



**VIJAYAWADA BRANCH OF  
SOUTHERN INDIA REGIONAL COUNCIL OF  
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**



# NEWS LETTER

For Private Circulation Only

**VOL.XI**

**JANUARY, 2010**

**OFFICE BEARERS FOR THE  
YEAR 2009-2010**

**CA. DURGA PRASAD DARISIPUDI**

Chairman

(O) 2577040, (R) 2475001, Cell: 98660 73288  
E-mail: ddurga\_prasad@hotmail.com

**CA. B.V.S. LINGA MURTY**

Vice-Chairman

(O) 2568164, (R) 2565631, Cell: 98481 14696  
E-mail: lingamurty@hotmail.com

**CA. P. SUBBARAYUDU**

Secretary

(O) 2432968, (R) 2436900, Cell: 94401 72460  
E-mail: rayuduca@gmail.com

**CA. KUNDA RAMA NARAYANA**

Treasurer

(O) 2573968, (R) 2575788, Cell: 98494 20772  
E-mail: ramukunda@yahoo.com

**CA. CHITTA AMAR SUDHEER**

CHAIRMAN SICASA

(O) 2571857, (R) 2479423, Cell: 98491 21421  
E-mail: sudheerchitta@rediffmail.com

**CA. S. GOPALAKRISHNA MURTHY**

Member

(O) 2574593, (R) 2476584, Cell: 93944 76584  
E-mail: sgkmvja@yahoo.com

**CA. SATYANARAYANA G.V.V.**

Ex-Officio of the Branch

(O) 2477461, (R) 2470087, Cell: 98490 81461  
E-mail: gvvsatyam\_2003@yahoo.co.in

**Chairman's Column**

**Dear Colleagues,**

At the outset let me wish all the members and their family members a prosperous and happy new year 2010. I also wish all concerned a very happy Makar Sankranti, which is considered as the biggest festival for all concerned who are residing along the coastal districts. Let us all hope the turmoil which we are undergoing would come to an end in near future. Development is possible only when there is lasting peace. It is also disturbing to note that the Industry is having a second look for making investment in our state. Let us all hope that wisdom is dawn upon all concerned and that things start to move forward for further development of this wonderful state of Andhra Pradesh.



It is also gratifying to note that this time also the elections for new Managing Committee of the branch would be a unanimous affair at the special general meeting. I would thank all concerned in making this possible. The results for the elections to the central council and regional council have been announced and let us all congratulate all the winners. It is also heartening to note that CA GVV Satyanarayana, a member of our branch got reelected to the regional council.

I would also like to inform all that the furnishings and interiors of new building project would be completed very soon and the building would be ready for occupation by this month end. The date of inauguration is being worked out and the details will intimated separately. I once again appeal to all the members to contribute their might to this project.

Finally I thank the speakers CA S.Gopalakrishna murthy of Vijayawada, and CA M.Sriram of Vijayawada for spending their valuble time for the branch.

With warm regards

**D.DURGA PRASAD**  
Chairman

**EDITORIAL BOARD**

Editor, **CA. S. GOPALAKRISHNA MURTHY**

Member, **CA. D. DURGA PRASAD**

Member, **CA. P. SUBBARAYUDU**

Branch website address: [www.vijayawadaicai.org](http://www.vijayawadaicai.org)

Branch E-mail: [vijayawada@icai.in](mailto:vijayawada@icai.in)

Phone: 0866 - 2432406

## Human wants versus needs

The very nature of the mind is to be dissatisfied, not be contented, and not be in the present moment. The mind can only exist either in the past or the future because you cannot have thoughts in the present moment. So, by its very nature, the mind will chase desires. We have to bring awareness to ourselves and understand whether our desires are actually ours or borrowed from others.

When you go for a drive in your car and notice an expensive Mercedes alongside, you start thinking, “It is time to buy a new car ... may be a Mercedes”. Until then you were happy, but now, seeing somebody else’s car, a desire has entered you to possess that same vehicle. You have borrowed the desire of that car owner — this borrowed desire is an example of a want, not a need, which is born out of comparison. Drop all your prestige problems and do an honest self-analysis of your desires. If you cannot drop your prestige when alone, how will you drop it when you are with people!

Before sending you to planet Earth, Existence furnishes you with the energy to fulfill all that you will require to live a contented and fulfilling life. But when you start spending this energy to realise borrowed desires, you start feeling that you are not equipped with enough energy for fulfilling all your desires. You experience discontentment because your own desires have not been fulfilled. The moment one want is fulfilled, numerous wants arise within you because you borrow more desires from others.

The enlightened master Ramana Maharshi says, “The mind is such that it shows a tiny mustard seed to be a huge mountain until it is attained. As soon as it has been attained, even a mountain appears as insignificant as a mustard seed!”. We all function around these three axes of doing, having and being. Doing for having, without enjoying being, is the cause of all our misery. Doing never catches up with having! Every time you work hard and fulfill one desire, suddenly that desire loses its pull over you.

As soon as one desire is fulfilled, you attract another desire — you don’t even have time to enjoy your fulfilled desire and feel satisfied. You start thinking, “Just let me acquire one more thing. Then I can relax and enjoy what I have.” Be very clear, your mind will never allow it happen. You have enough energy for fulfilling all of your needs but not your wants. The only way to really live and enjoy life is to enjoy the very doing itself. Then automatically the doing, having and being, will be integrated and will happen. Be Blissful!

— PARAMAHAMSA NITHYANANDA

## Gist of Case Laws on Direct Taxes

Compiled by Mr. S.S.R.Gupta, B.Com, F.C.A., D.I.S.A. F.I.V. M.P.V.A.I.

### **Forfeiture is transfer-Loss on forfeiture-Capital loss-s. 2[47], 45-DCIT vs. BPL Sanyo Finance Ltd [2009] 223 CTR 461 [Kar]**

Cancellation of allotment of shares on failure to deposit call money is “transfer” within the meaning of section 2[47] and consequent forfeiture of earnest money amounted to short term capital loss.

### **Interested witness - Evidence Act s.3-Joginder Singh vs. State of Punjab AIR [2009] SC 2263[it is not a case on direct taxes. But given because of its usefulness in survey and search operations]**

Merely because the eye witnesses are family members, their evidence can not per se be discarded, relationship is not a factor to affect creditability of witness

### **Income during construction period-Interest & Rent- s.4 & 56-CIT vs. Tehri Hydro Development Corporation [2009] 25 DTR 100 [Uttarakhand]**

Interest and rent received from employees and outsees in dam area had a nature of capital receipt, not chargeable to tax as the construction process was still on and the assessee had yet not started the business activity

### **Income-s.4-AY2003-04-Abraham Vittal v ITO, Ward 2[3] Mangalore-[2009] 119 ITD 71 [Bang]**

Even though assessee might have committed a serious economic offence, yet he could not be charged to income unless it was proved beyond doubt that said income was generated to him alone.

### **Waiver of amount of loan taken for acquiring capital asset is not taxable- s. 28, s.41- A.Y: 200-04-Cipla Investments Ltd v ITO-[2009] TIOL 707 ITAT Mum**

The assessee had in 1998 received a sum of Rs 8291076/-from its holding company towards share application money which was subsequently transferred to unsecured loans. The amount was utilized for investment in shares of other concerns. The shares so

purchased with borrowed funds were held as capital assets and income arising on transfer of shares was offered for tax under the head “income from capital gains”. In view of the losses incurred by the assessee, the holding company had written off the amount as unrecoverable whereas the assessee company had not written back the said amount as cessation of liability. The AO taxed the sum of Rs 8291076/- u/s 41[1] of the Act.

On appeal by the assessee CIT [A], the CIT [A] held that the provisions of s. 41[1] are not attracted but he held that the assessee’s business activity comprised investment in shares and securities and advancement of loan to various parties on interest. He also held that the amount was obtained in the course of business and by virtue of waiver of the amount by the holding company the assessee had gained in the course of the business and therefore the sum waived was held to be taxable u/s 28 of the Act. Aggrieved, the assessee preferred an appeal to the Tribunal. Allowing the appeal by the Assessee, the High Court held that

1. The CIT [A] was correct in holding that the provisions of s. 41[1] do not apply.
2. In view of the assessee’s contention that it has not done any trading activity nor shown any income as business income on investments made the findings of the CIT [A] that the amount was received in the course of its business are against his findings given while considering the addition u/s 41[1]
3. The assessee’s business activity may comprise investment in shares and securities, but as far as computation of income is concerned the profit and loss in those transactions are said to be under head “Capital Gains” but not “Business Income” hence, the gain earned by the assessee in the course of business in investment and advance of loans is in the capital field but can not be on the revenue field.

4. Remission of a debt by the holding company which was not claimed and allowed as deduction in any manner in any earlier previous year could not be brought to tax either u/s 41[1] or u/s 28[iv]. There is no benefit or perquisite arising to the assessee in this regard.
5. The decision of the Bombay High Court in the case of Solid Containers Ltd v Dy.CIT 308 ITR 417 does not apply to the facts of the case. The facts of the present case are similar to the decision of the Bombay High Court in the case of Mahindra & Mahindra Ltd v CIT 261 ITR 501. The loans availed for acquiring the capital assets i.e. shares, when waived can not be treated as assessable income by invoking the provisions of s. 28
6. Since the original receipt was undoubtedly capital in nature its waiver does not have the quality of changing the same in to a revenue receipt.
7. On facts, the provisions of s.28 do not apply and the amount is not taxable.

**Whether loan waiver is a ‘Cessation of trading liability’-s. 28[iv] & 41[1]-Accelerated Freez & Drying Co Ltd Dy CIT [2009] 31 SOT 442[Cochin]**

On the waiver of loan under a scheme formulated by Reserve Bank of India known as “One time Settlement Scheme”, the assessee credited the said waiver amount in General Reserve Account. The Tribunal held that loan amount waived could not be treated as its income either under s.2 [iv] or under section 41[1] because the loans availed by assessee from banks were not in the nature of trading liability but were in nature of capital liability and, therefore waiver, of loan liability was not waiver of any trading liability hence the provision of s. 41[1] was not applicable.

**Block of Asset- s.41 [1], 50-Nectar Beverages P Ltd vs. Dy.CIT [2009] 25 DTR 218 [SC]**

The assessee had sold soft drink bottles and crates on which depreciation was claimed @ 100% as the cost of each item was less than Rs 5000. The Supreme Court held that such receipts are not assessable under s.41[1] as it would have been taxable under s. 41[2] which

was omitted by Finance act 1988

The Supreme Court held that bottles and crates purchased before 31 March, 1995 would not be assessable under s.50 as they do not form part of block of assets in view of the proviso to s.32[1][ii]. However bottles and crates purchased later would be assessable under s.50 as the proviso was deleted.

**Speculation Transaction- Derivatives s.43 [5]-Shree Capital Services Ltd vs ACIT**

Transactions in derivatives in which underlying asset is shares will fall within the meaning of ‘commodity’ u/s 43[5] of the Act and hence it is speculative in nature.

**Bottling Fee under the Rajasthan Excise Act –does not fall under the curse of s.43B-CIT vs. McDowell and Co [2009] 314 ITR 174 [SC]**

The Supreme Court held that the bottling fee for acquiring the right of bottling Indian manufactured Foreign Liquor, was payable by the assessee as a consideration for acquiring an exclusive privilege and hence the amount did not fall within the purview of section 43B.

**Capital gains on dissolution-s.45 [4]-AY1998-99-Aum Chemicals v ACIT, Palghar Circle, Palghar-[2009] 119 ITD 21 [Mum]**

A partnership firm consisting of 2 partners was converted in to company. Partners were given shares of that company to the extent of their credit balances in Capital Account. It was held that since the condition of distribution of capital assets on dissolution of firm is not fulfilled, s.45 [4] is not applicable. Even otherwise after deducting cost of capital which was equal to book value, capital gain would be nil

**Cost of Acquisition-s.48-A.Y: 2002-03-Ishtiaque Ahmad v ACIT-ITAT Bench ‘C’, New Delhi**

Interest paid on the borrowings utilized for the purchase of the asset is eligible for deduction and indexation for the calculation of the Capital gains on sale of that asset u/s 48

**Short term capital loss set off-s. 70 [3], s.111A, s.115D- AY-2005-06-First State Investments [Hongkong] Ltd v Addl. DIT [International Tax]-[2009] TIOL 547 ITAT [Mum]**

As per the provisions of s.70 [3] r.w.s s.111A and s.115AD, the assessee has an option to set off the short capital loss against the short term capital gains. Short term capital loss suffered after 1-10-2004 could be set off against short term capital gains earned before 30-09-2004

**Loss Returns- Return revised-s.80, s.139 [3] & s. 139 [5]- A.Y: 2001-02 Dated: 21-3-2008-Escorts Mahle Ltd v DCIT-[2009] 119 ITD [Delhi ITAT]-Loss return filed within time could be revised and loss carried forward- DEPB/Duty Drawbacks does not constitute 'profits' derived from industrial undertaking- s.80IA-Liberty India vs. CIT [2009] 28 DTR 73 [SC] [2009] 317 ITR 218 [SC]**

The Supreme Court held that DEPB / Duty drawbacks are incentives which flow from Schemes framed by Central Government or from s.75 of the Customs Act, 1962, hence, incentives profits are not profits derived from the eligible business and therefore, do not form part of net profits of the industrial undertaking for the purpose of s.80IA and 80IB

**Export – Deduction –s. 80HHC deduction is allowable for s.115JB even if there are no normal profits despite Ajanta Pharma-DCIT vs. M/s Glenmark Laboratories Ltd ITA No 4155/Mum/2007 Source: itatonline.org**

The assessee's income was computed u/s 115JB as it had no income under the normal provisions of the Act. The assessee claimed that despite the absence of normal profits, it was eligible for deduction u/s 80HHC in computing the book profits under Expl [iv] of s. 115JB in accordance with the judgment of the Special Bench in Syncome Formulations 106 ITD 193 [Mum] [SB] and that the judgment of the Bombay High Court in Ajanta Pharma 223 CTR 441 [Bom] [Which held that Syncome Formulations was overruled] was not applicable. Held upholding the assessee's plea.

**In Syncome Formulations**, the special Bench had to

consider two questions i.e (a) Method of computation of deduction u/s 80HHC and (b) Percentage of deduction allowable in each year. As regards the percentage of deduction, the Special Bench held that the assessee would be entitled to 100% deduction. This view was overruled by the High Court in Ajanta Pharma where it was held that in view of s. 80HHC[1B], deduction was only allowable as per the limits set out therein. **However, the first issue as to the method of deduction u/s 80HHC was not before the High Court.** As per Sun Engineering 198 ITR 297, the observations of a Court have to be read in context. **Consequently, the judgment of the Special Bench on this aspect still held good and the assessee was entitled to deduction u/s 80HHC even though there were no normal profits.**

**Reassessment – Direction of higher authority s.147-CIT vs. Green world Corporation [2009] 314 ITR 81 [SC]**

The Assessing Officer for assessment year 2000-01 recorded a specific note in the assessment order which indicated that the assessment order was passed under the dictates of the Commissioner. The Supreme Court in the challenge to the reopening for the same assessment year held that the assessment order passed on the dictates of the higher authority, being wholly without jurisdiction, was a nullity. Therefore, with a view to do complete justice to the parties, the Supreme Court directed that the assessment proceedings should be gone through again.

**Deduction – Co-operative Society s.80P-Udaipur Sahkari Upbhokta Thok Bhandar Ltd vs. CIT 26 DTR 82[SC] / 315 ITR 21**

The Supreme Court held that the burden is on the assessee to establish that the income comes within the favour corners of section 80P [2] [e]. The deduction is available only in respect of income derived from letting of godowns or warehouses, where the purpose is for storage, processing or facilitating the marketing of commodities. The Supreme Court confirmed the order of the High Court where it had held that the assessee was storing the goods in the godowns for its own trading activity and hence not eligible for deduction under

s.80P

**Interest u/s 234C-AY: 2004-05-Itratech Cement Ltd v Dy. CIT-ITAT 'E' Bench, Mumbai**

Interest u/s 234C is not payable, even though seems mandatory, if, on the date of payment of advance tax it is not known whether the demerger scheme will be sanctioned or not and from which date it would be sanctioned.

**Tribunal's duty to pass speaking Order s.254-CIT vs. India Carbon Limited [2009] 315 ITR 315 [Gau]**

Merely confirming CIT [A]'s order with out recording reasons, ITAT's order to be set aside and has to be remanded back. The order of the Tribunal does not satisfy even the bare necessities of an order of a quasi judicial body, and hence, to be set aside.

**Penalty for concealment of particulars- whether amounts to concealment-s.271-1-c-AY-2004-05-Nera (India) Limited v DCIT**

It was held by the ITAT 'F' Bench, New Delhi that non bifurcation of Short Term Capital Loss from the overall Business Loss does not amount to concealment of income and furnishing of inaccurate particulars of income.

**Penalty – Concealment s.271 [1][c]-CIT vs. Atual Mohan Bridal [2009] 28 DTR 82 [SC]**

The High Court had relied upon the decision of CIT vs. Ram Commercial Enterprises 246 ITR 568 [Del] which was approved by the Supreme Court in the case of Dilip N Shroff vs. JCIT 291 ITR 519 [SC]. The Supreme Court set aside the matter for fresh consideration to the High Court since in the case of Union of India vs. Dharmendra Textiles 306 ITR 277 [SC] the Supreme Court has held that Dilip N Shroff is no longer a good law

**Business Expenditure – replacement expenditure is neither “current repairs” nor “revenue”-CIT vs. Sri Mangayarkarasi Mills Pvt Ltd -[2009] 182 Taxman 143 [SC]**

To constitute “current repairs” u/s 31 the expenditure must be incurred to ‘preserve and maintain’ an already

existing asset and not to bring a new asset into existence or to obtain a new advantage. For determination of ‘current repairs’ the question whether the expenditure is revenue or capital is not the proper test. If the machine was an independent entity and its replacement brought in to existence a ‘new asset’, it was not current repairs.

**Non Reasoned Order-ICICI Bank Ltd and Anr vs. State of Maharashtra and Anr [2009] Vol 111 [8] Bom L.R 3532**[it is not a case on direct taxes. But given because of its usefulness in stay applications and proceedings]

Application for stay filed by the petitioner was dismissed with out a reasoned order. Petition was filed challenging the action of the Authorities exercising quasi-judicial functions under the VAT Act were required to give reasons as any other quasi judicial Tribunal entrusted with judicial functions. The court held that when an application for stay is moved, all authorities exercising quasi-judicial functions under the VAT Act have to give reasons as any other quasi-judicial Tribunal entrusted with judicial functions. In the instant case, the order communicated to the parties clearly disclosed that no reason for dismissal of application for stay is stated. Order set aside.

**Refund of stamp duty – Limitation-K.T Abdul Salam vs. State of Kerala & Ors AIR 2009 [NOC] 2451 [ker] Refund of stamp duty** [it is not a case on direct taxes. But given because of its usefulness in recovery of money spent on stamp papers purchased/ stamp duty paid by error/mistake]

Application for refund to be made with in prescribed period of Six month

**Indexation of the cost to the previous owner-Deputy CIT vs. Manjula J shah (318 ITR [AT] 417 Mum SB)**

In this case, it was held that when assessee acquired an asset by any of the modes referred in s. 49[1] of IT Act 1961, then the indexation of the cost of asset can be made right from the year the previous owner acquired the asset. Because of this, the contrary decision in Dy

CIT vs. Kishore Kanungo 290 ITR AT 298 Mum stands reversed while the decisions in Mrs Pushpa Sofat vs. ITO 81 ITD 1 CHD and Smt Mina Deogun vs. ITO 117 TTJ KOL 121 have been affirmed

**TDS non payment-default-Tube Investments of India Ltd & Anr vs. ACIT & Ors [2009] 229 CTR [Mad]**

The constitutional validity of s. 40[a] [ia] was upheld by the Madras High Court in this case. Even though the constitutional validity was challenged on various grounds, the High Court have upheld the same mainly on the strength of the proviso to the said section which was construed as meant to dilute the rigour of the section. However, one interesting observation made in this decision is that the default of non recovery of TDS u/s 201 as well as its impact of disallowance u/s 40[a][ia] can be cured in a situation where the assessee makes the payment of the corresponding TDS amount on his own with out there being any scope for deduction from the concerned recipient of the payment

**Condonation of delay in filing before High Court-The CIT vs. Mohd Farooq [2009] 226 CTR 360 [ALL-FB]**

In this case, it was held that the period of limitation prescribed for filing a tax case appeal to the High Court u/s 260A [2] is not subject to the provisions contained in sections 4 to 24 of the Limitation Act and therefore, the High Court has no power to condone the delay in filing the appeal. They also held that the principles of natural justice are not remotely attracted so far as the limitation is concerned.

**Claim of interest on bank loan in assessment without claiming it in accounts-A.Ys: 2002-03 & 2003-04 -ACIT v Technofab Engg Ltd-[2009] TIOL 664 ITAT [Del]**

The CIT[A] directed the AO to allow liability of interest although the same was not debited to the books of account and the said claim was not made by filing a revised return. Aggrieved, the revenue preferred an appeal to the Tribunal. Held that the CBDT has issued circulars, which are binding on the Department, to the

effect that the assessee should be properly guided in relation to the claims. The CBDT has emphasized upon the AOs to assess the correct income to tax. If the assessee is following a particular method of accounting and he has omitted to claim the deduction or exemption, to which he is otherwise entitled, the board has emphasized that the AO should guide the assessee so that the correct income is assessed as per the provisions of the Act. In circular No 14 dated 11-4-1955 CBDT has emphasized that the department should not take advantage of the assessee's ignorance to collect more tax out of him than the liability due from him. This circular is very much binding on the Department. In the light of the said Circular and also in view of the findings of the CIT [A] that the claim made by the assessee was a perfectly legal claim supported by the method of accounting which the AO has accepted from year to year, the Tribunal upheld the order of CIT [A]. The appeal filed by the Revenue was dismissed.

**OBITUARY**



**We deeply mourn the sad demise of CA. KOTHAMASU KAMESWARA RAO on 29th December, 2009. On behalf of Vijayawada Branch of SIRC of ICAI, we pray the almighty to give sufficient strength to his family and friends to overcome the sad demise.**

**“May his soul rest in peace”.**

*The fact that people are full of greed, fear or folly is predictable. This sequence is not predictable.*

FORTHCOMING PROGRAMMES FOR MEMBERS DURING THE MONTH OF JAN., 2010

Date	Name of the Event	Speaker	CPE Credit	Delegate Fee	Venue	Time
16.01.2010 Saturday	CPE Lecture meeting on "A Discussion on Sec.40(a)(1A) of the Income Tax Act.	CA. G. Gangadhar Vijayawada	2 Hours	FREE	Branch Premises	6.00 to 8.30 P.M
26.01.2010 Tuesday	REPUBLIC DAY - Flag Hoisting	--	--	--	Branch Premises	9.00 A.M.



***Contribute generously  
for the New Building Project  
of Vijayawada Branch of SIRC of ICAI***