientific and educational purposes; and
- d) income arising or derived by way of interest received from investment.

This notification shall be applicable for the financial years 2012-13 to 2016-17.

However, all of them should file their return of income in accordance with the provision of 139 (4C) (g) of the Income Tax Act, and the activities and the nature of the specified income derived shall remain unchanged throughout the financial years.

OUR TAKE: Section 10(46) deals with specified income arising to a body or authority or Board or Trust or Commission, established by or under a Central or State Act or by a Central or State Govt with the object of regulating or administering any activity for the benefit of the general public, which would be exempt from tax subject to the condition that the said entity is not engaged in any commercial activity.

Notification No. 09/2015

The **CBDT vide Notification No. 06/2015 dated 21st January 2015** hereby provides that the Central Govt. has specified the '**Sukanya Samridhi Account**' for the purposes of clause (viii) of sub-section (2) of section 80C of the Income-tax Act, 1961.

OUR TAKE: Section 80C(2)(viii) deals with subscription to any such security of the Central Government or any such deposit scheme as that Government may, by notification in the Official Gazette specify. The same qualifies for deduction from while calculating the taxable income of any Individual or HUF assessee.

ACCEPTANCE OF THE ORDER OF THE HON'BLE HIGH COURT OF BOMBAY IN THE CASE OF VODAFONE INDIA SERVICES PVT. LTD.

The **CBDT vide Instruction No. 2 / 2015 dated 29th January 2015** draws attention to the decision of the High Court of Bombay in the case of **Vodafone India Services Pvt. Ltd. for AY 2009-10** wherein the Court has held that the **premium on share issue was on account of a capital account transaction**

and does not give rise to income and, hence, not liable to transfer pricing adjustment.

It is hereby informed that the Board has accepted the decision of the High Court of Bombay in the above mentioned Writ Petition. In view of the acceptance of the above judgment, it is directed that all field officers must adhere to this judgement in all cases where this issue is involved.

OUR TAKE: It is clarified that premium on issue of shares is a capital account transaction and does not give rise to income. Hence, such transactions are not liable to transfer pricing adjustment.

COURT DECISIONS

DEPUTY COMMISSIONER OF INCOME-TAX V/s GUJARAT NARMADA VALLEY FERTILIZERS CO. LTD. (Supreme Court)

BRIEF: The A.O. had issued notices for re-opening of assessment within the period of 4 years from the end of relevant assessment years. However the assessing officer's reason to believe lacks validity. The A.O. seeks to make additions through the process of reopening of the assessment previously closed. Since the notices lacked legal validity, they were disapproved by the Gujarat High Court and the reopening of the assessment was set aside. The Revenue thus filed an SLP with the Supreme Court.

OUR TAKE: In the above case, the Hon'ble Supreme Court seconded the decision taken by the High Court and dismissed the appeal.

ASSISTANT COMMISSIONER OF INCOME V/s CREATIVE PROCESSING LTD. (Supreme Court)

BRIEF: The Hon'ble High Court of Gujarat had allowed the depreciation, premium on redemption of debentures and deduction on restructuring of the term loan as eligible deductions u/s 36(1)(iii). The Revenue filed a SLP against the decision.

OUR TAKE: In the above case, the Hon'ble Supreme Court decided that the decision was rightly made in favour of the assessee and dismissed the SLP.

STATE TAXES

ALL INDIA VAT

NOTIFICATIONS & CIRCULARS

UTTAR PRADESH

The Govt. of Uttar Pradesh vide Notification No.- KA.NI.-2-136/XI-9(11)/14-U.P.Act-5-2008-Order-(127)-2015 dated 28th January 2015 deleted the words "or outer covering of paddy" from entry at serial no.4 in Schedule-I. Entry No.62 of Part-A in Schedule-II shall be substituted with "Rice polish, rice bran and rice husk; paddy husk."

OUR TAKE: The notification is self explanatory.

PUNJAB

The Govt. of Rajasthan vide Notification No. No. S.O. 3/P.A.8/2005/S.8/2015 dated 20th January 2015 has inserted the following in Schedule B after Sl. No. 171 :

"172. Earth moving equipments like Wheel Excavators, Track Excavators, Backhoe Loaders, Telescopic handlers, road rollers wheel loading shovel, skid steer and vibratory compactors.

173. Tower cranes, Mobile Cranes, Crawler Cranes, Backhoe Loaders, Pick and Carry cranes and Truck Mounted."

OUR TAKE: The notification is self explanatory.

GUJARAT

The Govt. of Gujarat vide Notification No. (GHN-6)ET-2015-S.17A(1)(2)-TH dated 22nd January 2015 hereby remits the whole of tax payable under section 3 of the Gujarat Tax on Entry of Specified Goods Into Local Areas Act, 2001 Act on the entry of yarns brought by the "specified dealer" subject to the conditions mentioned in the notification.

For the purpose of this Order, the expression "specified dealer" means a dealer having manufacturing unit in Vapi and Sarigam and engaged in the dyeing job work of yarns who has been granted a Certificate of Entitlement by the Commissioner, issued under this order.

OUR TAKE: The dealer who is eligible for remission under this order shall apply online to the Commissioner of

Commercial Tax in Form JWY-1 appended to the order. The remission order shall be issued online. Moreover, the specified dealer shall apply for refund online and refund payment order shall be issued online and amount shall be transferred to the bank account of such dealer online.

ODISHA

The **Govt. of Odisha** vide **Notification : S.R.O. No. - /2014 dated 24.12.2014** has made the following amendment to Schedule C to the said Act w.e.f. **25.12.2014** namely:-

In **Schedule C**, for the figure "**20%**" appearing in **Column (3)** against **serial no. 3A**, the figure "**23%**" shall be **substituted**.

OUR TAKE: The notification is self explanatory.

HIMACHAL PRADESH

The **Govt. of Himachal Pradesh** vide **Notification No. EXN-F(10)-23/2014 dated 30.12.2014** has made the following amendment to Notification No. EXN-F(10)-23/2014-loose, dated 16.12.2014:

"In **SCHEDULE 'D'** appended to the **Himachal Pradesh Value Added Tax Act, 2005 (Act No.12 of 2005)**, in **column No.3** of the commodity shown against serial **number 2 below Item No.1. "Motor-spirit (Petrol including Aviation Turbine Fuel and Diesel)"**, for the existing figures and signs "**9.60%**", the figures and signs "**11.5%**" shall be substituted" w.e.f **01.01.2015**.

OUR TAKE: The notification is self explanatory.

UTTARAKHAND

The **Govt of Uttarakhand** vide **Notification No. 97/2015/181/(120)/XXVII(8)/2008 dated 20th January 2015** has made the following amendments in **Schedule-I and Schedule-II(B)** of Vat Act:

1. In Schedule-I, the goods specified at serial no. 3 shall be deemed deleted.
2. In Schedule-I, the goods specified at serial no. 66 shall be deemed deleted.
3. In Schedule-II(B), the goods specified at serial no. 122 shall be deemed deleted.
4. In Schedule-II(B), the goods specified at serial no. 129 shall be deemed deleted.

OTHER UPDATES

RBI

REVIEW OF NORMS FOR CLASSIFICATION OF URBAN CO-OPERATIVE BANKS (UCBS) AS FINANCIALLY SOUND AND WELL MANAGED (FSWM)

The **RBI vide DCBR.CO.LS (PCB) Cir.No.4/07.01.000/2014-15 dated 29th January 2015** has revised the definition of 'Regulatory Comfort'. Accordingly, regulatory comfort for the purpose of classification of an UCB as FSWM would now include compliance to the provisions of Banking Regulation Act, 1949 (AACB), Reserve Bank of India Act, 1934 and the instructions / directions issued by RBI from time to time i.e. the bank should have track record of regulatory compliance and no monetary penalty should have been imposed on the bank on account of violation of RBI directives / guidelines during the last two financial years.

INTER-GOVERNMENTAL AGREEMENT (IGA) WITH UNITED STATES OF AMERICA (US) UNDER FOREIGN ACCOUNTS TAX COMPLIANCE ACT (FATCA)-REGISTRATION

In partial modification to **circular DBR.AML.No.9644/14.07.018/2014-15 dated December 30, 2014** it is clarified that those RRBs which do not have more than \$175 million in assets on its balance sheet, and the RRB and any related entities, taken together, do not have more than \$500 million in total assets on their consolidated or combined balance sheet are treated as Local Banks, i.e. 'deemed compliant FFIs' within the meaning of the Agreement provided that the asset test in paragraph 4 of III.B of Annex II of IGA. Such RRBs, therefore, need not register with United States – Internal Revenue Service (US IRS).

RRBs, which have more than \$175 million in assets on its balance sheet, and the RRB and any related entities, taken together, is more than \$500 million in total assets on their consolidated or combined balance sheet and are authorised to open accounts or accept deposits from NRIs, however, are required to register with US IRS, obtain Global Intermediary Identification Number (GIIN) and comply with the requirements of FATCA.

FAQS ON GST

Q.1. Who would be impacted by the implementation of GST?

A. All businesses, whether engaged in sales or supply of services would be impacted by GST. The impact would be on supply chains, ERP, product pricing, dealer margins etc. Even pure service providers would be required to charge GST.

Q.2. What is dual GST??

A: Under Dual GST system, GST is levied by both the federal and state of provincial governments. In India, a dual GST is proposed whereby a Central Goods and Services Tax (CGST) and a State Goods and Services Tax (SGST) will be levied on the taxable value of every transaction of supply of goods and services.

Q.3. What are the benefits of shifting to a dual GST system?

A: Dual GST is expected to be a simple and transparent tax structure with limited number of rates of tax. The result would be a reduction in the number of taxes at the Central and state levels, cut in effective tax rate for many goods, removal of current cascading effect of taxes, reduction of transaction costs for tax payers through simplified tax compliance, and increased tax collections due to wider tax base and better compliance.

Q.4. Will dual GST be levied in addition to the existing taxes?

A. No. It is proposed that the Central GST will subsume central excise duty (Cenvat), service tax, and additional duties of customs at the Central level; and value-added tax, central sales tax, entertainment tax, luxury tax, entry tax, lottery taxes, state surcharges related to supply of goods and services and purchase tax at the state level. Octroi may continue to be charged since it is levied by the Municipal/Local bodies.

Q.5. Will there be different rates for Goods and for Services?

A. The matter is under the discussion stage. If there are two rates for Goods and Services separately, there will be a same problem as to what comes under Goods and what comes under Services. For example, software- in some cases it is considered as Goods and in some cases it is considered as Services (custom made software). In GST such complications are not expected to be there. Hence, it is expected that there will be one rate which will apply for both Goods and Services.

Q.6. How will dual GST affect the fiscal health of states?

A. Being a consumption based tax, dual GST will result in better revenue collection for states with higher consumption of goods and services. The backward and less developed states would see fall in collections. The Centre is expected to put in place a mechanism to compensate states for any revenue loss due to GST.

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