



VIJAYAWADA BRANCH OF SIRC OF ICAI NEWS LETTER



VOL - I

For Private Circulation Only

March, 2014

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Dear Professional colleagues,

It is indeed a great pleasure to communicate with my professional colleagues through Newsletter.

I thank all of you for the confidence reposed on me and giving me the opportunity to serve this dynamic, vibrant branch as Chairman. The forthcoming year will see the continuation of current activities as well as venturing into new areas. I am quite confident that with your valuable support and guidance, we shall be able to perform well and live up to your expectations. Let me first put on record of appreciation of wonderful work being done by all my predecessors and we endeavour to reach the standards set by them whole heartedly.

The details of office bearers and other managing committee members for the term 2014-2015 are published elsewhere in this Newsletter.

On 19th February 2014, immediately after taking over charge, we have organized a Seminar on "Profession-The way forward". We thank CA.J.Venkateswarlu, Central Council Member for accepting our invitation as chief guest and delivering valuable lecture on the above topic.

On 24th February 2014, our branch conducted one Blood donation camp and 75 students donated their Blood in this camp. My hearty congratulations to the students who participated in this camp.

Our branch is going to conduct one day CPE Seminar on Wednesday 12th March 2014 on Bank Audit and request all the members to participate in the seminar. We are also planning to conduct Bank Audit seminar for CA Students in the 3rd week of March, and members are requested to send their students.



EDITORIAL BOARD

Editor : CA. S. AKKAIHAH NAIDU

Members : CA. B. SHIVAJI PRASAD, CA. SRINIVAS AGNIHOTRAM, CA. V. RAMA MOHAN REDDY

Once again, on behalf of all the members of our managing committee, I thank all the members for giving us this opportunity and assure our best services.

Thanking you

yours sincerely



(CA.SUNKARA AKKAIAH NAIDU)
CHAIRMAN

Date: 28/02/2014

BLOOD DONATION CAMP on 24th February, 2014



2014 (3) TMI 143 - CESTAT KOLKATA - Service Tax

M/s. KOLKATA PORT TRUST Versus COMMISSIONER OF CENTRAL EXCISE, HALDIA

Waiver of predeposit of service tax - Imposition of equal amount of penalty imposed under Section 78 and penalty imposed under Section 76 - Held that:- Applicant had received the service of M/s. Fels Cranes Pvt. Ltd., Singapore, an overseas company, against a contract for designing, manufacturing, supplying, installing, testing and commissioning of 4 numbers of Rubber Tyred Cranes - Prima facie the entire contractual value had been assessed to customs duty, considering the same as goods. Consequently, even if it is considered as 'works contract' comprising the value of goods as well as the services, the principle of vivisectioning the contract, at this stage, cannot be considered as the issue had been referred to the Larger Bench. Besides, we find that the Applicant Company being a Government of India Undertaking and the issue, prima facie, being not settled, the Applicant could not be able to make out a case for total waiver of the dues adjudged. Consequently, predeposit of all dues adjudged is waived and its recovery stayed during pendency of the Appeal - Stay granted.

2014 (3) TMI 142 - CESTAT BANGALORE - Service Tax

M/s Campco Chocolate Factory Versus Commissioner of Central Excise, Mangalore

Denial of cenvat credit - Outdoor Catering Service received in the factory canteen and used for supplying food to the workers/employees - Waiver of Pre-deposit - Held that:- The food supplied to the workers/employees was subsidised to the extent of 50% - Following Commissioner vs. Ultratech Cement Ltd. [2010 (10) TMI 13 - BOMBAY HIGH COURT] - subsidy in the matter of serving food to workers by making use of outdoor catering service was held to be immaterial insofar as the manufacturer's claim of CENVAT credit on the service was concerned - the appellant directed to pre-deposit an amount of Rupees One lakh as pre-deposit - upon such submission rest of the duty to be stayed till the disposal - Partial stay granted.

2014 (3) TMI 141 - CESTAT AHMEDABAD - Service Tax

Shri Bharatsinh Bavajiraj Gohil Versus CCE Bhavnagar

Waiver of the pre-deposit - Demand of service tax - Cargo handling services - Held that:- contract talks about transportation of goods as well as loading and unloading of the goods either at the stock yard or at the godowns. Since the entire issue needs to be appreciated from the evidence on record and the findings recorded by the lower authority, we are of the view that the appellant has not made out a prima facie case for the complete waiver of the pre-deposit of the service tax liability confirmed by the lower authorities - Conditional stay granted.

2014 (3) TMI 140 - CESTAT NEW DELHI - Service Tax

M/s. Jaypee Bela Plant Versus CCE, Bhopal

GTA services can be treated as output service or not - Suo moto credit allowed or refund u/s 11B to be filed - Waiver of Pre-deposit - Held that:- The show cause notice itself mentions that the recredit had been reflected in the ER-I Return as Cenvat credit statement had been filed with the ER-I Return and that it is from this statement that the department came to know about the recredit - the appellant have declared the fact of re-credit in their ER-I Return and this return was available with the department - the demand prima facie appears to be time barred - Pre-deposit of cenvat credit demand, interest and penalty waived till the disposal - Stay granted.

2014 (3) TMI 137 - DELHI HIGH COURT - FEMA

ARUN KUMAR MISHRA AND M/s AJANTA MERCHANTS PVT LTD Versus UNION OF INDIA & ANR AND THE DIRECTORATE OF ENFORCEMENT

Principle of natural justice - appellant contends that if the appellants have a right in law to cross-examine the witnesses whose testimonies are intended to be used against the appellants, why should this Court not interfere at this stage itself instead of allowing the Adjudicating Authority to proceed on a futile exercise and which will only result in multiplicity of proceedings. - Proceedings under Prevention of Money Laundering Act, 2002.

Held that:- The Adjudicating Authority is currently seized of and in seisin of the complaints. We, at this stage, do not know as to which way the order of the Adjudicating Authority will go. It cannot also be said at this stage whether the Adjudicating Authority even if deciding against the appellants will rely upon the material before it qua which the appellants claim a right of cross-examination. All this can be known only when the Adjudicating Authority passes an order and qua which if the appellants are aggrieved, the appellants shall have their statutory remedy. Any interference by us at this stage in the proceedings of which the Adjudicating Authority is seized is thus uncalled for and would result in a situation which the Supreme Court has warned the High Courts to avoid. - The Supreme Court [2006 (11) TMI 543 - SUPREME COURT OF INDIA] held that the writ jurisdiction being discretionary, should not ordinarily be exercised by quashing a show cause notice. - Decided against the petitioners.

2014 (3) TMI 154 - DELHI HIGH COURT - Income Tax

Acorus Unitech Wireless Private Limited Versus Assistant Commissioner of Income Tax

Reassessment proceedings u/s 147 / 148 - validity of notice - non supply of documents to the assessee i.e. 2G Spectrum Report - Held that:- The order sheet entries demonstrate a clear and chronological compliance with the earlier order of the Court - In any case, the previous order of the Court expressly bars any objections by the petitioner to the fresh notice on the ground that the Revenue "had earlier issued notice under Sections 147/48 dated 5 July, 2011 - the petitioner's present argument is that the proceedings are vitiated because the reasons in this case were recorded before the earlier notice was dropped - the argument is attempting to play the legality of the second notice against the existence of the first notice - was one that the previous order of this Court foresaw and specifically barred in terms of the order dated 28.5.2012, which is now final and binding upon both parties - thus, the notice is required to be set aside would set to nought the direction of the Court in the earlier writ petition - Decided against Assessee.

Adequacy of the material disclosed to justify reassessment proceedings - Whether the Revenue is within its right to keep the 2G Spectrum Report from the assessee on the ground of confidentiality or whether the failure to supply the report vitiates the proceedings and Whether the reasons to believe that income has escaped assessment in this case meet the test under Section 148 and judicial directives in that regard - Held that:- Far from holding that all documents used by the AO, let alone specific documents indicated by the assessee, are to be disclosed - Only when the privilege is claimed as regards the reasons recorded or when no material is provided in addition to the mere assertion of the subjective satisfaction of the AO, may the principle denying privilege or confidentiality operate - Even then, the claim for privilege may still prevail in that the Court may consider the manner in which the documents are to be inspected, but such questions does not arise in cases such as the present, where concrete and specific details - which support the belief under Section 147/148 - are communicated to the assessee independent of the document sought to be disclosed - Thus, the non-disclosure of the 2G Spectrum Report does not affect the notice - Decided against Assessee with costs.

2014 (3) TMI 153 - GUJARAT HIGH COURT - Income Tax

Commissioner of Income Tax Versus Hiraben Govindbhai Patel

Amount to be taken as LTCG - Whether the ITAT has erred in confirming the order of CIT(A) directing the Assessing Officer to adopt the amount of Long Term Capital gain by adopting the sale consideration as per registered Sale Deed - Held that:- CIT(A) has given a clear finding that the MOU and no other document can be a basis for the conclusion reached by the Assessing Officer and on the basis of these documents, a presumption cannot be raised about receiving the cash by the assessee - no specific evidence is referred to by the Assessing Officer about the allegation that assessee has been paid any amount in excess of the price of Rs. 7.36 crores as per the documents - the price has been accepted by the stamp duty authority and it is not disputed by the authority - thus, there was no infirmity in the order of the CIT(A).

The entire issue is based on evidence on record, duly considered by CIT (A) as well as the Tribunal to come to a concurrent factual finding - MOU did reflect the sale price of Rs. 14.71 Crores, nevertheless, the agreement to sale as well as the sale deed recorded the sale consideration of Rs. 7.35 Crores - There was no material to suggest that any sale consideration in excess of the said amount was actually paid - the CIT (A) as well as the Tribunal both have considered the development and limited use of land to the purchaser - Fifty per cent of the land was likely to be reserved - The AO did not have any other evidence barring the MOU to controvert such evidence - CIT (A) as well as the Tribunal relied on the valuation report of the registered valuer - Without any further evidence, the Assessing Officer could not have substituted such amount - Decided against Revenue.

2014 (3) TMI 152 - GUJARAT HIGH COURT - Income Tax

Pratapbhai Virjibhai Patel Versus Income Tax Officer

Reversal of CIT(A)'s order - Proper explanation not made - Addition made u/s 68 of the Act - Unaccounted cash credit - Whether the assessee offer explanation for different amounts credited in his account - Held that:- The Tribunal had not committed any error so as to give rise to substantial question of law - Entire issue was based on facts - The tribunal on the basis of evidence came to the conclusion that explanation was not acceptable - Different creditors were agriculturists and odd amounts were deposited - There was no explanation for this phenomena - the CIT(Appeals) decided the issue in favour of the assessee without pointing out as to which additional evidence admitted by the tribunal and considered by him had clinched the issue in favour of the assessee - Thus, the CIT(Appeals) in essence shifted the burden of establishing such facts on the Revenue rather than on the assessee - the entire issue is based on appreciation of facts - thus, no question of law arises - Decided against Assessee.

2014 (3) TMI 151 - GUJARAT HIGH COURT - Income Tax

Commissioner of Income Tax- III Versus Kamlaben Sureshchandra Bhatti

Admission of additional evidence under Rule 46A of the Act - Held that:- The CIT (A) recorded that the notice of hearing issued by the Assessing Officer on 31st October 2011 was received by the assessee on the date of hearing itself - It was therefore that the assessee could not produce necessary evidence on such date - When subsequently, he attended the office of the Assessing Officer on 25th November 2011 with necessary evidence, he learnt that the order of assessment was already passed on 21st November 2011- on this ground that the CIT (A) permitted additional evidence to be produced - thus, CIT (A) committed no error nor the admission of additional evidence can be stated to be in breach of the requirement of Rule 46A of the Rules - Particularly when the interest of the Revenue was safeguarded by calling for the remand report and permitting the Assessing Officer to comment on such additional evidence - there is no reason to interfere - Decided against Revenue.

Deletion confirmed by Tribunal - Held that:- CIT(A) was of the view that the entries of cash deposited are duly reflected in the personal cash book which the appellant has submitted under Rule 46A - The appellant has given documentary evidence relating to loans taken - thus, the source of the same is not questionable - From the contents of the order passed by the CIT (A), it can be seen that the entire issue is based on appreciation of evidence on record - The CIT (A) having undertaken detailed exercise of reconciling the accounts and examined the source of different deposits in cash, limited the addition to Rs. 10,45,000 - thus, there was no question of law arises - Decided against Revenue.

Deletion made u/s 69 of the Act - CIT(A) was of the view that the source of cash is duly explained by the appellant with the help of cash book and sources of cash deposited in the cash book and in the bank account - thus, the source of investment in the property is treated as explained - The CIT (A) has given cogent reasons and found no grounds for sustaining the addition made by the Assessing Officer - the source of investment in the property stood explained - the order of the CIT(A) confirmed by the Tribunal - thus, no question of law arises - Decided against Revenue.

2014 (3) TMI 150 - KARNATAKA HIGH COURT - Income Tax

THE COMMISSIONER OF INCOME TAX, BANGALORE AND THE ASST COMMISSIONER OF INCOME TAX, BANGALORE Versus M/s TEXAS INSTRUMENTS (INDIA) PVT LTD.

Calculation of days of employment - Entitlement for deduction u/s 80JJAA of the Act - Whether new regular workmen had completed 300 days employment during the previous year - Held that:- The court ordered that the Tribunal shall address the question after giving an opportunity of being heard to the parties and also allowing them to produce further evidence/materials in support of their case, if they so desire - the other question remained open by the court - Decided in favour of Revenue.

2014 (3) TMI 149 - KERALA HIGH COURT - Income Tax

DAWN EDUCATIONAL CHARITABLE TRUST Versus COMMISSIONER OF INCOME TAX, KOCHI

Rejection of registration u/s 12AA of the Act - Application u/s 12A of the Act - Assessee imparting education as a posh international school - Held that:- Even if nomenclature of the trust may indicate it is meant for charitable purpose, but if activities reveal otherwise, that should weigh with the authorities who grant registration - also, while considering claim of exemption, authorities under the Act would look into the actual activity of the institution, especially main activity of the institution - In the absence of facts indicating that the activities carried on attracts definition of charitable purpose, one cannot find fault with rejection of registration - When the school is running on commercial lines under the clad of charitable purpose, the parties were justified making enquiries and rejecting the application - thus, there is no reason to interfere in the order of the Tribunal - Decided against Assessee.

2014 (3) TMI 148 - GUJARAT HIGH COURT - Income Tax

GUJARAT GAS CO. LTD. Versus ASSISTANT COMMISSIONER OF INCOME TAX

Claim of deduction towards rent for the entire period between 1990 to 1997 - User rent liability towards GIDC - Held that:- There was nothing on the record to suggest that the liability for the earlier years crystallized during the year under consideration - The assessee was following mercantile system of accounting - The assessee had to account for the expenditure during the year when the liability crystallized - There was no elaboration how such liability crystallized during the period - As the Company is having mercantile accounting system, expenses are accounted on accrual basis - thus, lease rent payable to GIDC Ankleshwar/Bharuch has been accounted under Prior Period Expenses during the year - If for some reason even after laying the pipeline, the liability had not crystallized and was therefore open for the assessee to postpone the expenditure or the provision - the assessee had to demonstrate how during the current year, such liability could be claimed as having crystallized - There is nothing on the record to suggest that liability for such prior period expenses crystallized during the said period - Decided against Assessee.

2014 (3) TMI 147 - GUJARAT HIGH COURT - Income Tax

Commissioner of Income Tax-II Versus Gujarat Ambuja Export Ltd.

Restriction of addition - Bogus purchases made - Applicability of Section 40A(3) of the Act - Whether the Tribunal has substantially erred in restricting the addition made by the Assessing Officer to 5% of the total bogus purchases made - Held that:- The entire issue is based on materials on record - The Tribunal did not accept the Revenue's stand that the purchases were bogus, in the sense that no material was received - the Tribunal held that the material was actually received for which payments were made - The Tribunal has not committed any error so as to give rise to any question of law - The Tribunal looking to the material retained portion by giving cogent reasons - the assessee could produce before the authorities the precise rate at which the purchases were made from M/s. Vishal Traders and other suppliers to demonstrate that the purchases made on the same day carried the same price - This would substantially eliminate the angle of the purchase price being artificially inflated - the Tribunal also noted other parameters such as higher net and gross profit rates of the present year compared to the earlier years of the recent past - thus, no question of law arises - Decided against Revenue

2014 (3) TMI 146 - GUJARAT HIGH COURT - Income Tax

Commissioner of Income Tax Versus Industrial Extension Bureau

Option given under clause (2) of Explanation to Section 11 (1) of the Act - Unspent income of the Trust -Held that:- The assessee did exercise the option as is apparent from the letter supplied by the assessee - the assessee conveyed to the Department that the assessee gave a notice of option exercised by the Trust to allow to spend surplus amount that may remain at the end of the previous year ended on 31st March 2009, during the immediately following the previous year i.e., 2009-10 - Two things are thus abundantly clear - firstly, that such option was exercised before last date of filing the return, which was 30th September 2009 and secondly, that such option was exercised in terms of clause (2) of Explanation to Section 11 (1) of the Act - This was clearly not an option under subsection (2) of Section 11 - The caption of the communication dated 22nd September 2009 as well as the contents of the letter make this clear - thus, the assessee cannot be precluded from pursuing the option on the ground as was done by the Assessing Officer that no declaration in the prescribed form was made - the declaration was required only if the assessee's option was to be covered by the provision of Section 11 (2) of the Act.

The Tribunal has taken note of facts on record namely that the option in fact was exercised within the time permitted under the statute - It was a bona fide error to indicate a wrong figure - The intention to avail carryover of the unspent income to the next year was clear - Relying upon Trustees of Tulsidas Gopalji Charitable And Chaleshwar Temple Trust v. Commissioner of Income Tax [1993 (9) TMI 75 - BOMBAY High Court] Commissioner of Income Tax v. Ziarat Mir Syed Ali Hamdani [2000 (11) TMI 110 - JAMMU AND KASHMIR High Court] - the requirement of exercising an option within the time permitted under clause (2) of Explanation to Section 11 (1) of the Act is directory and not mandatory - Substantial compliance thereof would therefore be sufficient - the Tribunal had committed no error in granting the benefit to the assessee for the entire amount since it was a mere oversight or bona fide error in not indicating the correct and full amount for the option under clause (2) of Explanation to Section 11 (1) of the Act - Decided against Revenue.

2014 (3) TMI 145 - GUJARAT HIGH COURT - Income Tax

Commissioner of Income Tax II Versus Southern India Bidi Works Pvt. Ltd.

Disallowance of excess Interest u/s 40A(2)(a) of the Act - Commercial expediency not proved - Held that:- The assessee paid interest in the range of 12% to 18% on unsecured loans - in the business of making beedies finances were needed for steady flow of cash to keep the business going - The interest rates were related to old borrowings - In the earlier years, such interest rate was accepted by the Revenue - also, the directors in question were in the highest tax bracket - thus, there is no reason to interfere in the findings of the Tribunal - thus, there was no question of law arises - Decided against Revenue.

Addition made u/s 41(1) - waiver of sales tax liability - Mercantile system of accounting followed - Held that:- The Revenue submitted that the Karnataka Government had issued a circular during the previous year relevant to the assessment year under consideration waiving sales tax liability to the tune of Rs.22.51 lacs, but it was during the year that the liability thus ceased - The assessee instead accounted for such amount much later during the year when the refund was actually paid - the assessee following mercantile system of accounting must surrender the benefit when the right is accrued and cannot wait for the actual repayment - thus, the question is admitted for consideration - Decided partly in favour of Revenue.

GLIMPSES OF INSTALLATION OF OFFICE BEARERS



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Chairman with the Past Chairmen



Staff presenting Memento to Past Chairman CA. B. Shivaji Prasad



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