ASC Times

All India Taxes Weekly Referencer

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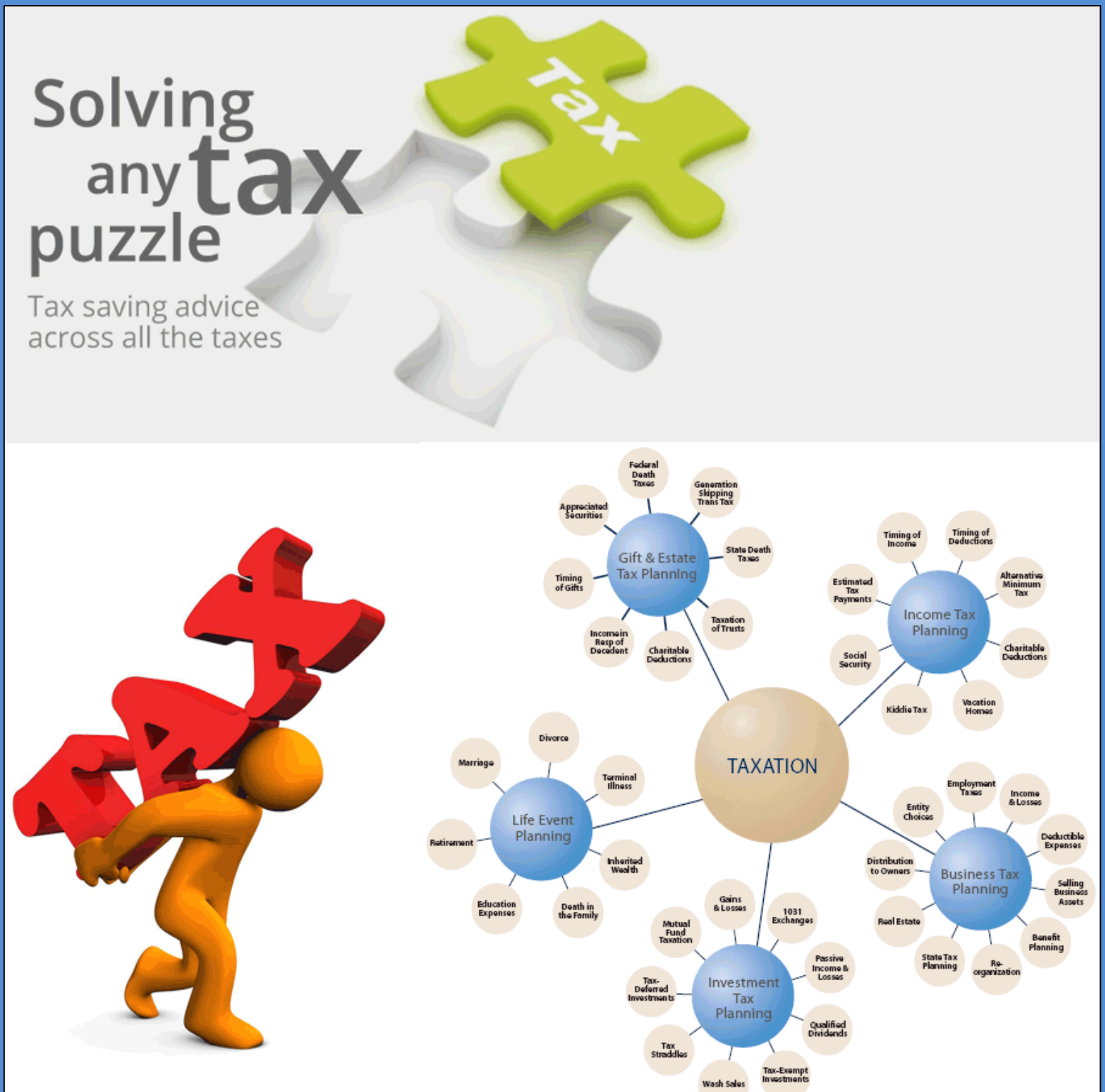

From the CEO's Desk

Dear Reader,

Change is only permanent. We all have heard this. This is true for individuals, families, countries and also world as whole. Same is true for different aspects of life of people and countries. Constant growth is required in the long run but rate of growth can vary in the short term we all know. Right now economies are facing problems related to slowdown. But isn't it possible that someone's pain becomes someone else's gain. This was the dispute when RBI Governor Mr. Rajan said that China's pain of economic slowdown is India's pain too, people from industry and government had a different take on it. According to NITI Aayog Vice Chairman Arvind Panagariya that may not hold truth. As, one no country can have similar growth for a very long time. Two, China's slowdown was expected as wages were on rise, demographics have changed and thirdly if China has growing domestic demand it will not be able to export more which would be counter-productive for China in the international scenario.

India can gain from the slowdown of China or of any other Asian counterpart if India takes it's reforms very seriously. The major reform which is pending and which is critical for gaining confidence of other countries is implementation of GST (Goods and Services Tax). Foreign institutional investors (FIIs) have still not started investing in a big way. For the week, there was a net outflow of Rs 1,500 crore. However, domestic institutions have bought shares worth Rs 2,000 crore counter-balancing the outflow.

Second comes in the form of regulations related to transfer pricing. Still there are many manipulative practices are prevailing through which companies take out more than deserved amount to tax havens, which is a loss on Indian part. So, CBDT is trying to solve many disputes by APA (Advance Pricing Agreements). APA, introduced in the Income Tax Act in 2012, provides for signing of an agreement between a taxpayer and the IT department on an appropriate transfer pricing methodology for determining the value of assets and ensuing taxes on intra-group overseas transactions.

Also there have been talks to end all corporate tax breaks to give country a break from favoritism. Why some industries still given tax breaks when they are flourishing and can pay taxes which would be used for financing many schemes that can generate better ROI in the long run.

Alok Kumar Agarwal
CEO
ASC Group.

TAX CALENDER

Due Date	Description	Law
30 November	Deposit of Tax	Goa VAT, Himachal Pradesh VAT, Mizoram VAT, Punjab & Chandigarh VAT, Tripura VAT
	Return Filing	Himachal Pradesh VAT, Punjab & Chandigarh VAT, Rajasthan VAT, Tripura VAT
		Income Tax Law (u/s 92E)
		Wealth Tax Law
	Annual Return Filing	Chhattisgarh VAT, Haryana VAT, Himachal Pradesh VAT, Sikkim VAT
	Audit Report	Chhattisgarh VAT
	Annual Financial Information Statement	Central Excise Law
5 December	Deposit of Tax	Kerala VAT, Rajasthan VAT
	Issue of TDS Certificate	Tamil Nadu VAT
6 December	Deposit of Tax	Service Tax Law
		Central Excise Law

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
1 December	Indigenous faith Day State Inauguration Day	Arunachal Pradesh Nagaland
2 December	Asom Divas (Su-Ka-Fa Divas)	Assam
3 December	Feast of St.Francis Xavier	Goa
4 December	Chehallum	Bihar
5 December	Birthday of Sheikh Mohammad Abdullah	Jammu & Kashmir

INDEX GUIDE

CENTRAL TAXES

SERVICE TAX

NOTIFICATIONS & CIRCULARS

The **Govt. vide Circular No. 188/7/2015-ST F. No. 354/129/2015-TRU (Pt.), dated 16 November, 2015** clarification regarding leviability of service tax in respect of Seed Testing with effect from 01.07.2012.

OUR TAKE: All testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of testing as mentioned in sub-clause (i) of clause (d) of section 66D of the Finance Act, 1994. Therefore, such services are not liable to Service Tax under section 66B of the Finance Act, 1994.

COURT DECISIONS

M/S RELIANT ADVERTISING VERSUS COMMISSIONER, CENTRAL EXCISE AND ANOTHER (PUNJAB AND HARYANA HIGH COURT)

BRIEF: Advertising agency. Amounts received as cash discount and incentives from media. Service tax had been rightly imposed on the assessee-appellant besides recovery of interest on the confirmed demand.

OUR TAKE: The **PUNJAB AND HARYANA HIGH COURT** held that amounts received as cash discount and incentives were not liable to service tax since no service was provided by the advertising agency to the media, the Commissioner (Appeals) recorded that the incentives or cash discounts shown as commission in the balance sheet of the appellant were not liable to service tax. Aggrieved by the order, the revenue went in appeal before the Tribunal. The Tribunal while reversing the order passed by the Commissioner (Appeals), vide order dated 9.4.2013, Annexure A.9 recorded that the assessee was not assessed to service tax on any transaction involving sale of space for advertisement in print media. It was concluded that the activity of the appellant-assessee fell within the taxable service of "advertising agency". Service tax amounting to Rs 7,11,804.78 and Education cess of Rs 3692.90 for the period 1.4.2001 to 31.12.2005 had been rightly imposed on the assessee-appellant besides recovery of interest on the confirmed demand. No illegality or perversity in the impugned order so as to call for interference by this Court [**Decided against the assessee**]

CENTRAL EXCISE

COURT DECISIONS

COMMR. OF CEN. EXCISE & CUSTOMS-II, AHMD. VERSUS M/S RELIANCE INDUSTRIES LTD. (SUPREME COURT)

BRIEF: Whether the amount collected by the respondent assessee 1 on the invoice value as incentive is includible in the value of goods on payment of central excise duty?

OUR TAKE: The hon'ble **SUPREME COURT** held that scheme is that of the dealers/agents; dealers are seeking help from staff of the respondent to manage and service the scheme. The findings of the original authority also confirmed that the scheme was meant for buying the gifts for dealers and distributors. If the money received from the dealers and distributors is spent on their behalf, the same cannot be treated as additional consideration flowing back to the manufacturer. Therefore, we do not find any reason to interfere with the findings of the Commissioner (Appeals). [**Decided against Revenue**]

COMMR. OF CUSTOMS & CENTRAL EXCISE, U.P VERSUS M/S S.P.L. SIDDHARTHA LIMITED & ANR. (SUPREME COURT)

BRIEF: Whether product which is floor covering is made of jute and plastic coating is applied thereupon is to be classified as jute products or products of plastic.

OUR TAKE: The hon'ble **SUPREME COURT** held that it is clear that the products are dominantly jute products and they cannot be treated as products of plastic. Therefore, there is no question of their coverage under Chapter Heading 39. On the other hand, we find that the Entry which is more proximate to get the aforesaid product covered appears to be 59.04 which, inter alia, cover the product that is floor coverings consisting of a coating or covering applied on a textile backing. Product which is floor covering is made of jute and plastic coating is applied thereupon. In the amendment made to the sub-Headings in Entry 59.04 in the year 2005, the product in question is described with more

clarity inasmuch as Entry 5904.90.10 is described as 'Floor coverings with jute base". There is no dispute that in the instant case, the product is a floor covering with jute as its base. Order of the CESTAT does not call for any interference. [**Decided against Revenue**]

COMMISSIONER OF CENTRAL EXCISE PUNE-I VERSUS M/S. BAJAJ AUTO LTD. (SUPREME COURT)

BRIEF: Whether three wheeled tractor which are known as Auto Track and semi-trailer are to be classified under Chapter Heading 87.01 or under heading 84.04?

OUR TAKE: The hon'ble **SUPREME COURT** held that Tribunal found that the Commissioner while relying upon the earlier decision of the Tribunal ignored the fact that on the first occasion, when the matter was remanded, the Tribunal itself had observed that the new tariff did find the meaning of the tractor and also that positive evidence would be necessary to make them depart from its earlier view. It further found that the Revenue had not disputed that it is immaterial whether vehicle in question comprising of hauling unit and semi-trailer is cleared together or separately which is clear from Chapter Note 2. classification under Chapter Heading 87.01 and not under heading 84.04 upheld. [**Decided against Revenue**]

COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX, VAPI VERSUS M/S TARAPUR GREASE INDIA PVT. LTD., VINOD VYAS, BHARAT VYAS, M/S STANDARD GREASE, M/S STANDARD OIL AND GREASE (BOMBAY HIGH COURT)

BRIEF: Availment of CENVAT Credit. Merely because the penalty has been notionally imposed on all the assessees does not mean that the Tribunal's earlier conclusion and by applicability of the principle of revenue neutrality is perverse or vitiated by any error of law apparent on the face of record.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that Tribunal found that once the inputs have been delivered only at the factories of the assessees from the associate companies, then no loss occurs to revenue. The assessees would derive no benefit by not reversing CENVAT credit on the inputs, when sister concerns are also eligible to take CENVAT credit. Therefore, in the absence of cogent and reliable evidence particularly on the diversion of these inputs, the Tribunal applied the doctrine or principle of revenue neutrality. Tribunal has taken this factual position from order-in-original itself. The only procedure that was required to be complied with was clearance of the raw materials after reversing the credit availed on it. Thus, the duty amount should have been paid and thereafter when these inputs or raw materials were utilized in the manufacture of the final product, the CENVAT credit could have been claimed but this procedure was not followed. Merely because the penalty has been notionally imposed on all the assessees, does not mean that the Tribunal's earlier conclusion, and by applicability of the principle of revenue neutrality, is perverse or vitiated by any error of law apparent on the face of record. Imposition of the notional penalty is for infraction of some procedural rule. No substantial question of law arises. [**Decided against Revenue**]

M/S. CAPRIHANS INDIA LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE (SUPREME COURT)

BRIEF: Classification of printed PVC sheets. No new product emerges after printing and consequently therefore that cannot be said to be any manufacture. On this ground alone we set aside the Tribunal s judgment and restore that of the Commissioner making it clear that the classification of the product remains under Chapter 39 Heading No. 39.20.

OUR TAKE: The hon'ble **SUPREME COURT** held that even the Assistant Commissioner in his order dated November 19, 1997 correctly proceeds on the footing that by mere printing, the fabric does not lose its original identity. However, despite this finding of the Assistant Commissioner, the Assistant Commissioner went on to levy excise duty twice over in respect of the same product, both times under Chapter 39 Heading No. 39.20. Findings in these paragraphs by the Tribunal have to be set aside on the simple ground that they are beyond the show cause notice of the Revenue, which accepts the fact that at least in the present case, no new product emerges after printing and consequently, therefore, that cannot be said to be any manufacture. On this ground alone, we set aside the Tribunal's judgment and restore that of the Commissioner, making it clear that the classification of the product remains under Chapter 39 Heading No. 39.20. [**Decided in favour of assessee**]

CUSTOMS

NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No. 53/2015-Customs dated 23 of November, 2015** seeks to amend Notification No. 10/2008 Customs, dated 15th January 2008, so as to deepen the tariff concessions in respect of specified goods under the Comprehensive Economic Co-operation Agreement (CECA) between India and Singapore, when imported from Singapore.

OUR TAKE: In the said notification the Table containing Tariff is substituted.

COURT DECISIONS

M/S. PODDAR PIGMENTS LTD. VERSUS C.C.E., JAIPUR-I (CESTAT NEW DELHI)

BRIEF: Denial of refund claim. Unjust enrichment. That burden cannot be deemed to have been discharged merely by saying that the price of the final products reduced after the import of the impugned goods because the price of the final product does not depend solely on the price of the impugned goods.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that even in the case of CC Vs. Hindalco Industries Ltd. (2008 (9) TMI 372 - HIGH COURT OF GUJARAT AT AHMEDABAD) the Gujarat High Court only stated that no provision existed in section 18 of the Customs Act, 1962 which would permit Revenue to invoke principles of unjust enrichment in relation to duty paid in excess, found to be so, upon finalisation of provisional assessment under section 18 ibid. While that was certainly the case, (i.e., Section 18 ibid did not expressly contain provision regarding unjust enrichment) the invocation of doctrine of unjust enrichment does not require the crutches of any section of any act in the light of the fact that the said doctrine was required to be invoked in all cases involving refund of duty in the wake of the judgement of Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. Vs. Union of India (1996 (12) TMI 50 - SUPREME COURT OF INDIA) which laid down the principles of unjust enrichment as law of the land. - doctrine of unjust enrichment is applicable even in respect of raw materials to be consumed it, settled by Supreme Court in the case of Union of India Vs. Solar Pesticides Pvt. Ltd. (2000 (2) TMI 237 - SUPREME COURT OF INDIA).

It is not in dispute that the burden to establish that the burden of duty has not been passed on to any other person squarely rests on the appellant. That burden cannot be deemed to have been discharged merely by saying that the price of the final products reduced after the import of the impugned goods because the price of the final product does not depend solely on the price of the impugned goods. No infirmity in impugned order. [**Decided against the assessee**]

M/S. S.J. FABRICS PVT. LTD. AND ANR. VERSUS UNION OF INDIA AND ANR. (CALCUTTA HIGH COURT)

BRIEF: Denial of import duty benefit equivalent to 2 of FOB value of exports - Focus Products Scheme FPS - the decision cannot be reversed at a later point of time by change of interpretation of the description of the goods by a policy circular with retrospective effect.

OUR TAKE: The hon'ble **CALCUTTA HIGH COURT** held that the exporter, on reliance of the earlier interpretation and enforcement of the policy made exportation of the said goods with the expectation of earning duty benefits, which were earned on previous occasions. On that basis he exported goods on this occasion too. He thereby altered his position. All of a sudden, enforcement of this notification with retrospective effect deprived him of this duty legitimately earned. This is plainly unjust. An administrative action should have finality. When goods are legitimately exported under the existing policy duty is earned. The Government takes a decision in clearing particular exports, which results in earning of this duty benefit. This decision at that point of time is to be taken as final in normal circumstances and cannot be reversed at a later point of time by change of interpretation of the description of the goods by a policy circular, with retrospective effect. - respondent authorities are restrained by an order of injunction from denying any duty benefit to the writ petitioners earned by virtue of export of goods understood by the parties as Technical Textiles, before 21st October, 2011. [**Decided in favour of assessee**]

INCOME TAX

COURT DECISIONS

COMMISSIONER OF INCOME TAX, DELHI VERSUS M/S. SI GROUP INDIA LTD. (SUPREME COURT)

BRIEF: Principal requirement for the applicability of Section 41. Whether the assessee must obtain a benefit in respect of a trading liability by way of a remission or cessation thereof?

OUR TAKE: The hon'ble **SUPREME COURT** held that the

assessee had not been granted the benefit of the said cessation for the Assessment Years in question, the High Court [2010 (6) TMI 18 - BOMBAY HIGH COURT] has rightly held that one of the requirements for the applicability of Section 41(1)(a) of the Act had not been fulfilled in the present case. [**Decided in favour of assessee**]

THE COMMISSIONER OF INCOME TAX (TDS) VERSUS M/S. PRIYA BLUE INDUSTRIES PVT. LTD (GUJARAT HIGH COURT)

BRIEF: Not collection of tax at source on Old and used plates Non-excisable (exempted) like furniture wood etc. Trading of scrap (melting) and High seas sale. The products obtained by the assessee in the course of ship breaking activity are usable as such and therefore do not fall within the definition of scrap. TCS u/s 206C is not required.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that the Tribunal, in the impugned order, has recorded that the items/products in question obtained from the activity of ship breaking are usable as such and, therefore, do not fall within the definition of scrap. However, since the assessee had not collected tax at source on items other than items obtained out of the manufacturing activity in the course of ship breaking, the Tribunal has remitted the matter to the Assessing Officer for the purpose granting relief to the assessee under the provisions of section 206C (1) of the Act with regard to only sale of scrap arising out of manufacturing activity in the course of ship breaking after providing due opportunity of hearing to the assessee. Thus, the Tribunal after recording a finding of fact to the effect that the products obtained by the assessee in the course of ship breaking activity are usable as such, and, therefore, do not fall within the definition of scrap has remitted the matter to the Assessing Officer to grant relief accordingly. Essentially, therefore, the impugned order of the Tribunal is based upon a finding of fact which does not give rise to any question of law. [**Decided against revenue**]

PARAS BUILDTECH INDIA PRIVATE LIMITED VERSUS COMMISSIONER OF INCOME TAX (DELHI HIGH COURT)

BRIEF: Rejection of books of accounts. The explanation added by way of Notes to the Accounts was not taken note of by the ITAT when it came to the conclusion that the percentage completion method should apply to the Assessee. Project completion method was certainly one of the recognized methods and has been consistently followed by it.

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that the settled legal position as far as Section 145 of the Act is concerned is that it is not open to an AO to reject the accounts of an Assessee unless he comes to a determination that notified accounting standards have not been regularly followed by the Assessee. As pointed out by the CIT (A) in the order dated 2nd July, 2010, the AS of the ICAI did not have any statutory recognition under the Act although it was binding under the Companies Act, 1956. The method of accounting followed by the Assessee in the present case i.e. project completion method was certainly one of the recognized methods and has been consistently followed by it.

In the present case, there was therefore no good reason for the ITAT to have reversed the finding of the CIT (A). The only reason given in the impugned order of the ITAT is that 'risks and rewards' of ownership were transferred to the buyers who had paid the booking advance amounts and in some cases these rights were transferred to third parties. However, this does not in any manner affect the treatment of the said amounts in the books of the Assessee. As noted hereinbefore, the expenses of construction were not debited to the P & L account of the Assessee. It was shown as cost of construction or block of buildings. It is only as and when a conveyance deed was executed or possession delivered that the receipt was shown as income. The explanation added by way of Notes to the Accounts was not taken note of by the ITAT when it came to the conclusion that the percentage completion method should apply to the Assessee.

The other aspect that appears to have escaped the attention of the ITAT is that the Assessee offered to tax in the subsequent FY the amounts received and therefore there was no actual loss to the revenue. [**Decided in favour of assessee**]

As far as AY 2006-07 is concerned, it is apparent that the ITAT in the impugned order lost sight of the fact that the advances received by the Assessee were in respect of a project that never took off. A part of the advance amount was returned in the following FY since the transaction itself fell through. In the circumstances the question of treating the amounts as income in the hands of the Assessee did not arise. No purpose was going to be served in remanding the matter to the AO for a fresh determination. [**Decided in favour of assessee**]

TRIUNE ENERGY SERVICES PRIVATE LIMITED, COMMISSIONER OF INCOME TAX-9 VERSUS DEPUTY COMMISSIONER OF INCOME TAX, SAIPEM TRIUNE ENGINEERING PVT. LTD. (DELHI HIGH COURT)

BRIEF: Question whether the valuation of goodwill is appropriate. Calculation of the intangible and deprecation thereon. ITAT has rejected the view that the slump sale agreement was a colorable device. Once having held so the agreement between the parties must be accepted in its totality. The Agreement itself does not provide for splitting up of the intangibles into separate components.

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that the issue whether depreciation is allowable on goodwill is no longer res integra. In Smifs Securities Ltd. (2012 (8) TMI 713 - SUPREME COURT), the Supreme Court had answered the question "Whether goodwill is an asset within the meaning of section 32 of the Income-tax Act, 1961, and whether depreciation on 'goodwill' is allowable under the said section" in favour of the Assessee.

From an accounting perspective, it is well established that 'goodwill' is an intangible asset, which is required to be accounted for when a purchaser acquires a business as a going concern by paying more than the fair market value of the net tangible assets, that is, assets less liabilities. The difference in the purchase consideration and the net value of assets and liabilities is attributable to the commercial benefit that is acquired by the purchaser. Such goodwill is also commonly understood as the value of the whole undertaking less the sum total of its parts. Thus we are inclined to accept the contention advanced on behalf of the Assessee that the consideration paid by the Assessee in excess of its value of tangible assets was rightly classified as goodwill

In the facts of the present case, the ITAT has rejected the view that the slump sale agreement was a colourable device. Once having held so, the agreement between the parties must be accepted in its totality. The Agreement itself does not provide for splitting up of the intangibles into separate components. Indisputably, the transaction in question is a slump sale which does not contemplate separate values to be ascribed to various assets (tangible and intangible) that constitute the business undertaking, which is sold and purchased. The Agreement itself indicates that slump sale included sale of goodwill and the balance sheet drawn up on 22nd September, 2006 specifically recorded goodwill at Rs 40,58,75,529.40/-. As indicated hereinbefore Goodwill includes a host of intangible assets, which a person acquires, on acquiring a business as a going concern and valuing the same at the excess consideration paid over and above the value of net tangible assets is an acceptable accounting practice. Thus, a further exercise to value the goodwill is not warranted. The question framed is answered in the negative, that is, in favour of the Assessee and against the Revenue.

STATE TAXES

ALL INDIA VAT

ANDHRA PRADESH

The **Govt. vide Circular No. CCTs Ref No.BII(3)/42/2015, dated 24 November, 2015** issued certain instructions regarding conducting VAT audit.

OUR TAKE: Readers are requested to read the said Circular. It is self-explanatory.

ASSAM

The **Govt. vide Notification No.FTX.90/2004/Pt-II/65, dated 13 November, 2015** make the rules further to amend the Central Sales Tax (Assam) Rules, 1957.

OUR TAKE: There is insertion of Rule 8EC and amendment of Rule 11A. Readers are requested to read the said Notification. It is self-explanatory.

DELHI

The **Govt. vide Notification No. F.3(352)Policy/VAT/2013/1062-73, dated 23 November, 2015** in partial modification of Notification No.F.3(352)/Policy/VAT/2013/929-940 dated 21/10/2015 notify that the Form DP-1 shall be submitted online by all the dealers latest by 31/12/2015. The form shall be filed by dealers registered upto 31/10/2015.

The **Govt. vide Notification No. F.3(475)/Policy/VAT/2014/1078-84, dated 26 November, 2015** issued instructions in continuation of Circular No. 15 of 2014-15, whereby all the Zonal Authorities are directed to ensure that once the proposal for restoration of registration is approved by the Competent Authority, then

registration of the dealers should be restored within 3 working days positively.

GUJARAT

The **Govt. issued a Public Notice** and stated that dealers are requested to approach unit offices to get Manual Acknowledgement for Physical challan of VAT/CST above Rs 10 lacs in Unit Offices where Payment Date is 16-Nov or earlier only. This is opened for 15 days only. Then after Dealer shall not be issued any manual acknowledgement

of tax payment of Rs 10 lacs and above from any unit office.

HARYANA

The **Govt. vide Notification No. 27/ST-1/H.A. 6/2003/S.59/2015, dated 24 November 2015** amends Schedule E appended to Haryana Value Added Tax Act, 2003 by dispensing with the condition of previous notice.

OUR TAKE: In Schedule E, under column 1, 2, 3 and 4, serial number 3(b) and entries there against shall be substituted and shall be deemed to have been substituted with effect from the 7th September, 2015. Readers are requested to read the said Notification for the substituting conditions in details.

The **Govt. vide Public Notice** to inform all the liquor licensees in the state of Haryana that the Department of Excise and Taxation, Haryana is launching the system of online issuance of Permit and Pass for Bottled Spirits with effect from 01.12.2015.

OUR TAKE: Readers are requested to read the said Notice for the instructions and guidelines for the successful implementation of the online issuance of Permits and Passes. Further, User manual for the application of online issuance of permit and pass and payment of license fee and creation of corpus shall be available on the website of the Department i.e. www.haryanatax.gov.in.

WEST BENGAL

The **Govt. vide issued order dated 9 November, 2015** against application filed by Hewlett Packard Sales Private Limited stated that concerned goods i.e. Software are Goods and taxable according to relevant Rules under West Bengal Value Added Tax Act.

OUR TAKE: Readers are requested to read the said Order. It is self-explanatory.

The **Govt. vide issued order dated 9 November, 2015** against application filed by M/s TIL Ltd. regarding applicability of VAT on crane.

OUR TAKE: Crane is neither specified by name nor by description under any of the Schedule under West Bengal Value Added Tax Act, 2003. Its sale in the state will be taxed at 14.5% under the Act. However, the same will be taxed at 5% as Capital Goods subject to conditions for the capital goods prescribed under the said Act.

COURT DECISIONS

ALL-ASSAM NON-GOVERNMENT HEALTH ESTABLISHMENT ASSOCIATION AND G.N.R.C. LTD, VERSUS STATE OF ASSAM REPRESENTED BY THE COMMISSIONER AND SECRETARY, FINANCE DEPARTMENT. AND OTHERS (GAUHATI HIGH COURT)

BRIEF: Challenge to the luxury tax, in view of the amended definition of the "luxury provided in a hospital" by virtue of the amendment to clause (7A) to section 2 of the Assam Tax on Luxuries (Hotels and Lodging Houses and Hospitals) Act, 1989, is levied on the hospitals. Any facility like the air-conditioner and television provided to the patient or his attendant in a private hospital should definitely be construed as a luxury and liable for luxury tax.

OUR TAKE: The hon'ble **GAUHATI HIGH COURT** held that it is pertinent to note that in judgment in Godfrey(supra) the Supreme Court has laid down the test to determine whether the facility is a luxury or otherwise, "the requirements of the common man is a determinative factor to find out whether any facility is a luxury or otherwise. It is further observed that the facility so provided should be costly and generally recognized as beyond the necessary requirement of an

average member of the society". If this test is considered, any facility like the air-conditioner and television provided to the patient or his attendant in a private hospital should definitely be construed as a luxury and liable for luxury tax. Besides, the Assam legislature has brought about an amendment to the Assam Tax on Luxuries (Hotels and Lodging Houses and Hospitals) Act, 1989, specifically to define the "luxuries provided in a hospital" with a determinate connotation. The said definition includes the facilities like air-conditioner and television provided to the patient or his attendant is within the ambit of a luxury. The dissection of the definition of "luxury provided in the hospital" consists of multiple components: a residence provided to a patient or his attendant in the hospital with the facility of air-conditioner and television or radio or any other services provided thereto in connection with the residence. The rate of tax is variable as per the luxury provided in a hospital. If only a room is provided without having the facility of air-conditioner and television, such a situation would not come within the definition of "luxury provided in the hospital". [**Decided against assessee**]

OTHER UPDATES

FEMA

The **Govt. vide Press Note No. 12 (2015 Series), dated 24 November, 2015** amends the Consolidated FDI Policy Circular of 2015 (FDI Policy), effective from May 12, 2015, and as amended from time to time.

OUR TAKE: The Govt. Review of Foreign Direct Investment (FDI) policy on various sectors. Readers are requested to read the said Note. It is self-explanatory.

The **Govt. vide Circular No 31, dated 26 November, 2015** issued direction regarding Investment by Foreign Portfolio Investors (FPI) in Corporate Bonds.

OUR TAKE: The Govt. decided to permit FPI to acquire NCDs/bonds, which are under default, either fully or partly,

in the repayment of principal on maturity or principal installment in the case of amortizing bond.

The **Govt. vide Circular No. 29, dated 26 November, 2015** issued instructions regarding evidence of import of Goods into India.

OUR TAKE: With the establishment of Free Trade Warehousing Zones / SEZ Unit warehouses, imported goods can be stored therein, for re-export / re-selling purposes for which Customs Authorities issue Ex-Bond Bill of Entry. AD banks are advised to consider the Bill of Entry issued by Customs Authorities named as Ex-Bond Bill of Entry or by any other similar nomenclature, as evidence for physical import of goods.

Further, in cases where goods have been imported through couriers, the Courier Bill of Entry, as declared by the courier companies to the Customs Authorities, may also be considered as evidence of import of goods.

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