ASC Times

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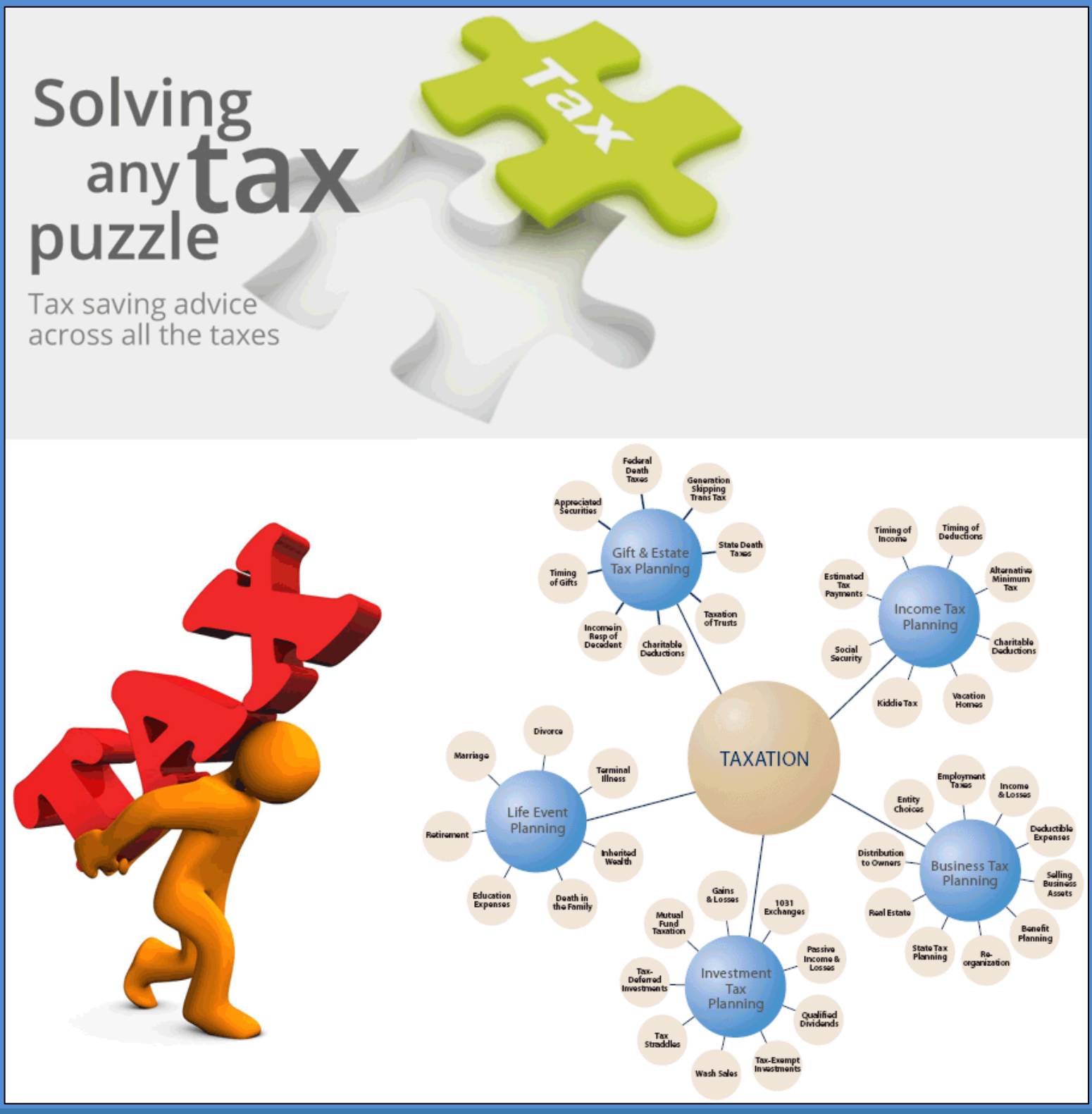

From the CEO's Desk

Hi All,

A belated Happy & Colorful Holi. Though weather played a spoilt sport and children's final exams are another constraint, but I am sure most of us celebrated Holi in high spirits.

Now coming to the agenda, Budget 2015-16 is out and also all the possible interpretations for the same. India is a big country and mostly unorganized. People differ in opinions and actions, and having said that laying policies and making rules which will please everyone is almost impossible is an accepted fact. But I want to talk about some obvious observations.

One such thing is about the tax payers which is barely 3% of the population (about 35 million) who in any case are the law abiders and most of their money is well accounted for but promoting to use of credit or debit cards, payments by cheques etc., will have more burden on them and any measures for erosion of black money (which is estimated at one third of the GDP) can go in vain.

Then there are some sectors such as agriculture, which is exempted of any taxes. Here problem is manifold. One is of having an amendment in the constitution for bringing it in tax bracket, and another one is that where most of the small and medium size farmers are still somehow managing their bread and butter, there is a huge chunk of rich and super rich farmers who are accumulating wealth without being burdened and enjoy all the possible benefits of being a "farmer" so to say. And third and most important that agriculture comes under states jurisdiction. So the big question in front of the government arises that, "How to increase the number of taxpayers?"

Politics and economy is inseparable. Any change in one affects another, so keeping intact political interests while proposing economic policies is the toughest task for any government.

Stay Active.
Alok Kumar Agarwal
CEO

TAX CALENDAR

Due Date	Compliances from 09/03/2015 to 16/03/2015
10thMar	VAT, CST, ET, WCT, PT Payment for Chhattisgarh
10thMar	WCT Payment for West Bengal, Nagaland, Mizoram, Arunachal Pradesh, Madhya Pradesh
14th Mar	VAT,CST,ET Payment for Rajasthan
15th Mar	WCT Payment for Delhi, Haryana, Jharkhand, Punjab, Rajasthan, Himachal Pradesh
15th Mar	VAT,CST,ET,WCT,PT Payment for Sikkim, Jharkhand, Bihar

Country Wide Holidays for the Week

NO HOLIDAYS FOR THE WEEK

Index Guide

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

SIDDHARTH SURYANARAYAN V/S UNION OF INDIA SECRETARY MINISTRY OF FINANCE DEPARTMENT OF REVENUE AND OTHERS(Madras HC)

BRIEF: The petitioner claims to be an actor in movies and submits that his job involves skills to display different kinds of emotions, dialogue delivery skills and acting characters specified by film Director. He states that these skills are not different from an actor who performs with similar skills in theatre or drama. The petitioner has filed the present writ petition seeking to assail the notification No. 25/2012 dated 20.06.2012 (1960) providing for an exemption in respect of services provided by performing artist or folk or classical art forms of music, dance or theatre from the liability towards service tax under Section 66-B of the Finance Act, 1994.

OUR TAKE: In the above case**, the Hon'ble Madras High Court** held that an element of drama or acting in both the cases of theatre and films does not necessarily mean that the two activities are identical, taking into consideration the circumstances in which films are made and theatre is performed. Notification No. 25/2012 dated 20.06.2012 provides exemption only to performing artists in theatre or drama and not to artists in films. The two categories are clearly different and distinguishable and cannot be treated at parity. The exemption vide this notification is given to support the native art and culture and encourage them as they suffer from financial constraints. This is not the position of films **[Decided against the assessee]**

M/S WELSPUN MAXSTEEL LTD. V/S COMMISSIONER OF CENTRAL EXCISE, RAIGAD(CESTAT Mumbai)

BRIEF: The appellant took input service credit on those services that were availed in course of their business activity being manufacturer of excisable goods. The Department by order denied the input service credit on the premise that the same do not qualify for the benefit under Rule 2(l) of the Cenvat Credit Rules, 2004.

The services in dispute are as under:-

(a) Running and maintenance of barges and tugs,
(b) Insurance services,
(c) Horticultural services and
(d) Canteen services

OUR TAKE: In the above case, the **Hon'ble CESTAT Mumbai** held that **insurance cover on employees and on their dependents** have no relation to the business activity of the appellant. Therefore credit availed on service tax paid on the "insurance service" is not admissible. For the rest of the services appellant is entitled for input service credit as per the judgment of the **Ultra Tech Cement Ltd**. **[Decided in favour of assessee]**

K. PADMA V/S COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX - HYDERABAD-III (CESTAT Bangalore)

BRIEF: The appellant has made available their buses to the APSRTC under agreement wherein the APSRTC would ply the buses on predetermined routes covered by stage carriage permits held by the owner, with a time schedule fixed by the APSRTC, and the bus owner would provide the services of drivers to the Corporation and would be paid by the corporation, hire charges at per km. Department had issued show-cause notice to the appellant demanding service tax along with interest under the head 'rent-a-cab' service and proposing penalties under various provisions of the Finance Act 1994. The appellate authority also ordered the assessee to pre-deposit 10% of the service tax.

OUR TAKE: In the above case **the Hon'ble CESTAT Bangalore** held that it is a prima facie view that the activity of the bus owners cannot be classified as rent-a-cab service. Accordingly, the demand is set aside and the pre-deposit is waived off. **[Decided in favour of assessee]**

RADIO MID DAY WEST (INDIA) LTD. V/S COMMISSIONER OF SERVICE TAX, MUMBAI-I (CESTAT Mumbai)

BRIEF: An audit was conducted in the factory of the appellant in February 2008 and it was found that the amount deducted on account of income tax as TDS was not included in the taxable value. Therefore, there was a short payment of service tax. Accordingly, impugned proceedings were initiated invoking the extended period of limitation. The appellant immediately paid the amount of differential service tax along with interest but show-cause notice was issued for imposition of penalty under Section 76, 77 and 78 of the Finance Act, 1994. The appellant is in appeal against the impugned order.

OUR TAKE: In the above case, the **Hon'ble CESTAT Mumbai** held that the only error committed by the appellant is that

they have not included the amount of TDS deducted at the time of calculating the taxable service and that may be due to the ignorance of law. Therefore, appellant are entitled to benefit of Section 80 of the Finance Act, 1994. Accordingly, as per Section 73 (1) of the Finance Act, 1994, the appellant were not required to be issued show-cause notice for imposition of penalty. Accordingly, after giving benefit of Section 80, the imposition of penalty against the appellant under various provisions of the Finance Act, 1994 is set aside. **[Decided in favour of assessee]**

CENTRAL EXCISE

COURT DECISIONS

M/S CENTURY LAMINATING COM. V/S COMMISSIONER OF CENTRAL EXCISE, MEERUT (Allahabad HC)

BRIEF: The assessee applied for permission to store the inputs used outside the factory permission. This application was rejected subject to the condition that the assessee could bring in the goods in smaller lots and take credit on the receipt of the last and final lot. Based on the aforesaid direction, the assessee started bringing the goods in smaller lots and availed credit on receipt of the last and final lot. However, the last and final lot was received after the expiry of six months from the date of the initial issuance of the invoice. Thus a SCN was issued stating that the assessee had wrongly availed the credit.

OUR TAKE: In the above case **the Hon'ble Allahabad High Court** held that manufacturer shall not take credit after six months of the date of issue of any document. However, there wasn't any deliberate delay on the part of the assessee. Since the transaction was executed by the assessee on the direction of the Superintendent, the appellant was entitled to the credit. [**Decided in favour of assessee]**

M/S 3M INDIA LTD. V/S COMMISSIONER OF CENTRAL EXCISE (LTU), BANGALORE (CESTAT Bangalore)

BRIEF: Appellant is a Large Tax Payer Unit (LTU) and is engaged in the manufacture of self-adhesives, plastic labels, glues, adhesives, etc. The appellant is availing the benefit of Cenvat credit scheme in terms of the Cenvat Credit Rules, 2004. During the period of dispute the appellant had availed Cenvat credit on various inputs and input services of more than Rs. 49 crores and it was submitted that the appellant received on an average 4500 to 5000 invoices/bills/challans etc. on the basis of which they availed credit. The appellant got the work of data entry and maintenance of records relating to Cenvat credit based on these documents by outsourced manpower. It is his submission that because of bona fide and genuine mistakes arisen, there was availment of excess credit of more than Rs. 67 lakhs during the period and taking note of this fact during the audit of the appellants unit, proceedings were initiated culminating demand for wrongly availing Cenvat credit with interest and imposition of penalty.

OUR TAKE: In the above case **the Hon'ble CESTAT Bangalore** held that besides excess credit being availed, a short credit availment was also there which shows that there wasn't any malafide intention of the assessee. As soon as the omission was pointed out, the entire amount of Cenvat credit wrongly availed by them with interest was paid. Thus, it is clear that the excess availment of credit or the short availment of credit was due to clerical error and the penalty imposed was set aside. **[Decided in favour of assessee]**

M/S CIPLA LTD. V/S COMMISSIONER OF CENTRAL EXCISE, MUMBAI (CESTAT Mumbai)

BRIEF: The appellant is a manufacturer of medicaments and procured capital goods and availed Cenvat credit on the value of capital goods as per the invoice issued by the supplier of capital goods. The said capital goods were put into use, thereafter; the capital goods were sold on a transaction value with payment of duty on transaction value. Revenue is of the view that these goods were removed as such, thereafter, the appellant is required to reverse Cenvat Credit equivalent to the amount of Cenvat Credit availed on such capital goods. The proceedings were initiated against the appellant and the impugned orders confirmed the said demand.

OUR TAKE: In the above case, the **Hon'ble CESTAT Mumbai** held that when the capital goods have been put to use and cleared on transaction value, the assessee is required to pay Central Excise duty on transaction value and not required to reverse the Cenvat Credit availed on such capital goods. It is not res integra as already held in the decision of **Cummins India Ltd. (supra)**. Therefore, the impugned order is set aside. **[Decided in favour of assessee]**

CUSTOMS

COURT DECISIONS

JAI DURGE TRADING CO. V/S COMMISSIONER OF CUSTOMS (IMPORT) (CESTAT Mumbai)

BRIEF: The appellant did not clear the goods covered by the IGM consisting of 1,19,887 kgs. of black matpe within a period of thirty days as stipulated under Section 48 of the Customs Act nor did they discharge the Customs duty liability. Therefore, the shipping agent has applied for amendment of the IGM for substitution of appellant's name with that of M/s. BGH Exim Ltd., in as much as the goods were incurring heavy detention/demurrage charges and the latter was willing to clear the goods. Accordingly, the Assistant Commissioner has allowed amendment of the IGM. The appellant is in appeal against the same.

OUR TAKE: In the above case, the **Hon'ble** CESTAT Mumbai held that Section 149 of the Customs Act provides for amendment of IGM as per the discretion of the proper officer. Since the importer did not clear the goods nor did he pay duty within thirty days from the date of unloading of the goods, it clearly shows that the appellant was not interested in clearance of the goods and had abandoned their claim of the goods. Therefore, the amendment of the IGM sought by the shipping agent for substituting the name of the importer with M/s. BGH Exim Ltd. cannot be faulted at all. When an importer fails to pay for the goods and abandons/refuses them, the supplier continues to remain the owner of the goods and that he can transfer the document of title to another person and thereafter person will be entitled to clear the goods. **[Decided againstassessee]**

SURAT TEXTILES MILLS LTD. V/S COMMISSIONER OF CUSTOMS (IMPORT), NHAVA SHEVA(CESTAT Mumbai)

BRIEF: The appellant imported certain plants and machinery for set up of synthetic filament yarn unit under the Project Import Regulation. At the time of importation of the impugned goods, the appellant made a security deposit and also paid the duty for clearance of the goods provisionally. Later on, the assessments were finalized. It was found that the security deposit made by the appellant is in excess of the duty payable by them. Consequent to it, the appellant filed a refund claim which was rejected on the premise that the appellant has failed to pass the bar of unjust enrichment.

OUR TAKE: In the above case, the **Hon'ble CESTAT Mumbai** held that even when Section 27 had provisions relating to provisional assessment prior to when Section 18 was not amended prior to 2006 to incorporate the provisions of the bar of unjust enrichment, the provisions of the bar of unjust enrichment would not apply. The bar of unjust enrichment arises after process of finalization of adjustment of duty and assessment is completed. Therefore, in case where security deposit is made provisionally and the assessment is finalized the bar of unjust enrichment is not applicable. **[Decided in favour of assessee]**

INCOME TAX

COURT DECISIONS

COMMISSIONER OF INCOME TAX V/S NISHI MEHRA, ARUN MEHRA, SUSHIL MEHRA, SUBHASH MEHRA, SURBHI MEHRA, MANJU MEHRA (Delhi HC)

BRIEF: The assessees had purchased eight different properties which were related to each other. The allegations made by the Revenue against the firm and its partners were that the high profit margins enjoyed by it were concealed and only modest amounts were disclosed in the ITRs. The Assessing Officer referred the properties for valuation to the District Valuation Officer (DVO) under Section 142A of the Income Tax Act and later concluded that there was a serious discrepancy between the declared value and the value determined by the DVO and thus made additions.

OUR TAKE: In the above case, the **Hon'ble Delhi High Court** held that it is settled law that in the absence of any incriminating evidence that anything has been paid over and above than the stated amount, the primary burden of proof is on the Revenue to show that there has been an understatement or concealment of income. It is only when such burden has been discharged, would it be permissible to rely upon the valuation given by the DVO. However, there was no material in the course of the search pointing to undervaluation of the assessees' properties which were ultimately held to have been the subject of under valuation. The assessee had also disclosed the transaction value of the assets as and when the actual purchases were effected. Wealth Tax authorities too had accepted the valuation. Thus, the AO could not have brought to tax the amounts that he ultimately did merely based upon the DVO's report in the absence of any material pointing to undervaluation. **[Decided in favour of assessee]**

COMMISSIONER OF INCOME TAX III V/S AMRAVATI DISTRICT CENTRAL COOPERATIVE BANK LTD (Bombay HC)

BRIEF: The questions to be answered are:

i) Whether on the fact and in the circumstances of the case the learned ITAT was justified in holding that the assessee is entitled to deduction u/s 80P(2)(a) of an

amount Rs. 39,32,829/- being commission derived from Cotton Hundi business even though such an activity is not carrying on the business of banking itself but an activity in addition to the activity of carrying on the business of banking?

ii) Whether the learned ITAT was justified in holding that the assessee is entitled to deduction u/s 80P(2)(a) of an amount Rs. 43,75,229/- being commission on electricity bill even though such an activity was in addition to the carrying on the business of banking?

OUR TAKE: In the above case, the **Hon'ble Bombay High Court** held that the facility of collection of bills provided by the bank is found to qualify as banking activity and the commission has been thus allowed to be deducted under Section 80P(2)(a) of the Act.
Also, held that the cheques issued by the State Government to the cotton growing farmers as price of cotton purchased are immediately honoured by the assessee and the State Government then reimburses the assessee after some time. It is, therefore, obvious that the funds of the bank are used in the process and for such use the State Government is compensating it by paying the commission. Therefore, the said commission also qualifies for such deduction. **[Decided in favour of assessee]**

INCOME TAX OFFICER, WARD 15(2), NEW DELHI V/S M/S RAJPUTANA STORES (BOMBAY) (P) LTD. (ITAT Delhi)

BRIEF: The **assessee has taken unsecured loan from a sister concern, on which it has paid interest @ 10% which works out to Rs. 82,75,818/- for the year under consideration. The assessee had further advanced loan to another sister concern @ 10% and earned interest amounting to Rs. 56,72,979/-. The Assessing Officer held that the said transactions were sham and there was no justification regarding deriving any profit in the transaction. Thus, the A.O. disallowed the difference amount of Rs. 26,02,839/- and completed the assessment u/s 143(3) of the I.T. Act.**

OUR TAKE: In the above case, the **Hon'ble ITAT Delhi** held that loan transactions have been carried out through account payee cheques and the same has been duly recorded in the books of account. The receipt and the payment of interest have also been recorded in the books of account. The assessee is in the same business from the last and subsequent years, and no such disallowance has been made then. The Revenue has, also, not produced any documentary evidence establishing that the business of the assessee is not genuine and the transactions are sham. Rejection of the books of account and disallowance of expenses cannot be done whimsically without proper basis. **[Decided against Revenue]**

INCOME-TAX OFFICER V/S M/S BIHANI COMMERCIAL (ITAT Kolkata)

BRIEF: The assessee debited carriage inward expenses to transporters of Rs. 3,34,08,822/- paid to six transport companies having goods carriages for the purpose of hiring towards carriages of goods. The officer is of the view that assessee is liable to deduct TDS on the payment made to these transport companies for debiting carriage inward expenses paid to transporters u/s 194C of the Act and therefore disallowed the entire amount.

OUR TAKE: In the above case, the **Hon'ble ITAT Kolkata held that** the assessee has debited carriage inward expenses paid to six transport contractors, who are transport companies in the carriage business for the purpose of hiring towards carriage of goods. Once the hiring is made, the contract exists, as to whether verbal or written. Once there is a verbal contract the provision of section 194C will apply following which the provisions of 40(a)(ia) shall definitely apply. **[Decided in favour of Revenue]**

THE DEPUTY COMMISSIONER OF INCOME TAX, CHENNAI V/S M/S. IM. GEARS PVT. LTD. (ITAT Chennai)

BRIEF: The Assessing Officer while completing assessments disallowed agency commission payments made to non-resident agents as the assessee did not deduct TDS under section 195 of the Act. The Assessing Officer invoking provisions of section 40(a)(i) of the Act disallowed such payments made by the assessee to non-resident agents. The Assessing Officer was of the view that since the Board has withdrawn Circular No. 786 dated 7.2.2000 which deals with the payment of export commission to non-resident agents, the payments made by the assessee towards sales commission to non-resident agents is liable for TDS under section 195 of the Act.

OUR TAKE: In the above case, the **Hon'ble ITAT Chennai** held that TDS is required to be deducted on all payments to non-residents if the said payments are liable for tax in India. In the instant case, the commission payments to the non-resident agents are not taxable in India as the services are rendered abroad and the agents have no Permanent Establishment in India. Therefore, there is no requirement to deduct TDS on these payments. **[Decided in favour of assessee]**

STATE TAXES

ALL INDIA VAT

HARYANA-PUBLIC NOTICE

BRIEF: The Haryana Excise & Taxation Department has undertaken a comprehensive computerization of all its activities under which the Dealers will be able to get online Registration, Payment of Tax, Filing of Returns, Forms, and Refunds etc. With this initiative, unnecessarily going to the department by the dealers shall be done away with.

OUR TAKE: The Department shall provide a user id and a password to enable the online process for each dealer. The dealers are therefore required to provide their e-mail, mobile no. and Proprietor/Firm/Company copy of PAN to their respective wards in the Department before 12th March, 2015 in the format attached to the public notice so that their User ID and Password could be sent on their emails. The dealers whose above said information is not provided, shall not be able to use the online facilities provided by the Department and the dealers who have already provided the said information to the Department, need not give it again.

COURT DECISIONS

RUCHI SOYA INDUSTRIES LTD. V/S STATE OF MP. AND OTHERS(Madhya Pradesh HC)

BRIEF: The petitioner has not been granted the benefit of set-off as provided under the provisions of sections 14(1)(a), (2) and 26A(7) of the VAT Act. The petitioner purchased the goods, i.e., soya seeds, mustard seeds and crude oil. These goods have been consumed in manufacture of soya oil and De-Oiled Cake (DOC). The aforesaid product is a by-product. It is tax-free in accordance with entry No. 3 of Schedule I of the VAT Act. However, the edible oil and other by-products, such as, sludge and waste of sludge are taxable goods under entry No. 31 of Schedule II of the VAT Act. The taxing authority has opined that the petitioner used soya seeds in the manufacture of edible oil and DOC. The DOC, a by-product, is not taxable, hence, the petitioner is not entitled to the benefit of set-off as provided under sections 14(1)(a), (2) and 26A(7) of the VAT Act and the petitioner is liable to pay tax at 4% in accordance with the provisions of section 26A(5) of the VAT Act.

OUR TAKE: In the above case, the **Hon'ble Madhya Pradesh High Court** held that the assessee would be entitled to set-off the entire tax paid by it on the purchase of raw material. The principle of apportionment could not be invoked. In the facts and circumstances of the present case, the judgment of the Hon'ble Supreme Court is applicable because the DOC, a by-product is tax-free and another by-product sludge and main product oil are taxable. Hence, the authority cannot apportion the tax liability after deducting the percentage of proportionate manufacture of DOC, which has been done in the present case. Following decision of **COMMISSIONER OF SALES TAX, BOMBAY V/S BHARAT PETROLEUM CORPN. LTD. [1992 (2) TMI 250 - SUPREME COURT OF INDIA] [Decided in favour of assessee]**

OTHER UPDATES

MCA

CLARIFICATION RELATING TO FILING OF E-FORM DIR-11 & DIR-12 UNDER THE COMPANIES ACT, 2013- REGARDING

The MCA vide **General Circular No.03/2015 dated 3rd March 2015 has clarified that the Registrar of Companies within their respective jurisdictions are authorized, on request from the stakeholders, and after due examination, to allow any one of the resigned director who was an authorized signatory Director for the purpose of filing DIR-12 only along with additional fees, as applicable and subject to compliance of other provisions of Companies Act 2013.**

RBI

REVISION OF BANK RATE, REPO RATE AND REVERSE REPO RATE

The **RBI vide Circulars dated 4th March 2015 has reduced the** Repo rate under the Liquidity Adjustment Facility (LAF) by 25 basis points from 7.75 per cent to 7.50 per cent with immediate effect.

The Reverse Repo rate under the LAF will stand adjusted to 6.50 per cent with immediate effect.

The Bank Rate stands adjusted by 25 basis points from 8.75 per cent to 8.5 per cent with effect from March 4, 2015.

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