

SIRC Newsletter

PRICE - Rs.5

APRIL 2012 | Volume 37 ■ Part 10



Southern India Regional Council ▶ THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA ▶ SET UP BY AN ACT OF PARLIAMENT



**UNION
BUDGET
2012**



Chief Guest CA. S. Balasubramanian, Chairman, City Union Bank inaugurating. (L-R): CA. V. Murali, CCM-ICAI, CA. E. Phalguna Kumar, CA. Gopal Krishna Raju, CA. P.R. Aruloli, Regional Council Members of SIRC, CA. K. Viswanath, Chairman-SIRC of ICAI and CA. P.V. Rajarajeswaran, Secretary-SIRC.

CPE SEMINAR ON BANK BRANCH AUDIT

March 3, 2012 - Chennai

Resource Persons



CA. H. Anil Kumar
Bangalore



CA. S. Rajeshwari
Chennai



CA. V. Chandrasekaran
Chennai



CA. Amarjit Chopra
Past President-ICAI



PANEL DISCUSSION ON UNION BUDGET

March 16, 2012 - Chennai

Resource Persons



CA. T. Banusekar
Chennai



Adv. K. Vaitheeswaran
Chennai

- ◀ **CA. K. Viswanath, Chairman-SIRC of ICAI** addressing the delegates. (L-R): Adv. K. Vaitheeswaran, Chennai, CA. T. Banusekar, Chennai and CA. E. Phalguna Kumar, Chairman-Taxation Committee of SIRC of ICAI.

PUBLIC MEETING ON UNION BUDGET

March 21, 2012 - Chennai

Resource Persons



CA. Dr. Girish Ahuja
New Delhi



CA. Nishant Shah
Mumbai



Mr. B.S. Raghavan, IAS
Former Chief Secretary
Government of Tripura



- CA. K. Viswanath, Chairman-SIRC of ICAI** addressing the Members of ICAI and public. (L-R): CA. P.V. Rajarajeswaran, Secretary, SIRC, CA. Dr. Girish Ahuja, New Delhi, Mr. B.S. Raghavan, IAS, Former Chief Secretary, Government of Tripura and CA. Nishant Shah, Mumbai.

CPE SEMINAR ON REVISED SCHEDULE VI & XBRL

March 24, 2012 - Chennai



Mr. Henry Richard, Registrar of Companies (TN) (4th from left) inaugurates. (L-R): CA. R. Sundararajan, Chennai, CA. P.V. Rajarajeswaran, Secretary, CA. E. Phalguna Kumar, Member, CA. K. Viswanath, Chairman, CA. P.R. Suresh, Treasurer of SIRC, Mr. V.C. Davey, former ROC (TN), CA. D. Prasanna Kumar, Vice-Chairman-SIRC and CA. Chinnsamy Ganesan, Chennai (Resource Person).



CA. E. Phalguna Kumar, Member-SIRC felicitating **Mr. V.C. Davey, former ROC (TN)** in the presence of CA. K. Viswanath, Chairman-SIRC of ICAI.



CA. K. Viswanath, Chairman-SIRC of ICAI felicitating **Mr. Henry Richard, ROC (TN)**.

Resource Persons



CA. R. Subramanian
Chennai



CA. Chinnsamy Ganesan
Chennai



CA. Mohan R. Lavi
Bangalore



CA. P. Selva Moorthy
Chennai

Chairman writes ...



My Dear Professional Colleagues:

“Setting goals is the first step in turning the invisible into the visible.” – Mr. Anthony Robbins.

A month and half has passed since me and my team of office-bearers took over the respective positions in SIRC, and I must at the outset express my sincere and heartiest thanks to all of you for your good wishes and support for all the initiatives of SIRC so far and I assure you that we will endeavour to bring the best of programmes and value addition to our members in the coming months. My team and I have set our goal during this year to achieve excellence by identifying newer areas of professional interest, newer subjects and concepts and structuring innovative programmes to fulfill the expectations of the members. I believe in the concept of “Team Work” and with your support, we will make it happen.

SIRC celebrated the Diamond Jubilee Year from 1st April 2011 to 31st March 2012 in a befitting manner with the inauguration at a glittering function on 25th April, followed with a series of programmes throughout the Region and culminating with the valedictory function on 23rd March 2012 in the gracious presence of our beloved President CA. Jaydeep Narendra Shah and Vice President CA. Subodh Kumar Agrawal. We had in our midst Shri K.V.S. Gopalakrishnan, IPS, Former Special Director, Intelligence Bureau as the Chief Guest on the day delivering the Valedictory Address.

The occasion also provided an opportunity for SIRC to recognize the Officers and Staff of ICAI who have completed more than 35 years of service in the Institute. Through this column I express our sincere thanks to my predecessor CA. K. Shanmukha Sundaram and his team, in whose period the Diamond Jubilee Celebrations commenced, the Central Council Members and my other colleagues in the Regional Council for their unstinted support and guidance in making the year 2011-12 a memorable and remarkable year to cherish for ever.

SIRC organized two important programmes last month to educate our members and the public on the salient features of the Union Budget presented before the Parliament on 16th March 2012 by the Hon’ble Union Finance Minister Mr. Pranab Mukherjee. A program was held on the 16th March and a “Public Meeting” on the 21st March and both the programmes held were well attended. SIRC, encouraged with the response, organized yet another programme

“Clause by Clause Analysis of Union Budget – 2012” for an in-depth exposure on the various provisions of the Finance Bill on 30th March 2012 again attracting a large gathering of our members.

The programmes on Bank Branch Audit on 3rd March 2012, Workshop on Advanced Excel on 17th March, Seminar on Revised Schedule VI on the 24th March were all highly acclaimed by the members which I would say on the one hand have given us confidence to achieve several goals and objectives that we had set for ourselves during the year but at the same time cast upon me and my team the responsibility to meet the expectations of the members. However I am confident that with your continued association and support for our programmes we would take you through to a glorious year of activity filled with a variety of interesting and innovative programmes.

At this point, I would like to share with my colleagues that SIRC has decided to organize the 44th Regional Conference at Bangalore on the 18th and 19th August 2012, an event which we are trying to make, most absorbing, educative and enlightening to add value to our members. I request all of you to be part of one of the most important events of the year and SIRC would like to see a sea of professionals converging in Bangalore, sharing their knowledge, experience and acumen with other professional colleagues from across the region and the country, and enjoy the hospitality of SIRC and the Bangalore Branch of SIRC who will play host to the Regional Conference.

Apart from my transcending through the various programmes SIRC had organized and plan to organize, I would like to express, on behalf of all the members, our thanks to our beloved President CA. Jaydeep Narendra Shah and Vice President CA. Subodh Kumar Agrawal who have with missionary zeal, and determination, represented and interacted with the Union Finance Minister and the Ministry of Finance to ensure that criteria for allotment of bank branches for audit is maintained albeit with minor modifications! I also appreciate the patience and understanding with which our members anxiously waited, with the confidence that the issue will be well addressed by the Institute and the interest of the profession would be taken care of. A very laudable effort by the Institute and I join with my colleagues in the Regional Council and the members of the Region to express, once again, our heartiest thanks to our beloved President and Vice-President

and other members of the Central Council for their tireless efforts and success.

On 23rd March when members from the Region met our President CA. Jaydeep Narendra Shah and Vice President CA. Subodh Kumar Agrawal, the SIRC had the opportunity to felicitate both of them on their assumption of office and it was very interesting to listen to the President and Vice President who dwelt at length on the objectives and goals of the Institute for the year. Let us all join together with them to take the Vision 2012 enunciated by the President to reality and to take the profession to greater heights of glory.

The month of March belongs to Union Budget, so also the month of April belongs to Bank Audit for our members who undertake the assignment with seriousness and professional zeal. While each one of us are fully aware of the time constraint vis-à-vis the scheduling of completion of the bank audit it would be our endeavour to ensure that the bank audit is done effectively and efficiently, with precision and perfection as in the past. I would urge the members of the profession to pay particular attention to the documentation of the audit process, collect & maintain evidence of the work done, issues examined, significant observations made & issues raised, how they were resolved, reasons for disagreement with management, correspondence with statutory auditor & management of the branches, quality of reporting and basis for qualifications, if any, in the report.

SIRC also requests members to share the experience they have gained during the course of audit which needs to be taken forward to the Central Council of our Institute and to other higher authorities for review wherever needed. I would be happy to receive your views by the end of the month in sirc@icai.in.

On the 9th, 10th and 11th March 2012, the members at the helm of affairs at the branches joined together with the members of the SIRC at Bangalore for an Orientation Programme where sharing of thoughts flowed across on all matters relating to professional opportunities, infrastructure, administration, career counseling for students aspiring to become Chartered Accountants, student related activities, coaching classes and all such related matters. The programme was well appreciated by the participants for its content, presentation, ambience and atmosphere and I am sure the orientation would percolate into fruitful action in the form of improvement in the

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Chairman writes Contd. ...

functioning of the branches thereby serving the members and students in various spheres of activity in more effective manner and in organizing programs of excellence across the region.

SIRC is scheduling programmes for the month of April 2012 and one amongst them is the Regional Residential Seminar at Yercaud with Salem Branch hosting the same. The details are given elsewhere in this Newsletter. I request the members to participate in large numbers and make the program a grand success.

Before I conclude, I reiterate my request made in the last column of this communication to the members to **Block August 18th and 19th, 2012** in their Diary

to be part of the mega and memorable **44th SIRC Regional Conference at Bangalore**. The complete details would be forthcoming very shortly.

On the 23rd March I had the privilege of wishing you all a "Happy Ugadi" and now I am happy to wish you all a very "Happy and Prosperous Tamil New Year" and a "Happy Vishu".

Faith is taking the first step even when you don't see the whole staircase. – Martin Luther King Jr.

Me and my team have taken the first step in the first month of our office and our focus will henceforth be on the journey to serve you to fulfill your expectations from

us and our endeavour will be to bring you the best of programs with the focus on value addition. We only look forward to your support and encouragement in all the programs into the year ahead.

Until meeting you again next month through this column, I remain.

With warm regards

Yours in professional service



CA. K. VISWANATH
kviswanath.sirc@gmail.com

SIRC CALENDAR

APRIL & MAY 2012

Contact: Shri T.V. Srinivasan, Deputy Secretary – ICAI - Phone: 044 – 30210320 / 321 – Email: sirc@icai.in

DATE and TIME	PROGRAM DETAILS	RESOURCE PERSON	FEE (₹)	CPE CREDIT
Apr. 4, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on STOCK & RECEIVABLES AUDIT OF BANKS	CA. T.M. Venkateswaran Chennai	150/-	2 hrs
Apr. 11, Wednesday 11.00 a.m. – 01.00 p.m.	**CPE Teleconference on REVISED SCHEDULE VI OF THE COMPANIES ACT 1956	CA. Ganesh Balakrishnan Hyderabad	150/-	2 hrs
Apr. 11, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on CHARITABLE TRUST / INSTITUTION – RECENT TRENDS IN TAXATION	CA. Dr. N. Suresh Bangalore	150/-	2 hrs
Apr. 18, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on COST ACCOUNTS RECORD RULES & COST AUDIT RULES 2011	CA. L. Venkatesan Chennai	No Delegate Fee	2 hrs
Apr. 20, 21 & 22, 2012 Fri, Sat & Sunday	REGIONAL RESIDENTIAL SEMINAR AT YERCAUD, SALEM	Details at page 09		12 hrs
April 21, Saturday 09.00 a.m. to 06.00 p.m.	#CPE Hands on "Practical Workshop" on ADVANCED EXCEL FOR CAS	Details at page 09		6 hrs
Apr. 25, Wednesday 11.00 a.m. – 01.00 p.m.	**CPE Teleconference on AUDITING STANDARDS	CA. P.R. Ramesh Hyderabad	150/-	2 hrs
Apr. 25, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on QUALITY OF REPORTING AND QUALIFICATIONS IN AUDIT REPORT	CA. Bhavani Balasubramanian Chennai	150/-	2 hrs
April 28, Saturday 09.00 a.m. to 05.30 p.m.	@CPE SEMINAR AT HYDERABAD ON MANAGEMENT ACCOUNTING FOR MEMBERS IN INDUSTRY	Details at page 14		6 hrs
May 2, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on ASSESSMENT UNDER SEC. 153A & 153C SANS SEIZED MATERIAL	CA. J. Prabhakar Chennai	150/-	2 hrs
May 9, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on STANDARDS ON AUDITING SA 700 / 705 / 706	CA. R.G. Rajan Chennai	150/-	2 hrs
May 16, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on LIMITED LIABILITY PARTNERSHIP (LLP) - RECENT DEVELOPMENTS	CS. B. Ravi Chennai	No Delegate Fee	2 hrs
May. 18, 19 & 20, 2012 Fri, Sat & Sunday	REGIONAL RESIDENTIAL SEMINAR AT OOTACAMUND	Details will be published in Next issue		12 hrs

* Programmes at P. Brahmaya Memorial Hall, ICAI Bhawan, SIRC Premises, Chennai – 600034.

** Programme at ICAI Bhawan, SIRC Premises, Chennai – 600034.

Programme at IIT Lab, 1st Floor, Annexe Building, ICAI Bhawan, SIRC Premises, Chennai – 600034.

@ Programme at KLN Prasad Auditorium, FAPCCI, Redhills, Hyderabad.



Dr. CA. Girish Ahuja
New Delhi
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Dr. Ravi Gupta
New Delhi

Measures to prevent Generation and Circulation of Unaccounted Money

Section 68 of the Act provides that if any sum is found credited in the books of an assessee and such assessee either

- (i) does not offer any explanation about nature and source of money; or
- (ii) the explanation offered by the assessee is found to be not satisfactory by the Assessing Officer, then, such amount can be taxed as income of the assessee.

The onus of satisfactorily explaining such credits remains on the person in whose books such sum is credited. If such person fails to offer an explanation or the explanation is not found to be satisfactory then the sum is added to the total income of the person.

As per the provisions of Section 68, in case the assessee has not been able to give satisfactory explanation in respect of certain expenditure or where any sum is found credited in the books of accounts, the AO can treat the same as undisclosed income and add to the income of the assessee. The assessee is required to give satisfactory explanation about the "nature and source" of such sum found credited in the books of accounts.

It is a common knowledge that insofar as the companies incorporated under the Indian Companies Act are concerned, whether private limited or public limited companies, they raise their capital through shares, though the manner of raising the share capital in the private limited companies on the one hand and public limited companies on the other hand, would be different.

In the case of private limited companies, normally, the shares are subscribed by family members or persons known/close to the promoters. Public limited companies, on the other hand, generally raise public issue inviting general public at large for subscription of these shares. Yet, it is also possible that in case of public limited companies, the share capital is issued in a close circuit.

"The plain language of Section 68 of the Act suggests that when the assessee is to give satisfactory explanation, burden of proof is on the assessee to provide nature and source of those receipts"



When the companies incorporated under the Companies Act raise their capital through shares, various persons would apply for shares and thus give share application money. These amounts received from such shareholders would, naturally, be the sums credited in the books of account of the assessee. If the AO doubts the genuineness of the investors, who had purportedly subscribed to the share capital, the AO may ask the assessee to explain the nature and source of those sums received by the assessee on account of share capital. It is in this scenario, the question arises about the genuineness of transactions. The plain language of Section 68 of the Act suggests that when the assessee is to give satisfactory explanation, burden of proof is on the assessee to provide nature and source of those receipts.

Judicial pronouncements have time and again held that the onus of the assessee

in whose books such sum is credited is to explain the source of the credit. He is not required to explain the source of the source. Certain judicial pronouncements have created doubts about the onus of proof and the requirements of this section, particularly, in cases where the sum which is credited as share capital, share premium etc.

Important judgments have been delivered on this subject, which are being analyzed.

Commissioner of Income Tax v Lovely Exports (P) Ltd. [216 CTR 195 (SC)]

The Court while dismissing the SLP recorded some reasons as well albeit in brief, which is as under:

“Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.....”

The observations of the Supreme Court in the case of Lovely Exports go to suggest that the Department is free to proceed to reopen the individual assessment in case of alleged bogus shareholders in accordance with law and, thus, not remediless. It is, thus, for the AO to make further inquiries with regard to the status of these parties to bring on record any adverse findings regarding their creditworthiness. This would be more so where the assessee is a public limited company and has issued the share capital to the public at large, as in such cases the company cannot be expected to know every detail pertaining to the identity and the financial worth of the subscribers.

CIT v Kamdhenu Steel & Alloys Ltd. (Delhi High Court)

What kind of proof is to be furnished by the assessee, is the question. It has come up for discussion in various judgments rendered by this Court, other Courts as well as the Supreme Court. The law was discussed by a Division Bench of this Court in the case of Commissioner of Income Tax v Divine Leasing and Finance Ltd. [299 ITR 268]. In this case, the Court highlighted the menace of conversion of unaccounted money through the masquerade or such channels of investment in the share capital of a company and thus stressed upon the duty of the Revenue to firmly curb the same. It was also observed that, in the process, the innocent assessee should not be unnecessary harassed. A delicate balance must be maintained. It was, thus, stressed:

“There cannot be two opinions on the aspect that the pernicious practice of conversion of unaccounted money through the masquerade or channel of investment in the share capital of a company must be firmly excoriated by the Revenue. Equally, where the preponderance of evidence indicates absence of culpability and complexity of the assessed it should not be harassed by the Revenue’s insistence that it should prove the negative. In the case of a public issue, the Company concerned cannot be expected to know every detail pertaining to the identity as well as financial worth of each of its subscribers. The Company must, however, maintain and make available to the AO for his perusal, all the information contained in the statutory share application documents. In the case of private placement the legal regime would not be the same. A delicate balance must be maintained while walking the tightrope of Section 68 and 69 of the IT Act. The burden of proof can seldom be discharged to the hilt by the assessed; if the AO harbours doubts of the legitimacy of any subscription he is empowered, nay duty-bound, to carry out thorough investigations. But if the AO fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the Company.”

It is clear from the above that the initial burden is upon the assessee to explain the nature and source of the share application money received by the assessee. In order to discharge this burden, the assessee is required to prove:

- a. Identity of shareholder;
- b. Genuineness of transaction; and
- c. Credit worthiness of shareholders.

In case the investor/shareholder is an individual, some documents will have to be filed or the said shareholder will have to be produced before the AO to prove his identity. If the creditor/subscriber is a company, then the details in the form of registered address or PAN identity, etc. can be furnished.

Genuineness of the transaction is to be demonstrated by showing that the assessee had, in fact, received money from the said shareholder and it came from the coffers from that very shareholder. The Division Bench held that when the money is received by cheque and is transmitted through banking or other indisputable channels, genuineness of transaction would be proved. Other documents showing the genuineness of transaction could be the copies of the shareholders register, share application forms, share transfer register, etc.

It is, thus, clear that initial burden lies on the assessee to explain the nature and source of the share application money received by the assessee. It is also clear that the assessee has to satisfactorily establish the identity of the shareholders, the genuineness of the transaction and the creditworthiness of the shareholders. The manner in which such a burden is to be discharged has been explained in various judgments and noted by us above. At the same time, it is also well established principle of law that in any matter, the onus brought is not a static one. Though initial burden is upon the assessee, once he proves the identity of credits/share application by either furnishing Permanent Account Numbers or copies of bank accounts and shows the genuineness of the transaction by showing money in the banks is by account payee cheques or by draft, etc., then the onus to prove the same would shift to the assessee. The question which assumes importance at this stage is to what the Revenue is supposed to do to dislodge the initial burden discharged by the assessee and to throw the ball again in the assessee’s court demanding the assessee to give some more proofs, as the documents produced earlier by the assessee either become suspect or are rendered insufficient in view of the material produced by the Department rebutting the assessee’s documentary evidence. This is the aspect which has to be gone into in all these cases.

No doubt, what the AO observed may make him suspicious about such companies, either their existence, which may be only on papers and/or genuineness of the transactions. When he found that investing companies are

not available at given addresses or that the issuance of the cheque representing share application money or preceded by the deposit of cash in the bank account of these investment companies.

We may repeat what is often said, that a delicate balance has to be maintained while walking on the tight rope of Sections 68 and 69 of the Act. On the one hand, no doubt, such kind of dubious practices are rampant, on the other hand, merely because there is an acknowledgement of such practices would not mean that in any of such cases coming before the Court, the Court has to presume that the assessee in question has indulged in that practice. To make the assessee responsible, there has to be proper evidence. It is equally important that an innocent person cannot be fastened with liability without cogent evidence. One has to see the matter from the point of view of such companies (like the assessee herein) who invite the share application money from different sources or even public at large. It would be asking for a moon if such companies are asked to find out from each and every share applicant/subscribers to first satisfy the assessee companies about the source of their funds before investing. It is for this reason the balance is struck by catena of judgments in laying down that the Department is not remediless and is free to proceed to reopen the individual assessment of such alleged bogus shareholders in accordance with the law. That was precisely the observation of the Supreme Court in *Lovely Export* which holds the fields and is binding.

In conclusion, we are of the opinion that once adequate evidence/material is given, as stated by us above, which would *prima facie* discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has “created” evidence, the Revenue is supposed to make thorough probe of the nature indicated above before it could nail the assessee and fasten the assessee with such a liability under Section 68 and 69 of the Act.

CIT v NOVA Promoters & Finlease (P) Ltd ITA No.342 of 2011 Date of Decision: February 15, 2012

In this case the Hon’ble Judges of the Delhi High Court distinguished the case on the facts of the case and observed as under:

“The ratio of a decision is to be understood and appreciated in the background of the facts of that case. So understood, it will be

seen that where the complete particulars of the share applicants such as their names and addresses, income tax file numbers, their creditworthiness, share application forms and share holders' register, share transfer register etc. are furnished to the Assessing Officer and the Assessing Officer has not conducted any enquiry into the same or has no material in his possession to show that those particulars are false and cannot be acted upon, then no addition can be made in the hands of the company under sec.68 and the remedy open to the revenue is to go after the share applicants in accordance with law. We are afraid that we cannot apply the ratio to a case, such as the present one, where the Assessing Officer is in possession of material that discredits and impeaches the particulars furnished by the assessee and also establishes the link between self-confessed "accommodation entry providers", whose business it is to help assesseees bring into their books of account their unaccounted monies through the medium of share subscription, and the assessee. The ratio is inapplicable to a case, again such as the present one, where the involvement of the assessee in such modus operandi is clearly indicated by valid material made available to the Assessing Officer as a result of investigations carried out by the revenue authorities into the activities of such "entry providers". The existence with the Assessing Officer of material showing that the share subscriptions were collected as part of a pre-meditated plan – a smokescreen – conceived and executed with the connivance or involvement of the assessee excludes the applicability of the ratio. In our understanding, the ratio is attracted to a case where it is a simple question of whether the assessee has discharged the burden placed upon him under sec.68 to prove and establish the identity and creditworthiness of the share applicant and the genuineness of the transaction. In such a case, the Assessing Officer cannot sit back with folded hands till the assessee exhausts all the evidence or material in his possession and then come forward to merely reject the same, without carrying out any verification or enquiry into the material placed before him. The case before us does not fall under this category and it would be a travesty of truth and justice to express a view to the contrary."

Amendment proposed by the Finance Bill, 2012 to curb the menace

Judicial pronouncements, while recognizing that the pernicious practice

of conversion of unaccounted money through masquerade of investment in the share capital of a company needs to be prevented, have advised a balance to be maintained regarding onus of proof to be placed on the company. The Courts have drawn a distinction and emphasized that in case of private placement of shares the legal regime should be different from that which is followed in case of a company seeking share capital from the public at large.

In the case of closely held companies, investments are made by known persons. Therefore, a higher onus is required to be placed on such companies besides the general onus to establish identity and credit worthiness of creditor and genuineness of transaction. This additional onus, needs to be placed on such companies to also prove the source of money in the hands of such shareholder or persons making payment towards issue of shares before such sum is accepted as genuine credit. If the company fails to discharge the additional onus, the sum shall be treated as income of the company and added to its income.

It is, therefore, proposed to amend section 68 of the Act to provide that the nature and source of any sum credited, as share capital, share premium etc., in the books of a closely held company shall be treated as explained only if the source of funds is also explained by the assessee company in the hands of the resident shareholder.

The following provisos shall be inserted to section 68 with effect from 1.4.2013, namely:—

"Provided that where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- a. the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
- b. such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory."

However, even in the case of closely held companies, it is proposed that this additional onus of satisfactorily

explaining the source in the hands of the shareholder, would not apply if the shareholder is a well regulated entity, i.e. a Venture Capital Fund, Venture Capital Company registered with the Securities Exchange Board of India (SEBI).

Taxation of cash credits, unexplained money, investments etc.

A new section 115BBE is proposed to be inserted w.e.f. 1.4.2013 to provide for special rate of tax of 30% on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

Under the existing provisions of the Income-tax Act, certain unexplained amounts are deemed as income under section 68, section 69, section 69A, section 69B, section 69C and section 69D of the Act and are subject to tax as per the tax rate applicable to the assessee. In case of individuals, HUF, etc., no tax is levied up to the basic exemption limit. Therefore, in these cases, no tax can be levied on these deemed income if the amount of such deemed income is less than the amount of basic exemption limit and even if it is higher, it is levied at the lower slab rate.

In order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, it is proposed to tax the unexplained credits, money, investment, expenditure, etc., which has been deemed as income under section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of 30% (plus surcharge and cess as applicable). It is also proposed to provide that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing deemed income under the said sections. ■

INVITATION FOR CONTRIBUTION OF ARTICLES

SIRC of ICAI invites Articles from Members for publication in the SIRC Newsletter. SIRC would be releasing Theme Based monthly Newsletter. The theme finalized for the May 2012 issue is as follows:

"AUDIT & ASSURANCE"

Members may send the soft copy of their article, profile and passport size colour photograph to SIRC by email to sirc@icai.in and sircnewsltr@icai.in for consideration by the Editorial Board.

REGIONAL RESIDENTIAL SEMINAR AT YERCAUD

Organised by SIRC of ICAI and Hosted by Salem Branch of SIRC

Theme: **PENDULUS**
(REJUVENATE TO SWING)CPE Credit
12
HOURSFriday, Saturday and Sunday
April 20, 21 & 22, 20126.00 a.m.: Pickup from Railway Station
Check in: 07.30 a.m. on 20.04.2012
Check out: 02.30 p.m. on 22.04.2012**Hotel Shevaroy**
Yercaud Hills, Salem Dt., Tamil Nadu**Inaugural Session – 09.00 a.m. to 09.30 a.m.**

Chief Guest **CA. K. Viswanath**, Chairman, SIRC of ICAI

Guests of Honour **CA. Rajendra Kumar P.**, Central Council Member, ICAI
CA. D. Prasanna Kumar, Vice Chairman, SIRC of ICAI
CA. P.V. Rajarajeswaran, Secretary, SIRC of ICAI
CA. P.R. Suresh, Treasurer, SIRC of ICAI

Delegate Fee

Residential	Members (Twin Sharing Basis)	₹ 6000/-
	Accompanying Spouse	₹ 5000/-
	Children above 10 years	₹ 5000/-
Non-Residential	Members	₹ 3000/-

Fees payable by DD/Cheque in favour of "Salem Branch of SIRC of ICAI" payable at Salem may be sent to the Chairman, Salem Branch of SIRC of ICAI, No. 65, ICAI Street, Ramakrishna Road, Salem-636007. Phone: 0427-2318813, Fax: 2318813, Email: salem@icai.org

Complete details hosted in SIRC Website www.sircoficai.org**Technical Sessions on**

Intriguing intricate issues in Income Tax Act
CA. N. Santhanakrishnan, Salem.

Works Contract vs. Construction services
Adv. V. Raghuraman, Bangalore.

Emerging Opportunities for CAs
Carbon Credit, Private Equity, Green Energy
CA. S. Natanagopal, Madurai.

Intricacies in Revised Schedule VI under the Companies Act, 1956
CA. Chinnasamy Ganesan, Chennai.

HUF Tax Planning & Documentation Issues
CA. Gopal Krishna Raju, Chennai.

Special Session on

The Body - Self Healer
Hr. Bose Mohammed Meeran, President
Tamilnadu Acupuncture Healers Organization, Madurai.

CA. P.V. Rajarajeswaran
Secretary, SIRCCA.S. Murali
Ex-Officio Member, Salem Branch and Co-ordinatorCA. R. Gunasekaran
Chairman, Salem BranchCA. K. Viswanath
Chairman, SIRC**HANDS ON "PRACTICAL WORKSHOP" ON
ADVANCED EXCEL FOR CHARTERED ACCOUNTANTS**

(Financial Analysis, Modelling & Case Studies)

Organised by SIRC of ICAI under the auspices of Information Technology Committee of SIRC of ICAI

CPE Credit
6
HOURSSaturday, April 21, 2012
09.00 a.m. to 06.00 p.m.**IIT Lab, First Floor, Annexe Building**, ICAI Bhawan
No.122 Mahatma Gandhi Road, Nungambakkam, Chennai – 600034**Course Contents:**

- ◆ Absolute & Relative Referencing
- ◆ Filters & Data Sorting
- ◆ Pivot Tables
- ◆ LOOKUP Functions
- ◆ Logical, Date/Time & Text Functions
- ◆ Advanced Filter

Resource Person: **CA. K. Srinivasan**, Tiruchirappalli

- ◆ Goal Seek
- ◆ Data Validations
- ◆ Conditional Formatting
- ◆ Scenarios
- ◆ Nesting Functions
- ◆ Linking Workbooks
- ◆ Using Formula Auditing
- ◆ Sharing and Protecting Workbooks
- ◆ Exporting and Importing Data
- ◆ Case Studies on Taxation, Financial Management
- ◆ Solver

DELEGATE FEE: ₹ 900/-

Delegate fee by way of Cash / Cheque / DD drawn in favour of 'SIRC of ICAI' payable at Chennai shall be sent to SIRC of ICAI, ICAI Bhawan, No.122, Mahatma Gandhi Road, Nungambakkam, Chennai – 600034. Phone: 044-30210320; Email: sirc@icai.in

This Program is best suited for participants who have exposure of at least one year in the MS Excel operations.

Seats limited to 40 only on first-come-first-serve basis.
Kindly send email to sirc@icai.in for early registrations.
Since seats are limited, SPOT registrations are NOT encouraged.

CA. P.V. Rajarajeswaran
Secretary, SIRCCA. C.S. Srinivas
Chairman, Information Technology Committee of SIRCCA. K. Viswanath
Chairman, SIRC**DO YOU WANT TO BE A RESOURCE PERSON ?**

If you would like to be a Resource Person to address on technical topics in the programmes organised for Members and Students, please send an email with details of subjects / topics which could be handled by you to sirc@icai.in.



Adv. K. Vaitheeswaran
Chennai
vaithilegal@yahoo.co.in

BUDGET 2012 – ANALYSIS OF DIRECT & INDIRECT TAX PROPOSALS

“Economic policy as in medical treatment often requires us to do something which in the short run may be painful, but is good for us in the long run. As Hamlet, the Prince of Denmark had said in Shakespeare’s immortal words -I must be cruel only to be kind”.

This part of the speech can be understood better by analyzing the numbers which are part of the Budget documents.

	Revised 2011-2012	Budget 2012-2013
Excise Duty including all duties and cess administered by Central Excise.	150695	194350
Customs Duty including all duties and cess under customs.	153000	186694
Corporate Tax	327680	373227
Other Income Tax	171879	195786
Service Tax	95000	124000

Excise Duty

Rate of duty increased from 10% to 12% and 1% to 2% and 5% to 6% w.e.f. 17.03.2012. Cement attracts duty at a combo rate of 12% ad valorem + 120 per metric ton. when manufactured in a plant other than a mini cement plant. Portland cement is now notified under Section 4A duty would be calculated on RSP after abatement of 30%. Does this increase indicate that India has completely recovered from the impact of rescission? Whether indirect tax is the best option for resource mobilization in a country ravaged by inflation?

Branded jewellery was sought to be taxed in 2005 and the idea was completely diluted through a circular which enabled manufacture of jewellery with a mark so long as the mark was meant for customer or job worker identification. 2010 saw the withdrawal of this levy which in any event was not being paid or imposed in the country to the best of my knowledge based on the Board Circular. 2011 saw a new avatar which was fraught with issues. Now from 17.03.2012 all kinds of jewellery except silver jewellery is liable to excise duty. In other words even unbranded jewellery is liable. The duty based on Tariff value which is equal to 30% of the transaction value declared on the invoice and SSI exemption available based on tariff value. The old job worker provisions retained. Affixing or embossing trade name or brand name on articles of jewellery, etc. shall amount to manufacture.

The provisions to be seen in the context of amendments to Section 206C (1D) of the Income Tax Act which now requires the jeweler to collect from the buyer of jewellery / bullion a sum equal to 1% of the sale consideration as income tax **if the sale consideration in cash exceeds Rs.2 lakhs**. The jeweler has 1% VAT; 1% excise duty; and 1% TCS to deal with. In respect of articles of precious metal levy is only on articles that are manufactured are sold under brand name. Who knows? By the time this Article is printed, the Government could very well create a window for the jewellery sector taking into account their stiff opposition

The nullification of decisions through amendments continues unabated. The Supreme Court in the case of *CCE Vs. S.R. Tissues Pvt. Ltd. (2005) 186 ELT 385* had held that cutting of aluminium foils into various shapes and sizes does not amount to manufacture. *Cutting, slitting and printing of aluminium foils amounts to deemed manufacture.*

Finance Bill, 2012 seeks to insert note in Chapter 54 with retrospective effect from 29.06.2010 to provide that manmade fibre such as polyester staple fibre and polyester filament yarn manufactured from plastic, etc. shall be classified as textile material. ***CCE Vs. GPL Polyfils Ltd. nullified.***

The prosecution provisions have become stringent. If duty exceeds Rs.30 lakhs (*old provision Rs.1 lakh*) imprisonment is for a term which may extend to 7 years with fine. Offences punishable with imprisonment of 3 years or more under Section 9 shall be cognizable. The decision of the Supreme Court in ***Om Prakash*** on bail in excise matters stands nullified.

Customs

On the customs front the complex calculation of cess had resulted in huge cascading effect of taxes. Cess on CVD portion is now exempted to avoid computation of cess twice. TRU Circular explains the formula for calculation. A relief which ought to have been granted in 2004.

Service Tax

The service tax rate increased from 10% to 12% by virtue of rescinding Notification No.8/2009 through Notification No.2/2012 w.e.f. **01.04.2012**. WCT compounding has increased from 4.12% to 4.94% w.e.f. 01.04.2012. Invoice has to be issued within 30 days instead of 14 days. For Banking and Financial Services, it is within 45 days.

Earlier under the Point of Taxation Rules, Rule 7 provided for an exception and receipt based taxation was available to select service providers under certain categories. This exception stands deleted from 01.04.2012.

In respect of individual / firms whose value of taxable services from multiple locations is Rs.50 lakhs or less in the previous financial year **option available to pay tax upto Rs.50 lakhs in the current financial year based on receipt of payment.**

Excess amount can be adjusted without any monetary limits provided excess payment is not an account of interpretation of law, taxability, classification, valuation or applicability of any exemption Notification.

Taxation of All Services

- All services to be taxed other than services specified in the negative list – Sec. 66B
- Negative list specified through statutory provisions – Sec. 66D
- Some more services exempt through Notification No.12/2012 which shall come into force after Section 66B comes into force.
- Section 65, 66 and 66A have no application after the effective date.

'Service' defined in Terms of Section 65B(44)

- An activity carried out by a person to another for consideration and includes a declared service.
- Excludes an activity which constitutes transfer of title in goods or immovable property by way of sale, gift or in any other manner.
- Excludes an activity which constitutes transaction in money or actionable claim.
- Excludes provision of service by an employee to an employer in the course of or in relation to its employment.
- Excludes Court / Tribunal fees.
- Not applicable to functions performed by MP / MLA / Members of Panchayat / Members of Municipality and Members of Local Authority who **receive any consideration in performing the functions of that office as such member.**
- Not applicable to duties performed by constitutional authorities in that capacity, not a service.
- Not applicable to duties performed by chair person / member / director of a Government body who is not deemed as an employee is excluded.

Any activity carried out by a person to another for consideration would attract service tax in the new dispensation unless the same finds place in the negative list or enjoys an exemption through Notification. This initiates a major departure from the current system of taxation of specified services to taxation

of all services with certain exceptions. This will bring a wide number of activities within the ambit of service tax and the sad part would be that the persons who are liable may not even be aware of the implications. A Rs.10 lakhs threshold is not a major one since many of the service providers such as carpenters, plumbers, electricians, etc. will be paid for both material and labour. The scope of declared service is significant enough to bring even non-compete fee within the ambit of service tax!

Illustrative List of services in the Negative List

- Government services excluding certain specific services
- Services relating to agriculture including supply of farm labour. Renting / leasing of agro machinery / vacant land; agricultural produce related services.
- Trading in goods.
- Services provided outside the ambit of employment for consideration is a service.
- Any Process amounting to Manufacture or production of goods.
- Selling of space or time slots for advertisement other than advertisements broadcast by radio or television.
- Betting, Gambling, Lottery
- Entertainment
- Education in certain segments
- Transportation of passengers with or without belongings by
 - Stage carriage
 - Railways in class other than First class or AC coach
 - Metro, mono rail or tramway
 - Inland waterways
 - Public transport other than predominantly for tourism in a vessel less than 15 ton. net.
 - Meter cabs, radio taxis or auto rickshaws
- Transportation of Goods by road unless it is GTA or courier
- Transportation of goods by aircraft or vessel from place outside India to the first customs station of landing in India.
- Transportation of goods by inland waterways.

- Funeral, burial, crematorium, mortuary services including transportation of the deceased.
- Access to a road or a bridge on payment of toll.
- Transmission or distribution of electricity by an electricity transmission or distribution utility.
- Inter-se purchase of foreign currency by banks.

Income Tax

Measures to curb unaccounted Money – Sec. 68 and Sec. 56

Unexplained cash credits in the books of a company in the form of share application / capital / premium or any such amount by whatever name called. Taxable in the hands of the Company unless the person in whose name it is credited offers an explanation about the source of such funds to the satisfaction of the assessing authority. This provision is applicable only to a resident company in which **public are not substantially interested.** The provisions are not applicable to Venture Capital funds or venture capital Company.

There could be situations where information is not forthcoming from the investor or it is simply not to the satisfaction of the assessing authority which would result in huge tax liability for the Company. Interestingly, assuming, the Assessing Officer is not satisfied about the source can there be one more addition in the hands of the investor?

An amendment introduced to Section 56(2) brings about a new segment. The provision is applicable to companies in which **public are not substantially interested.** Where the company receives consideration for issue of shares that exceeds the **face value**, the aggregate consideration in excess of the fair market value shall be taxed under income from other sources.

Fair market value would be the value determined as per a prescribed method or a value substantiate by the company to the satisfaction of the assessing officer based on the value of assets including intangibles being goodwill, knowhow, patents, copyrights, trademark, license, franchise or any other business or commercial rights – on the date of issue of shares – whichever is higher.

Capital Gains

The AAR in the case of *Amiantit International Holding (2010) 322 ITR 678* had ruled that if consideration is

incapable of being valued in definite terms or it remain ascertainable on the date of occurrence of the taxable event, the question of applying Section 45 read with Section 48 does not arise. Similar view in the case of **Dana Corporation (2010) 321 ITR 178**.

It is proposed to insert a new provision (section 50D) in the Income-tax Act to provide that fair market value of the asset shall be deemed to be the full value of consideration if actual consideration is not attributable or determinable.

MAT

There is no change in the current MAT rate of 18.5%.

The Mumbai Tribunal in the case of **Krung Thai Bank PCL Vs. Jt. DIT (2010) 133 TTJ** had held that section 115JB is not applicable to banking companies since Schedule-VI is not applicable. The Board vide Circular dated 18.02.1998 had excluded electricity boards from the purview of Section 115JA as it stood before. The Kerala High Court in the case of **Kerala State Electricity Board Vs. DCIT (2010) 329 ITR 91** had held that MAT provisions are not applicable to electricity boards.

The MAT provisions have been amended to provide that in case of companies which are not required to prepare profit and loss account in accordance with the Companies Act, 1956, the book profit for the purposes of MAT shall be as per the profit and loss account drawn up in accordance with respective acts or regulations applicable to them.

In addition, the provisions of MAT have been amended to provide that the book profit shall be increased by the amount standing in the **revaluation reserve** relating to the revalued asset on the retirement or disposal of such asset.

AMT (Alternate Minimum Tax)

Section 115JC is now being made applicable to a person **other than a company**. If regular income tax payable is less than the AMT, the adjusted total income shall be deemed to be the total income attracting AMT at the rate of 18.5%. Adjusted total income shall be the total income before giving effect to this chapter and increased by Chapter VI-A deductions (other than Sec.80-P and deduction claimed under Sec.10-AA). Originally, AMT was introduced for LLPs last year. The impact is on firms claiming benefit under Sec.80-IA / 80-IB / 80-IC / 80-ID / Sec.10-AA. Tax credit is available under Sec.115-JD for a period of 10 years.

In terms of Sec.115-JE as proposed the provisions are not applicable to an individual / HUF / AOP / BOI whether incorporated or not or an artificial juridical person **if the adjusted total income of the person does not exceed Rs.20 lakhs**.

On one hand investment based tax concessions / exemptions are offered for a fixed tenure and then the Rules are changed for the sake of revenue. Levy of MAT on SEZ developers has been challenged under Article 226 before the Madras High Court since the main objective of the SEZ scheme was to attract investments based on certain promises in the form of tax benefits.

TDS – Purchase of Immovable Property

Section 194-LLA is being introduced from 1st October 2012 to provide for TDS at the rate of 1% on consideration for transfer of immovable property other than agricultural land. Credit / payment by way of cash, cheque, draft or any other mode is covered. The provision is not applicable where the consideration for transfer is less than Rs.50 lakhs/ Rs. 20 lakhs in specified urban area or others respectively. If the consideration paid / payable is less than the value adopted by the registered authority, the value so adopted shall be treated as consideration for the purpose of TDS.

No registering authority shall register the document unless the transferee produces proof of deduction and payment of the sum deducted **in the prescribed form**. Section 203-A is not applicable. Definition of specified area covers specific city urban agglomeration and opens debate on applicability by also including the area included in urban agglomeration on the basis of 2001 census.

Section 195(7)

This sub-section is introduced as a non-obstante provision to nullify decision of the Supreme Court in **GE Technology** and the judgement of Justice Radhakrishnan in **Vodafone** case. Section 195(7) will apply to notified categories of persons responsible for paying any sum whether or not chargeable under the Act. The Assessing Officer will have to determine appropriate proportion of sum chargeable. The Amendment is effective from 01.07.2012.

Vodafone Saga

The landmark decision of the Supreme Court in the case of **Vodafone** is sought to be nullified through a series of amendments with retrospective effect.

• The following retrospective amendments have been made to Section 9(1)(i) w.e.f. 01.04.1962:

- the expression “through” shall mean and include “by means of”, “in consequence of” or “by reason of” (*Supreme Court had held that the Department must have a ‘look at approach’ and not a ‘look through approach’.*)
- an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India, **if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.** (*The key conclusion in Vodafone was that shareholding in a foreign company cannot be considered as an asset situate in India.*)

• Section 2(14) amended retrospectively w.e.f. 01.04.1962 to provide that the rights in or in relation to an Indian company, including rights of management or control or other rights are deemed to be included within the definition of “property”.

• Section 2(47) amended retrospectively w.e.f. 01.04.1962 to introduce an explanation which provides that “transfer” includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein or creating any interest in any asset in any manner whatsoever directly or indirectly, absolutely or conditionally, voluntarily or involuntarily by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterized as being effected or dependent upon or flowing from the transfer of the share or shares of a Company registered or incorporated outside India.

• Sweeping retrospective amendment which will affect a number of transactions which are pending at various levels.

• Validation amendment to specifically affect Vodafone.

• Sec. 113 of the Finance Bill, 2012 provides that *notwithstanding anything contained in any judgment, decree, order of any Court or*

Tribunal or any authority, all notices sent or purporting to have been sent or taxes levied, demanded, assessed, imposed, collected or recovered or purported to have been levied, demanded, assessed, imposed, collected or recovered under the provisions of the Income Tax Act in respect of income accruing or arising through or from the transfer of a capital asset situate in India in consequence of the transfer of a share or shares of a company registered or incorporated outside India or in consequence of an agreement or otherwise outside India, shall be deemed to have been validly made and the notice, levy, demand, assessment, imposition, collection or recovery of tax shall be valid and shall be deemed to have always been valid and shall not be called in question on the ground including that it is a tax on capital gains arising out of transactions which have taken place outside India and accordingly any tax levied, demanded, assessed, imposed or deposited before the commencement of this Act and chargeable for a period prior to such commencement but not collected or recovered before such commencement may be collected or recovered and appropriated in accordance with the provisions of the Income Tax Act, 1961 as amended by this Act and the Rules made thereunder and there shall be no liability or obligation to make any refund whatsoever.

- In the year 2004, *ITC Ltd.* won an excise duty case in the Supreme Court and ITC Ltd. had pre-deposited all duties at various stages of appeal and was confident of the refund of the duties paid. Since Parliament was not in session, the Central Excise Laws (Amendment and Validation) Ordinance, 2005 was issued to enable Government to issue notifications with retrospective effect. Notifications issued in 1985 were retrospectively amended in 2005 and Section 5 of the Ordinance provided for validation of such Notifications. Ultimately, the Ordinance lapsed and what was paid remained as paid based on a settlement between the Assessee and the Government. Ironically the then Finance Minister on the floor of the House justified the Ordinance on the ground that in the absence of the Ordinance, Government would have lost Rs.350 crores

Retrospective Amendments

- There are a number of decisions of the Supreme Court upholding the legislative competence to make retrospective amendments and in all such decisions Supreme Court has referred to some ground as a basis for approving the retrospectivity.
- An amendment can be retrospective to rectify a defect pointed out by the Court.
- The key question is whether the retrospective and validation amendment is only rectifying a defect or lacuna in the existing provisions pointed out by the Court or whether the interpretation does not flow from the provisions as it stood prior to the amendment and there is nothing in the form of legislative intention to indicate that a wrong interpretation is being set right by a retrospective amendment.

Nullification Exercise

- The Delhi High Court in the case of *Asia Satellite Telecommunication Co. Ltd. Vs. DIT (2010) 332 ITR 340* had held providing the use of transponders does not constitute lease of equipment but only the use of broadband facility and there was no use of a 'process' for the income to be considered as a royalty. This decision is being nullified with retrospective effect from 01.06.1976 through an amendment to Sec.9(1) (vi). The expression "process" has always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.
- The Supreme Court in the case of *TCS* had held that packaged / licensed software is goods. The Madras High Court in the case of *Infosys* had held that even customised software is goods. The Bangalore Tribunal in the case of *Velankani Mauritius (2010) TII 64* had held that sale of software cannot be treated as income from royalty either under the Income Tax Act or under DTAA. The definition of royalty is being amended retrospectively from 01.06.1976 to specifically cover the use or right to use computer software (including granting of a licence). Medium of transfer not relevant for determining taxability.

- Consideration in respect of any right, property or information is now covered under the scope of 'Royalty' w.r.e.f. 01.06.1976 whether or not
 - the possession or control of such right, property or information is with the payer;
 - such right, property or information is used directly by the payer;
 - the location of such right, property or information is in India.

DTAA

Section 90(2A) is introduced to provide that provisions of the Treaty shall not override GAAR. Thanks to the market reaction, the Hon'ble Finance Minister has announced that GAAR may not be made applicable to participatory notes!

A non-resident assessee who has entered into a DTAA will not be eligible to relief unless he provides a certificate proving his residency in the other country-applicable w.e.f 1.04.2013.

The decision of the Supreme Court in the case of *CIT Vs. PVAL Kulandagan Chettiar (2004) 267 ITR 654* is nullified by explanation 3 to section 90 inserted w.e.f. 1.10.2009 to provide that if CBDT issues a notification under section 90(3) defining a term used in any Tax Treaty, the meaning will have retrospective effect from the date of the Tax Treaty.

Transfer Pricing Extended To Specified Domestic Transactions

The provisions have been justified on the ground that observations have been made by the Supreme Court in *Glaxo Smithkline* case to the effect that TP should apply to domestic transactions. Interestingly *Glaxo Smithkline* was decided by a Bench comprising of *Their Lordship K.S. Radhakrishnan and Lordship Swatanter Kumar. Vodafone* was decided by a Bench which comprised of the *Chief Justice Kapadia and Their Lordship K.S. Radhakrishnan and Lordship Swatanter Kumar*. It would have been nice if the sincerity displayed in respect of *Glaxo* decision was similarly displayed for the *Vodafone* decision.

In international transactions there is a possibility of parties structuring their business to ensure tax benefits through location and treaty. Where there are transactions between domestic companies, even if a payment is excessive in the hands of one person, the same is taxable in the hands of the other since

Income Tax Act applies to both. The possibility of tax slab arbitrage or tax benefits based on provisions cannot be a justification for introducing a complex law for domestic transactions and for increasing the transaction cost for doing business.

Similar TP provisions are also seen in UK Law where domestic transactions are subject to TP. A threshold limit of Rs.5 Crores per year has been provided for applicability of TP on SDT. Transfer Pricing applicable in respect of transactions between associated UK companies with a threshold of Euro 10,000,000 with employees less than 50 and other limits.

The following transactions are defined as specified domestic transactions:-

- Expenditure in respect of which payment is made to related party as defined under section 40A(2)
- In case of taxpayers claiming deductions under 10AA, 80IA, 80IAB, 80IB, 80IC, 80ID, 80IE, 80JJA, 80LA and 80P, transfer of goods/services from an eligible undertaking /business to other business of taxpayer or *vice versa*
- In case of taxpayers claiming deductions under 10AA, 80IA, 80IAB, 80IB, 80IC, 80ID and 80IE, taxpayer has 'close connection' with any other person and AO is of the view that the course of business is so arranged that taxpayer has 'more than ordinary profits'.
- Other transactions as may be prescribed

General Anti-Avoidance Rules

- Part of DTC mechanism introduced in the Income Tax Act itself w.e.f. 01.04.2013.

- An agreement entered into by an assessee **may be declared as an impermissible avoidance agreement and the tax consequences may be determined in accordance with the Chapter.**

- An Impermissible Avoidance Agreement means an arrangement, the main purpose or **one of the main purposes of which is to obtain a tax benefit and it**

- a. creates rights or obligations which are not ordinarily created between persons dealing in arms-length.
- b. results directly or indirectly in the misuse or abuse of the provisions of the Act.
- c. Lacks commercial substance or is deemed to lack commercial substance under Sec. 97 in whole or in part.
- d. is entered into or carried out by means or in a manner, which are not ordinarily employed for bonafide purposes.

- Onus on the assessee to establish the tax benefit was not the main purpose of the arrangement – Sec. 96(2)

- Consequences of impermissible avoidance agreement includes

- disregarding, combining or re-characterizing any step in or part or whole of the arrangement;
- ignoring the arrangement;
- disregarding accommodating parties;
- deeming that connected persons are one and the same;
- relocation of accrual / receipt of capital or revenue or any

expenditure deduction relief or rebate;

- treating the place of residence or situs of an asset at a place other than the place or location provided under the Agreement;

- Looking through any arrangement.

- Powers are available

- to treat equity as debt and vice versa;

- capital receipt as revenue receipt and vice versa;

- To re-characterize expenditure, deduction, relief or rebate;

The provisions of GAAR are far reaching in nature and considering the potential for use or misuse of the provisions, in the larger interest of honest tax payers it may be better if the advisory panel comprises of high ranking revenue secretaries or an independent body of lawyers, accountants, and industry representatives along with the Government Officials. This is in view of the fact that many of the economic decisions of enterprise are driven by tax benefits and concessions which are offered by the Government through the Income Tax Act. ■

INVITED

THEME

for the 44th Regional Conference

SIRC invites suggestions from members for the Theme of the ensuing 44th Regional Conference of SIRC to be held in Bangalore on 18th & 19th August 2012. The member sending the best selected theme would be recognized at the Regional Conference.

GRIEVANCE REDRESSAL

To effectively serve the Members and Students and redress their complaints/grievances, a Grievance Register is maintained at the Reception (Ground Floor, Main Building) of the Institute at Chennai Office. Members & Students may lodge their complaints in the Register for unresolved issues for remedial action by the appropriate authority/Committee. Members and Students may also send their complaints through email at grievance_sircmembers@icai.in and grievance_sircstudents@icai.in respectively.

CPE SEMINAR ON MANAGEMENT ACCOUNTING

Organised by

FOR MEMBERS IN INDUSTRY

Management Accounting Committee and Committee for Members in Industry of SIRC of ICAI

Hosted by Hyderabad Branch of SIRC of ICAI

CPE Credit

6
HOURS

Saturday – April 28, 2012

KLN Prasad Auditorium, FAPCCI

09.00 a.m. to 5.30 p.m.

Redhills, Hyderabad

Complete details of the program will be hosted on the SIRC and Hyderabad Branch Website www.sircoficai.org and www.icaihyd.org

Delegate fee: ₹ 800/-

Delegate Fee by way of Cash / Cheque / DD drawn in favour of 'Hyderabad Branch of SIRC of ICAI' payable at Hyderabad shall be sent to Hyderabad Branch of SIRC of ICAI, 11-5-398/C, Red Hills, Hyderabad – 500 004. Phone: 040-23317026, 23393182, Email: hyderabad@icai.in

CA. Naresh Chandra Gelli V., Chairman
Committee for Members of Industry, SIRC

CA. Dayakar Gelli, Chairman
Hyderabad Branch of SIRC

CA. P.R. Aruloli, Chairman
Management Accounting Committee, SIRC

CA. P.V. Rajarajeswaran, Secretary, SIRC

CA.K. Viswanath, Chairman, SIRC

CA. K.S. Satish
Mysore
ks.satish.55@gmail.com

Updates on Direct Taxes

Charitable Trust

The Cochin Bench has in **DCIT v. Adi Sankara Trust (2012) 143 TTJ (Coch) 234** taken the view that where the entire cost of assets was allowed by way of application of income under section 11, depreciation was not allowable in respect of such assets.

Chargeable Income

In **DCIT v. Sandvik Asia Ltd. (2011) 133 ITD 126 (Pune) (TM)**, the Pune Bench (Third Member Bench) has held that where the assessee-company received interest on refund of income tax and also paid interest for delayed payment of tax, the gross interest received by the assessee from the Income Tax Department was chargeable to tax in its hands.

Depreciation

The assessee was not entitled to depreciation on leasehold rights over the land treating it as an intangible asset under section 32(1)(ii) opined the Pune 'B' Bench in **Drilbits International (P) Ltd. v. DCIT (2011) 142 TTJ (Pune) 86**.

Interest on Borrowed Capital

In **P.D. Warehousing Corporation v. ACIT (2011) 141 TTJ (Mum) 415** where the partners of the assessee-firm paid the retiring partners an agreed amount for safeguarding the interests of the firm out of funds borrowed by the firm and funds available with the firm, the interest paid on loans borrowed therefor is deductible under section 36(1)(iii) since the payments made to the retiring partners were based on commercial expediency, held the Mumbai 'C' Bench.

Bad Debts

Where the assessee-company wrote off bad debts through the provision for bad and doubtful debts account, the bad debts so written off were deductible since the assessee had written back the provisions in the earlier years, opined the Mumbai 'G' Bench in **DCIT v. Warner Lambert (India) (P) Ltd. (2012) 143 TTJ (Mum) 571**.

Section 40(a)(ia)

In **ITO v. Parag Mahasukhlal Shah (2012) 143 TTJ (Ahd) 606** where the assessee paid interest for delayed payment of purchase price to the supplier of goods, the Ahmedabad 'A' Bench expressed the view that such interest did not fall within

the definition of 'interest' under section 2(28A) since it did not have any nexus with a deposit, loan or borrowing, that the assessee was not liable to deduct tax at source under section 194A thereon and consequently, the said interest could not be disallowed under section 40(a)(ia).

Method of Accounting

Where the Department had accepted the project completion method of accounting followed by the assessee, it could not adopt percentage completion method for one year on selective basis, held the Delhi 'E' Bench in **DCIT v. Manish Buildwell (P) Ltd. (2011) 142 TTJ (Del) 749**.

Capital Gains

In **ITO v. Pashu Mohammed Zainuddin (2011) 142 TTJ (Pune) (UO) 17** where the land sold by the assessee was acquired by his ancestors free of cost as Inami land as Choli Bangdi for maintenance of a Dargah, the Pune 'A' Bench took the view that there was no cost of acquisition for the land and, therefore, no capital gain arose on its sale.

Deemed Dividend

The Agra Bench has in **DCIT v. Atul Engineering Udyog (2011) 133 ITD 1 (Agra)** taken the view that section 2(22)(e) will not apply if a person is a registered shareholder but not a beneficial shareholder and vice versa as the expression 'shareholder being a person who is beneficial owner of shares' referred to therein refers to both a registered shareholder and beneficial shareholder.

Income from other Sources

In **ACIT v. Ratan Industries (P) Ltd. (2012) 143 TTJ (Agra) (TM) 24** where the assessee surrendered a sum of Rs.22,00,000 in respect of excess stock found during survey which was added under section 69 but could not prove the nature and source of investment made in the inventory, the Agra Bench (Third Member Bench) ruled that the income was assessable as income from other sources and not as business income.

Carry Forward of Loss

Where the assessee filed the original return of income under section 139(1) declaring an income of Rs.94,09,046 and a revised return under section 139(5) declaring long-term capital loss of Rs.1,82,27,039,

he was entitled to carry forward the long-term capital loss, held the Mumbai 'D' Bench in **Ramesh R. Shah v. ACIT (2012) 143 TTJ (Mum) 166**.

Reassessment

In **Priya Ltd. v. ITO (2011) 133 ITD 38 (Mum)**, the Mumbai 'A' Bench has opined that if the manner of computation of income done by the assessee is incorrect but that does not reduce the total income or the ultimate tax liability, it cannot be a case of income escaping assessment covered under section 147.

Appeal

A Circular issued by the Central Board of Direct Taxes cannot be treated as additional evidence in an appeal before the Commissioner (Appeals), held the Jodhpur Bench in **ACIT v. Minpro Industries (2012) 143 TTJ (Jd) 331**.

Interest under Section 234D

The Visakhapatnam Bench has in **Dredging Corporation of India Ltd. v. ACIT (2011) 142 TTJ (Vis) 252** taken the view that interest under section 234D cannot be levied in a reassessment made under section 147 after completion of assessment under section 143(3) since such interest is leviable only where the refund allowed to the assessee under section 143(1) becomes collectible in a regular assessment and such reassessment cannot be termed as regular assessment.

Interest under Section 201(1A)

In **Madhya Gujarat Vij Co. Ltd. v. ITO (2011) 142 TTJ (Ahd) 704**, the Ahmedabad 'D' Bench has held that section 192(3) would not save the employer from the liability to pay interest under section 201(1A) if the employer had taken the deduction of tax from salary casually during the earlier months of the financial year by not deducting tax correctly as required by section 192(1) but had resorted to lump sum deduction of tax at the end of the financial year.

Precedent

The Mumbai 'C' Bench has in **G.D. Metsteel (P) Ltd. v. ACIT (2011) 142 TTJ (Mum) 641** expressed the view that the ruling given by the Authority for Advance Rulings, though deserves the highest respect and consideration, is not a binding judicial precedent. ■

CA. N.R. Badrinath, Bangalore &
CA. R. Phani Kumar, Bangalore
badrinath@sduca.com & phani@sduca.com

Updates on Indirect Taxes

Central Excise:

Eligibility of exemption on specified goods cleared from units which are shifted in Uttaranchal and Himachal Pradesh: The Central Government has granted exemption from payment of excise duties on clearance of specified goods from industrial units in certain areas of Uttaranchal and Himachal Pradesh for a period of ten years from the date of commencement of commercial production. The exemption is available to new units set up or existing units which have undertaken substantial expansion in terms of the said Notifications and commence commercial production before the cut-off date (on or before 31.3.2010 - Notification no 49/2003 - CE and dated 50/2003 - CE dated 10.06.2003). In this regard, CBEC has now clarified as follows: *(Circular No.960/03/2012-CX Central Excise, Dated February 17, 2012)*

Issue	Clarification
When there is a change in the ownership of a Unit already availing exemption	As the exemption is extended to a 'Unit', any change in its ownership would not prevent the admissibility of exemption for the remaining part of the ten year exemption period subject to fulfillment of prescribed conditions.
When a Unit already availing exemption physically shifts to a new location within the areas specified	That the exemption in such cases should be available for the residual period of exemption subject to fulfillment of prescribed conditions
When a Unit already availing the exemption expands by acquiring a plot of land adjacent to its existing premises and installing new plant/machinery on such land.	In such cases, the exemption should continue to be available for the residual period of exemption. Reference to Board's Circular No. 939/29/2010-CX dated 22.12.2010 is provided wherein it was, inter alia, clarified that any growth in the production / output of a unit by installing fresh plant and machinery would be eligible for exemption under these area-based exemption Notifications. Accordingly, the exemption would continue to be available for the residual period of exemption

Restriction on availment of CENVAT Credit on clearance of inputs or capital goods from specified area: Where a manufacturer has cleared any inputs or capital goods from factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim under an exemption notification, they are eligible to take CENVAT Credit on such inputs or capital goods as if no portion of the duty paid on such goods was exempted under the notification specified under Rule 12 of CENVAT Credit Rules, 2004. In this regard, the Central Government has now issued a notification stating that the above benefit is not available if such input or capital goods are cleared under the exemption Notification No 1/2011. (Notification No 1/2011 provides that excise duty is leviable at the rate of 1% on the goods specified in the notification subject to fulfillment of conditions specified therein). *(Notification No.1/2012 Dated February 09, 2012)*

Service Tax:

Gross amount for Works Contract service not to include value of free-of-cost supplies prior to July 07, 2009: The CBEC has clarified that value of free-of-cost supplies of goods and services in or in relation to the execution of Works Contract, have to be included in the 'gross amount' for the purpose of payment of service tax on works contract under the composition scheme, only with effect from July 07, 2009. In case of works contract commenced prior to July 07,2009 or where any payment (except by way of credit or debit in the account) has been made towards a works contract prior to July 07,2009, then 'gross amount' for the purpose of payment of service tax does not include the value of free of cost supplies. *(Circular-150/1/2012 - Service Tax, Dated February 08, 2012)*

Toll in the nature of 'user charge' or 'access fee' paid by road users: It is clarified that service tax is not leviable on toll paid by the users of roads, including those roads constructed by a Special Purpose Vehicle (SPV) created under an agreement between National Highway Authority of India (NHAI) or a State Authority and the concessionaire (Public Private Partnership Model, Build-Own/Operate-Transfer arrangement). However, if the SPV engages an independent entity to collect toll from users on its behalf and a part of toll collection is retained by that independent entity as commission or is compensated in any other manner, service tax liability would arise on such commission or charges, under the head Business Auxiliary Service. Renting, leasing or licensing of vacant land by the NHAI or State Authority to an SPV for construction of road and such construction do not attract service tax. *(Circular -152/3/2012 - Service Tax, Dated February 22, 2012)*

Service tax on Construction Services: The CBEC has clarified the levy and collection of service tax on construction services ('commercial or industrial construction service' and 'construction of complex service') under certain business models:

Tripartite Business Model: The parties in the model are landowner, builder/developer and construction contractor. The builder/developer receives consideration for the construction services from landowner in the form of land/developmental rights and from other buyers in cash. The following clarification is provided:

Taxability: Construction services provided by builder or developer prior to July 01, 2010 were not taxable in cases where the initial agreement between the promoters / builders / developers and the ultimate owner was in the nature of 'agreement to sell' in terms of Circular 018/02/2009 date 29.01.2009. However, construction services provided by the builder after July 01, 2010 is taxable if any part of payment / developmental rights are received by builder/developer before issuance of completion certificate, including flats sold to land owner.

Value of service:

- a. Flats given to land owner: The value of the flats given to land owner would be the equal to value of similar flats sold by the builder/developer to other buyers. Further, in case the prices of flats/houses undergo a change over the period of sale (from the first sale of flat/house in the residential complex to the last sale of the flat/house), the value of similar flats as are sold nearer to the date on which land is made available for construction should be used for arriving at the value for the purpose of tax. Service tax is liable to be paid by the builder/developer on the 'construction service' involved in the flats to be given to the land owner, at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument (eg. allotment letter)
- b. Flats given to other buyers: The value of the flats given to other buyers shall be the gross amount charged by the builder/developer as determined in terms of Section 67 of Service Tax Provision.

Redevelopment including slum rehabilitation projects: In this model land is owned by a society. After a certain period, based on requirement the society or flat owners may engage builder/developer for undertaking reconstruction. The builder may in addition to re-construction, construct additional flats for sale to others or/and arrange for rental accommodation or rent payments for society members/owners for stay during the period of reconstruction or/and pay an additional amount to the original owners of the flats in the society. The builder/developer receives consideration for the construction services from society/members in the form of developmental right and from other buyers in cash. It is clarified that re-construction service undertaken by society/member by directly appointing a builder/developer is not taxable as it is meant for personal use of the society/members.

Construction of additional flats to other buyers (i.e. other than society/members) prior to July 01, 2010 is not taxable. However, construction services provided by the builder/developer after

July 7, 2010 to other buyers (i.e. other than society/members) is taxable if any payment is received by the builder/developer before issuance of completion certificate. The value of flats given to other buyers shall be the gross amount charged by the builder/developer.

Investment Model: Before commencement of a project, either a specified area of construction or a flat of a specified area is given to the investors. Additionally, the investors may also be paid a fixed rate of interest. The investor has the option to exit from the project on receipt of his investment and interest, resell the flat allotted or retain the flat. It is clarified that after 01/07/2010, investment amount paid to builder/developer is taxable. If the investor exits from the project either before or after the issuance of completion certificate, the builder/developer can take credit in terms of Rule 6(3) of Service Tax Rules, 1994 to the extent he has refunded the original amount. If the builder/developer resells the flat before issuance of the completion certificate, service tax would be payable.

Conversion Model: If any untaxed construction/complex or part thereof is later converted to a building or civil structure for commerce or industry, after a long period of time, it is clarified that service tax will be applicable if the conversion falls within the meaning of commercial or industrial construction service. A mere change in the use of building does not involve any taxable service.

Non requirement of completion certificate/where completion certificate is waived or not prescribed: Where completion certificate is waived or is not prescribed for a specified type of building it is clarified that any certificate which is an equivalent of completion certificate issued by a competent authority should be used to distinguish between service and sale. Competent authority to issue completion certificate includes an architect or chartered engineer or licensed surveyor in terms Service Tax (Removal of Difficulty) Order, 2010, dated 22/06/2010.

Build – Operate- Transfer (BOT) Projects: Under BOT projects the Government or its agency, by an agreement transfers the 'right to use' and/or 'right to develop' for a specified period to the concessionaire. The parties in this model are Government or its agency, concessionaire (Developer/builder or

independent party) and user. In these arrangements, the taxability is clarified under the following models:

1. Between Government and Concessionaire: The concessionaire pays either an upfront lease amount or annual charges to the government or its agency and therefore the concessionaire becomes the service receiver and not a service provider. The Government or its agency would be liable to service tax under 'renting of immovable property service' (renting of vacant land to be used for furtherance of business or commerce).

2. Between concessionaire and contractor: If the concessionaire engages a contractor to undertake construction on his behalf, then service tax is payable on the construction service provided by the contractor to the concessionaire. If the concessionaire is himself a builder/developer there would be no service tax.

3. Between concessionaire and users: The concessionaire may sub-lease the building constructed for rent or premium. The services provided by concessionaire may be taxable under different heads depending on the nature of the service provided by the concessionaire viz renting of immovable property, business support service etc., as the case may be.

Joint Development Agreement: In this model the land owner and builder/developer undertake construction activity either through a new entity or operate as an unincorporated association on partnership/joint/collaboration basis and share risks and profits together. It is clarified that Circular 148/17/2011 dated 13/12/2011 would apply with necessary changes. (*Circular -151/2/2012 – Service Tax, Dated February 10, 2012*)

Foreign Trade Policy (FTP):

Import of spares for domestically procured machinery is not allowed under EPCG scheme: EPCG scheme provides that Capital Goods can be procured indigenously upon invalidating an EPCG Authorization. However, EPCG Scheme provides for import of spares only in case where the imported Capital Goods were earlier under EPCG or other imports not under the EPCG Scheme. Domestically procured Capital Goods under the EPCG scheme cannot be treated as 'imported Capital Goods'. Consequently, spares cannot be allowed for domestically procured Capital Goods under the EPCG Scheme. (*Policy Circular No. 54 (RE-2010)/2009-14, Dated February 23, 2012*)

FEMA:

Liberalization in Foreign Exchange Remittance towards Imports: As per erstwhile Circular A.P.(DIR Series) Circular No. 106 dated June 19, 2003, all persons, firms and companies were required to make an application in Form A-1 for making payment exceeding USD 500 or its equivalent towards imports into India. Now the said limit of USD 500 or its equivalent towards imports is raised to USD 5000 or its equivalent without any documentation formalities, with immediate effect.

The remittance of USD 5000 or its equivalent shall be allowed based on a letter from the applicant containing the basic information viz., the name and the address of the applicant, name and address of the beneficiary, amount to be remitted and the purpose of remittance. However, the remittance should be for a current account transaction and the payment is made by a cheque drawn on the applicant's bank account or by a Demand Draft. **(A. P. (DIR Series) Circular No.82 Dated February 21, 2012)**

Reporting requirement in case of purchase of Immovable Property in India: As per the Foreign Exchange Management (Acquisition and Transfer

of Immovable Property in India), Regulations, 2000, as amended from time to time, a person resides outside India, having a branch, office or other place of business, excluding a liaison office, acquires any immovable property in India, has to file a declaration in the Form IPI prescribed under the said regulation. The same is required to be filed not later than ninety days from the date of acquisition of immovable property. Now, it has been clarified that the aforesaid regulation do not prescribe for reporting requirements for such transactions for a person resident outside India, being a citizen of India or a Person of Indian Origin. For the purpose of clarity, Form IPI has been amended. **(A. P. (DIR Series) Circular No.79 Dated February 15, 2012)**

Simplification and Revision of Softex Procedures: The software exporters in India are required to declare the export turnover through SOFTEX Form as per regulation under Foreign Exchange Management (Export of Goods and Services) Regulations 2000. Considering the increased volume of software exports and voluminous nature of contracts, the matter was revisited and the simplified procedure has been laid down as below:

- Software exporter having annual turnover of at least Rs. 1000 Crores or who files at least 600 SOFTEX Forms annually, will be eligible to submit a statement in Excel format in the prescribed format, giving all particulars along with **Quadruplicate** SOFTEX form to the nearest STPI.
- All the documents are required to be submitted on demand to STPI within 30 days of their advice or extended time, if any.
- The exporters, however, will have to provide information about all the invoices including the ones lesser than US\$ 25000, by way of statement in excel format.

The new procedure will be effective initially in STPI Bangalore, Hyderabad, Chennai, Pune and Mumbai with effect from April 01, 2012. Details of procedure and the format of annexure can be accessed at <http://rbi.org.in/scripts/NotificationUser.aspx?Id=7009&Mode=0> **(A. P. (DIR Series) Circular No.80 Dated February 15, 2012)**

External Commercial Borrowings (ECB) for Infrastructure Facilities within National Manufacturing Investment Zone (NMIZ): The Union Ministry for Commerce & Industry, Government of India had proposed the creation of National Manufacturing & Investment Zones (NMIZ) to boost the share of manufacturing sector in the country's GDP. The proposal sought to create more employment opportunities. The NMIZ would provide good physical infrastructure, a progressive exit policy, structures to support clean and green technologies, appropriate investment incentives and business friendly approval mechanisms and each zone would have a combination of production units, public utilities, logistics, environment protection mechanisms, residential areas and administered services.

Considering the infrastructural needs of the proposed NMIZs, the developers of NMIZ is now permitted to avail ECB under the "approval route" for providing infrastructure facilities within the NMIZ. **(A. P. (DIR Series) Circular No. 85 Dated February 29, 2012).** ■

THE MONTH THAT WAS (MARCH 2012)

3 rd	CPE Seminar on Bank Branch Audit
16 th	Panel Discussion on Union Budget 2012
17 th	CPE Hands on "Practical Workshop" on Advanced Excel for CAs
21 st	Public Meeting on Union Budget 2012
23 rd	Meet the President & Vice-President of ICAI & Valedictory function of the Diamond Jubilee Celebrations of SIRC of ICAI
24 th	CPE Seminar on Revised Schedule and XBRL Integration
30 th	CPE Seminar on Clause by Clause analysis on Finance Bill 2012
7 th , 20 th , 28 th	CPE Study Circle Meetings & Teleconferences

SIRC acknowledges the contribution and support extended by President and Vice-President of ICAI, Central Council Members of ICAI, Regional Council Members of SIRC, Resource Persons, Co-ordinators and the delegates/participants for making all the programmes a resounding success.

OBITUARY

M.No	Name	Status	Place	Date of Death
005056	MR. SHENOY MADHAV VENKATESH	FCA	BANGALORE	27/10/2011
009207	MR. KOTHANDARAMAN N	FCA	CHENNAI	19/02/2012
025396	MR. RAJARAM L S	FCA	CHENNAI	12/02/2012
030328	MR. RAMNATH NAREN	FCA	BANGALORE	28/01/2012
200502	MR. VAITHIYANATHAN N	FCA	TIRUCHIRAPALLI	20/01/2012

May the Almighty Architect of the Universe rest their souls in peace.

DISCLAIMER

The SIRC/ICAI does not accept any responsibility for the views expressed in different contributions / advertisements published in this Newsletter.

For Attention of Members & Students

Membership and Certificate of Practice Fee for the year 2012-2013

Annual Membership Fee and Certificate of Practice Fee for the year 2012-2013 is payable on 1st April 2012. The schedule of fee is as under:

For Members below age of 65 years		
Associate Membership Fee	:	₹ 800/-
Fellow Membership Fee	:	₹ 2200/-
Certificate of Practice Fee	:	₹ 2000/-

For Members above age of 65 years		
Associate Membership Fee	:	₹ 600/-
Fellow Membership Fee	:	₹ 1600/-
Certificate of Practice Fee	:	₹ 1500/-

Individual circulars are being mailed to members giving details of scale of fee and also the manner of remittance of the fee. The fee can, therefore, be remitted to the concerned Decentralised Office of the Institute.

A data sheet giving some of the particulars of the member concerned as they appear in the Institute's database is also being sent for their verification and confirmation. The data sheet may be verified by the member and also returned to the Decentralised Office concerned by 30th April 2012. If data sheet is not received by 30th April 2012, particulars appearing therein would be taken as confirmed for publication in the List of Members as on 1st April 2012.

It may be noted that remittance of fee has to be made by local cheque (in case of Members who are residing in the cities in which respective Decentralised Office is situated) or by way of demand draft in favour of 'Secretary, The Institute of Chartered Accountants of India', payable at the place where the concerned Decentralised Office is located. It may also be noted that under no circumstances out-station cheques will be accepted. No remittance should be made directly to the Head Office or a different Decentralised Office.

Members can also pay fee in advance in accordance with details given in the communication being mailed to the members.

The Chartered Accountants Benevolent Fund, members might be aware, has been set up with the object, inter alia, of providing financial assistance to Institute's members and / or their families in distress. Chartered Accountants can become members of the Benevolent Fund either by paying ordinary membership fee of Rs.250/- annually or become the member thereof by paying a one-time amount of Rs.2500/-. The Benevolent Fund has been providing financial assistance to the member and / or the families of the deceased member depending on the number of requests received and the fund position. In order to provide assistance to more members and in a substantial manner, augmentation of the corpus of the Benevolent Fund is necessary. Towards this direction members are requested to contribute their mite while remitting their membership / certificate of practice fee for the year 2012-2013. It is hoped that the members of the Institute would respond positively to this noble cause.

Members are advised to remit the fee by 30th April 2012. For more details visit our website www.icaai.org.

COACHING CLASSES AT SIRC OF ICAI

10-Day CPT Rapid Revision Classes

for student appearing in June 2012 Examination

From May 23, 2012 to June 3, 2012

Timings

Accounts	06.30 a.m. to 09.30 a.m.
	05.30 p.m. to 08.30 p.m.
Law / Economics / QT	10.30 a.m. to 01.00 p.m.
	02.00 p.m. to 05.00 p.m.

Fee: ₹ 1,500/-

- Students who have already appeared in CPT Examination and yet to qualify may also join this CPT Rapid Revision Classes.
- Senior Faculty Members will discuss the Model Test Papers (Questions) in details. Fully Exam oriented. One CPT Model Examination will also be conducted on June 3, 2012.

Three months intensified Coaching classes for PCC/IPCC and FINAL course for November 2012 Examinations

Commences on **May 28, 2012**

Timings

06.30 a.m. to 09.30 a.m. & 05.30 p.m. to 08.30 p.m.
(On Sundays: Between 07.00 a.m. & 05.00 p.m.)

Fees:

PCC/IPCC : ₹ 4,000/- (both groups) - ₹ 2,000/- (one group)
FINAL : ₹ 5,000/- (both groups) - ₹ 2,500/- (one group)

- Fee remittance at Syndicate Bank, Nungambakkam Branch, Chennai-34. Bank challan available at SIRC Office.
- Outstation students should remit fee by DD favouring "SIRC of ICAI" payable at Chennai. Fee and details (name, address, contact no. and Students Registration No.) to be sent to SIRC of ICAI, "ICAI Bhawan" 122, MG Road, Chennai-34.
- For latest announcements & information visit www.sircoficai.org
Ph: 044-3021 0322 / 3989 3989 [Extn. 322] Fax: 044 - 3021 0355
Email: sircclasses@icai.in; sirc@icai.in

Admit Cards to candidates appearing in May 2012 CA Examinations

Candidates who have applied for May 2012 Chartered Accountants exams are requested to note that admit cards with photographs and signatures of the candidates will be hosted on <http://www.icaai.org> generally 21 days prior to the commencement of the examination. Candidates may print their admit cards from the website, which will be valid for admission to the examination. **Complete details of the announcement on matters regarding downloading, printing, advice to candidates, details of Helpline, etc. are hosted in the ICAI Website under Students and sub link Examination. It can be viewed directly under the link http://www.icaai.org/new_post.html?post_id=8233&c_id=219** Candidates may note that physical admit cards for May 2012 examination will also be sent to the candidates, by post. In case a candidate does not receive the physical admit card by post, for whatsoever reason, they can carry the admit card printed from website, which is also equally valid.

Examination Department, ICAI

Submission of Annual Audited Results by 30th May 2012

The option available under the erstwhile Clause 41 for submission of either the unaudited results for the last quarter or submission of audited results for the entire year, has now been done away with, and **as per the amended Clause 41, a new sub clause (I) (d) has been inserted, which requires the listed companies to mandatorily submit the Audited Financial Results only, that too within the specified period of 60 days from the end of the Quarter.**

Further, in cases of listed companies having Subsidiaries, while submitting their annual audited financial results prepared on stand-alone basis, as mentioned above, they shall also submit annual audited consolidated financial results to the Exchanges within the stipulated period of 60 days from the end of the financial year.

The newly inserted clause also mandates that the companies shall also submit the audited financial results in respect of the last quarter along with the results for the entire financial year, with a note that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year to date figures upto the third quarter of the current financial year.

New Arrivals at Sales Counter

S.No.	Name of the publication	Price ₹	Postage ₹
1.	Guidance Note on the Revised Schedule VI to the Companies Act, 1956	200/-	30/-
2.	Implementation Guide to SA 530 Audit Sampling	100/-	30/-
3.	Compilation of Registration Provisions under VAT Laws of different States	225/-	30/-
4.	Technical Guide on Internal Audit of Mutual Fund	125/-	30/-
5.	Implementation Guide to Materiality in Planning & Performing an Audit	100/-	30/-
6.	Guide to Environment Audit (Ed. Jan 12)	150/-	30/-
7.	Technical Guide on Stock and Receivable Audit	150/-	30/-
8.	Educational Material on Indian Accounting Standards (IND AS) 1 - Presentation of Financial Statements	100/-	30/-
9.	Educational Material on Indian Accounting Standards (IND AS) 2 - Inventories	50/-	30/-
10.	Fiscal Responsibility and Budget Management Act	100/-	30/-
11.	Compendium of Opinions - Volume 29	300/-	30/-

Institute's Sales Counter at Chennai is open from 10.00 a.m. to 05.00 p.m. (Except lunch hour 01.00 to 02.00 p.m.). If required by post, send DD favouring "ICAI" payable at Chennai.

Corrigendum Memorandum of Understanding between ICAI and University of Madras

Attention of the readers is invited to aforesaid announcement published on page 3 of December 2011 issue where it was inadvertently stated "Similarly, any student of ICAI who passed the Intermediate level of Chartered Accountancy Course shall be eligible for admission to M.Com/MBA courses of the University of Madras". The error is deeply regretted.

Director of Studies, ICAI

WORK DISPOSAL POSITION

The position of disposal of various matters relating to Members and Students of Regional Office, Chennai as on 30.03.2012 is as under:

Particulars	Disposal of records received upto
Members	
Enrolment of Members	26.03.2012
Fellow Admission	28.03.2012
Grant of COP	28.03.2012
Restoration of Name - Recommended upto	28.03.2012
Restoration of Name - Cleared upto	29.02.2012
Constitution of Firms	28.03.2012
Reconstitution of Firms	28.03.2012
Paid Assistant	10.03.2012
Change of Address - Members	28.03.2012
Change of Address - Firms	26.03.2012
Students	
Registration of Articles	13.03.2012
Re-registration of Articles	20.03.2012
Industrial Training	20.03.2012
Termination of Articles	07.03.2012
Completion of Articles	29.02.2012
Permission to pursue Other Courses	31.01.2012
Change of Address - Students	29.03.2012
Despatch of Materials - CPT	27.03.2012
Despatch of Materials - Final	28.03.2012
Despatch of Materials - IPCC	27.03.2012
Despatch of Materials - ATC	27.03.2012
Despatch of Materials - ITT (By Post)	29.03.2012



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Name of Office Bearers of SIRC of ICAI for the year 2012-2013 and Chairmen of Branches of SICASA

Sl.No.	Name of the Branch	Chairman	Vice-Chairman	Secretary	Treasurer	SICASA Chairman
1	Alleppey	Biju Narayanan	Udaya Varma R	Prasanna Kumar N	Shafeeq A M	Vidhukumar B
2	Bangalore	Nithin M	Ravindranath S N	Prasad S R	Shivakumar H	
3	Belgaum	Nitin Sadashiva Hiremath	Vijayendra G. Patil	Sanjay S Mudnur	Shivanand Vilas Halbhavi	Basappa B. Chandargi
4	Bellary	Anil Kumar B K	Rajasekhar K	Venkatalakshmi Sontha	Syed Mahamed	Chandrappa K V
5	Calicut	Shaju Sebastian	Ranjani Umesh	Sujith Kumar T N	Ravi Chandrashekar	Vinod Kumar A P
6	Coimbatore	Jalapathi K	Gobinath K P	Viswanathan P	Robert Kennedy M	Shanmuga Vadivel N N
7	Ernakulam	Mathukutty P P	Mathew Joseph	Poulose M O	Balagopal R	Jayeme K P
8	Erode	Rajendran K	Thangavel N	Nagarajan R	Ayub J S	Sivasubramanian P
9	Guntur	Sasi Bhushan G N V	Leela Krishna Murthy A	Divakara Sarma M	Ashok Kumar CH.	Muppala Subba Rao
10	Hubli	Suresh Chenni	Madhusudan D. Pise	Hitesh Kumar Modi	Vinay K Kulkarni	Bhandiwad S R
11	Hyderabad	Dayakar Gelli	Tirupathiah Yarra	Murali Krishna Nagabhirava	Chinna Masthan Thalakayala	Venkatram C
12	Kakinada	Karthika Krishna Pavanakumar Chamarthi	Mandhata Surya Rao	Mallidi Rama Brahmananda Reddy	Buddhavarapu Venkata Subba Rao	Mandhata Surya Rao
13	Kannur	Emmanuval P D	Jacob P J	Rejeesh T K	Vijayan K K	-
14	Kottayam	Anthony Francis	Thankachan Zacharias	Josy Thomas	Sudhakar P	Thankachan Zacharias
15	Kumbakonam	Sattanathan R	Baskar R	Guhaneswaran A	Balaji B V	Guhaneswaran A
16	Madurai	Mohamaed Khan A	Saravanan P	Selva Kumar G	Chidambaram N	Dungar Chand Jain U
17	Mangalore	Murali Mohan Bhat	Jagannath Kamath M	Shyamala Shenoy A K	Shivakumar K	Sham Bhat K
18	Mysore	Subramanian T V	Sadashiva K S	Francis P W	Sathyanaarayana C S	Tejasvi S R
19	Nellore	Subba Rao V M V	Pundarikaksham A	Kiran Kumar K	Sankaranarayana A	Murali Krishna Reddy G
20	Palghat	Suresh P	Lakshmanan P R	Harish C R	Mohandas A K	Krishnankutty S
21	Pondicherry	Hari Govind G	Vijaykumar N Modi	Selvaraj V	Meenakshi Sundar V	Selvam R
22	Quilon	Krishna Kumar K	Jacob J	Kuruville George	Murugan N	Zachariah K Samuel
23	Rajamahendravaram	Satyanaarayana V V	Viswanath CH S V S	Venkateswarlu K	Veerabhadra Rao T	Seshagiri Vara Prasad V
24	Salem	Gunasekaran R	Madhukar V	Jayaprakash V	Sudharsan V	Sekar M
25	Sivakasi	Shenbaramoorthy C	Muthusubramanian M	Dharmarajan V K	Anuradha G	-
26	Tiruchirapalli	Jayaraman V	Hari R P	Victor Samuel A	Rajaram R	Annamalai P
27	Tirunelveli	Subramanian R	Ramasamy V	Sudalai Muthu T	Anbu Sanjeevi Kani A	Anbu Sanjeevi Kani A
28	Tirupati	Chandra Reddy B	Gupta K G M	Prasad K S S	Prasad K S S	
29	Tirupur	Harihara Subramanian V	Suresh S	Arun N	Harishankar S	Anbazhagan S
30	Trichur	Geo Job	Shajan T T	Shajan T T	Geo K M	Geo K M
31	Trivandrum	Alex Kuriakose	Hari C	Sundar S	Santhosh Cherian	Padmanabhan S
32	Tuticorin	Zubier A	Chandrasekaran C	Selvin Gnanaraj J	Manoj Rodrigo G	Ponpandi Inbarasu K
33	Udupi	Ganesh Y	Muralidhar Kini U	Ammunje Venkatesh Nayak	Prshantha Holla T	Sadashiva Pai B
34	Vellore	Chandra Bob C R	Renganatha Nagarajan N V	Kalalagan D	Srinivasan C	Manoharan D K
35	Vijayawada	Kunda Rama Narayana	Bhimavarapu Shivaji Prasad	Sankara Akkaiah Naidu	Srinivas Agnihotram	Lingamurthy B V S
36	Visakhapatnam	Kumar M K	Kumar P V S P	Prakasa Rao N N S	Sudheer Motamarri	Lalitha Sundari A V S

CHAIRMEN OF 36 BRANCHES OF SIRC OF ICAI FOR THE YEAR 2012-13



CA. Biju Narayanan
Alleppey
98952-14442



CA. M. Nithin
Bangalore
99456-82356, 94484-02356



CA. Nitin S. Hiremath
Belgaum
98455-13770



CA. B.K. Anil Kumar
Bellary
94480-72848



CA. Shaju Sebastian
Calicut
94470-14026



CA. K. Jalapathi
Coimbatore
98428-96673



CA. P.P. Mathukutty
Ernakulam
94470-48672



CA. K. Rajendran
Erode
98427-35070



CA. G.N.V. Sasi Bhushan
Guntur
98481-31623



CA. Suresh Chenni
Hubli
94481-16365



CA. Dayakar Gelli
Hyderabad
98490-26209



CA. K.K. Pavankumar
Chamarthi
Kakinada
98660-16243



CA. P.D. Emmanuel
Kannur
98475-03344



CA. Antony Francis
Kottayam
94475-08173



CA. R. Sattanathan
Kumbakonam
94431-87678



CA. A. Mohamed Khan
Madurai
98430-30275



CA. Murali Mohan Bhat
Mangalore
98451-02004



CA. T.V. Subramanian
Mysore
98866-52680



CA. V.M.V. Subba Rao
Nellore
93902-21100



CA. P. Suresh
Palghat
94474-43247



CA. G. Hari Govind
Pondicherry
94437-16611



CA. K. Krishna Kumar
Quilon
94951-14025



CA. V.V. Satyanarayana
Rajamahendravaram
98481-49058



CA. R. Gunasekaran
Salem
93621-09697



CA. C. Shenbagamoorthy
Sivakasi
94431-31792



CA. V. Jayaraman
Tiruchinappalli
94437-05152



CA. R. Subramanian
Tirunelveli
98421-57725



CA. B. Chandra Reddy
Tirupati
94409-01373



CA. V. Harihara Subramanian
Tirupur
95524-10060



CA. Geo Job
Trichur
98950-34820



CA. Alex Kuriakose
Trivandrum
94470-41458



CA. A. Zubier
Tuticorin
98421-26302, 94433-26302



CA. Y. Ganesh
Udupi
98452-49044



CA. C.R. Chandra Bob
Vellore
94432-62217



CA. Kunda Rama Narayana
Vijayawada
98494-20772



CA. M.K. Kumar
Visakhapatnam
98496-67748

CPE SEMINAR ON CLAUSE BY CLAUSE ANALYSIS OF FINANCE BILL - 2012
 under the auspices of Taxation Committee of SIRC of ICAI - March 30, 2012 - Chennai



CA. K. Viswanath, Chairman-SIRC inaugurating. (L-R): CA. C.S. Srinivas, Member-SIRC, CA. P.V. Rajarajeswaran, Secretary-SIRC and Member-Taxation Committee, SIRC, CA. P.R. Aruloli, Member-Taxation Committee, SIRC, CA. E. Phalguna Kumar, Chairman-Taxation Committee, SIRC, CA. N.R. Badrinath and CA. V. Raghuraman, Resource Persons.

Resource Persons



CA. V. Raghuraman
Bangalore



CA. N.R. Badrinath
Bangalore



CA. H. Padam Chand Khincha
Bangalore



CA. S. Ramasubramanian
Bangalore



CA. K.K. Chythanya
Bangalore

MADURAI BRANCH – March 17, 2012



CA. K. Viswanath, Chairman-SIRC inaugurating Bank Audit Seminar in the presence of Chief Guest Mr. N.P. Rajan, Zonal Manager-Indian Bank, Madurai, Guests of Honour CA. P.V. Rajarajeswaran, Secretary-SIRC & Ex-officio Member-Madurai Br. and CA. P.R. Suresh, Treasurer-SIRC, CA. A. Mohamed Khan, Chairman, Other Office Bearers & MC Members of the Madurai Branch and Resource Persons.

HYDERABAD BRANCH – March 22, 2012



Chief Guest **CA. B.A. Prabhakar, CMD, Andhra Bank** and Guest of Honour **CA. K. Viswanath, Chairman-SIRC (7th & 8th from Right)** at the Inaugural Session of the Seminar on Bank Audit with CA. J. Venkateswarlu, CCM-ICAI, CA. P.R. Suresh, Treasurer-SIRC, CA. Naresh Chandra Gelli V., Member-SIRC, CA. Dayakar Gelli, Chairman, Other Office Bearers & Managing Committee Members of Hyderabad Br.

BANGALORE BRANCH - March 27, 2012



Chief Guest **CA. K. Viswanath, Chairman-SIRC** at the Inaugural Session of the Seminar on Bank Branch Audit with CA. C.S. Srinivas, Member-SIRC, CA. M. Nithin, Chairman-Bangalore Branch, Other Office Bearers & Managing Committee Members of Bangalore Branch and Resource Persons.

SICASA BANK AUDIT SEMINAR - March 25, 2012 -Chennai



Chief Guest **CA. M. Naganathan, Chennai (3rd from Right)** inaugurated. (L-R): Mr. A.P. Lijil, Secretary-SICASA, Mr. M. Mohit, Vice-Chairman-SICASA, CA. C.S. Srinivas, Member-SICASA, **Guest of Honour CA. R. Sivakumar, Chennai**, CA. Naresh Chandra Gelli V., Chairman-SICASA and CA. S. Ramesh, Chennai (Resource Person)



CA. V. Murali, Member, Board of Studies, ICAI distributing Certificates to the students at the Valedictory function of GMCS Course held on March 8, 2012 at Chennai. (L-R): CA. Gopal Krishna Raju, Member, GMCS Co-ordination Committee of SIRC, **Guest of Honour CA. Vinod Ramakrishnan, AVP (Finance), M/s. Cognizant Technologies**, CA. S. Rangarajan, VP (Internal Audit), M/s. Sundaram Clayton and Dr. T. Sankravel, Faculty.

RESOURCE PERSONS AT THE WORKSHOP AND CPE STUDY CIRCLE MEETINGS

March 2012 at SIRC, Chennai

WORKSHOP - HANDS ON TRAINING

March 17, 2012



CA. Gopal Krishna Raju
Chennai

March 17, 2012



CA. P. Selva Moorthy
Chennai

CPE STUDY CIRCLE MEETINGS

March 7, 2012



CA. B. Ramanakumar
Chennai

March 28, 2012



CA. T.R. Chandrasekaran
Chennai

**MEET THE PRESIDENT & VICE-PRESIDENT OF ICAI &
VALEDICTORY FUNCTION OF THE DIAMOND JUBILEE CELEBRATIONS OF SIRC OF ICAI**
March 23, 2012 - Chennai



Chief Guest Shri K.V.S. Gopalakrishnan, IPS, Formerly Special Director, Intelligence Bureau inaugurating. (L-R): CA. P.V. Rajarajeswaran, Secretary-SIRC, CA. Rajendra Kumar P., CCM-ICAI, CA. K. Viswanath, Chairman-SIRC, CA. Subodh Kumar Agrawal, Vice-President-ICAI, CA. Jaydeep Narendra Shah, President-ICAI, CA. P.R. Suresh, Treasurer-SIRC and CA. V. Murali, CCM-ICAI.



Office Bearers and Regional Council Members of SIRC of ICAI with **Chief Guest Shri K.V.S. Gopalakrishnan, IPS, Formerly Special Director, Intelligence Bureau**, President-ICAI CA. Jaydeep Narendra Shah, Vice-President-ICAI CA. Subodh Kumar Agrawal, Central Council Members of ICAI CA. S. Santhanakrishnan, CA. V. Murali, CA. Rajendra Kumar P.



Shri K.V.S. Gopalakrishnan, IPS
delivering Valedictory Address



CA. Jaydeep Narendra Shah
delivering Presidential Address



CA. Subodh Kumar Agrawal
delivering Special Address

ORIENTATION PROGRAMME FOR CHAIRMEN AND SECRETARIES OF BRANCHES OF SIRC OF ICAI
March 9, 10 & 11, 2012 – Bangalore



Chief Guest CA. B.P. Rao, Past President-ICAI inaugurating. (L-R): CA. P.V. Rajarajeswaran, Secretary, CA. K. Viswanath, Chairman, CA. P.R. Suresh, Treasurer and CA. D. Prasanna Kumar, Vice-Chairman of SIRC of ICAI



Regional Council Members of SIRC with (seated L-R): CA. P.V. Rajarajeswaran, Secretary, CA. K. Viswanath, Chairman of SIRC, **Chief Guest CA. B.P. Rao, Past President-ICAI**, CA. D. Prasanna Kumar, Vice-Chairman and CA. P.R. Suresh, Treasurer of SIRC.



Chairmen and Secretaries of all the 36 Branches of SIRC of ICAI with
Office Bearers of SIRC of ICAI, Central Council Members of ICAI and Regional Council Members of SIRC of ICAI