



SIRC OF ICAI

Wishes its members, students and the staff of ICAI

A VERY HAPPY AND PROSPEROUS NEW YEAR – 2012 AND PONGAL

Chairman Writes...

My Dear Colleagues,

2012 has begun with so much of fanfare, and I am sure all of you are eagerly awaiting the events of the year that is prophesied to be the turning point for the whole universe. I take this opportunity to wish each and every one of you a Happy and Prosperous New Year, season's greetings for the Pongal / Mahara Sankaranthi.

Our professional fraternity also is celebrating the dawn of the New Year in our own unique traditional way (we are one of the rare breed of professional who celebrate any events by learning) - the International Conference at Chennai – Jan. 6-8 2012. The occasion will provide yet another forum to exchange our professional knowledge and also meet the icons of the fraternity spread over the globe. I look forward to meeting all of you once again.

My interaction with you through penultimate issue of this Newsletter in the capacity of Chairman has been heart-warming for the simple fact that, I have gained inspiration and motivation over the last 10 months than before with the kindness you all extended to me whenever I had the occasion to interact during my visits to branches and at the programmes organized by SIRC and its branches.

When I took over on 20th February 2011, I had, at that point of time, thought that onerous responsibility had cast upon me to dedicate myself to serve the members and students and when I look back at the end of 2011, I should confess with assertiveness that the oneness amongst our professional fraternity in extending the full support to the SIRC made all the difference – be it SIRC Regional Council Members – be it SIRC Executive Committee – be it the staff force of SIRC – be it the Central Council Members - be it the various committees of SIRC – be it the various co-opted members for various committees and the programmes – be it the Chairmen and committees of all the branches and the onerous task has become the honourable duty which I relished in performing to the best of my ability with the support of my colleagues in the Regional Council. At the same time, when I look forward to 2012, I should say again with conviction and confidence that we would be able to march ahead with rejuvenated energy to serve the members and students in their pursuit of education and excellence.



Chief Guest **CA. G. Ramaswamy, President-ICAI** inaugurated the 'ICAI Bhawan' of Bellary Branch of SIRC of ICAI on December 3, 2011 at Bellary in the presence of CA. K. Shanmukha Sundaram, Chairman-SIRC of ICAI, CA. K. Raghu & CA. M. Devaraja Reddy, Central Council Members of ICAI, Office-Bearers & Members of SIRC and CA. K.V. Chandrappa, Chairman, CA. K. Rajasekhar, Secretary, Office-Bearers & Members of Bellary Branch.

Chennai had the privilege of having CA Students' National Convention during the December month under the Chairmanship of CA. V. Murali, Chairman, Board of Studies, ICAI, where in more than 2000 students have participated. Meeting the students of our fraternity has always been an interesting and delightful experience and this one also gave me a great experience. Presence of our own President CA. G. Ramaswamy and Vice President CA. Jaydeep Narendra Shah gave a boost to the conference.

I am happy to inform that SIRC is video graphing some of the programmes and hosting in the SIRC website www.sircoficai.org under the head "Archives". I request the member to view and avail "CPE Unstructured Credits".

The months that have passed have really been hectic, the bouquets and the brickbats that have come in have really given me an insight of what members of our esteemed profession look for and also what people perceive. To me this year has been easier, thanks to the blessing and best wishes of so many friends and my efforts have been more meaningful, thanks to the learning's that friends have told me about. When I hear people's feedback I just smile and remember the story a good friend told me long time ago, that story really prepared me for life better than anything else.

Contd.. at page 3

TWO DAY SEMINAR ON RISK BASED INTERNAL AUDIT

Organised jointly by Information Technology Committee, Committee for Members in Industry and Committee on Internal Audit of SIRC of ICAI
December 10 & 11, 2011 - Chennai.



CA. Rajendra Kumar P, Vice-Chairman Internal Audit Standards Board and Member IT Committee- ICAI delivering Inaugural address. (L-R): CA. P.R. Aruloli, Member, SIRC, CA. Gopal Krishna Raju, Chairman- Information Technology Committee, SIRC, CA. K. Shanmukha Sundaram, Chairman-SIRC of ICAI, CA. G.V.V. Saityanarayana, Chairman-Committee for Members in Industry, SIRC and CA. Naresh Chandra Gelli V., Chairman-Internal Audit Committee, SIRC.

Resource Persons



CA. Chinnsamy
Ganesan
Chennai



Dr. K. Paul Jayakar
Chennai



CA. Terry Thomas
Chennai



CA. Gopal Krishna Raju
Chennai



Dr. Mathew Thomas
Aloor
Chennai



CA. H. Venkatesan
Chennai



Mr. A. Vijayakumar
Chennai



CPE REFRESHER COURSE ON TAXATION

under the auspices of Taxation Committee of SIRC of ICAI
December 19 - 24, 2011 - Chennai.

◀ Chief Guest **CA. V. Jagadisan, Past Central Council Member-ICAI**, Inaugurating (L-R): CA. Gopal Krishna Raju, Member, Taxation Committee-SIRC, CA. P.R. Aruloli, Chairman, Taxation Committee - SIRC, CA. K. Shanmukha Sundaram, Chairman-SIRC of ICAI, CA. M.P. Vijay Kumar and CA. P. Ramasamy, Resource Persons.

Resource Persons



CA. P. Ramasamy
Chennai



CA. M.P. Vijay Kumar
Chennai



CA. C.S. Sathyanarayanan
Coimbatore



CA. G. Sekar
Chennai



CA. V. Karthikeyan
Chennai



CA. N.S. Srinivasan
Chennai



CA. T. Banusekar
Chennai



CA. R. Raghunathan
Salem



CA. S. Sivam
Chennai



CA. V. Jagadisan
Chennai



CA. N. Santhana Krishnan
Salem



CA. S. Ramachandran
Coimbatore



CA. D.R. Venkatesh
Bengaluru

SUB-REGIONAL & DIAMOND JUBILEE CONFERENCE OF SIRC OF ICAI AT ERNAKULAM

Organised by SIRC of ICAI – Host: Ernakulam Branch of SIRC – December 9, 2011.



Resource Persons



CA. V. Raghuraman
Bengaluru



CA. Venugopal C. Govind
Kochi



CA. T. Banusekar
Chennai

◀ **Shri. Paul Antony, IAS, Chairman-Cochin Port Trust** inaugurating. (L-R:) CA. R. Balagopal, Member, CA. P.P. Mathukutty, Vice Chairman & CA. K.P. Jayeme, Member of Ernakulam Br., CA. Babu Abraham Kallivayalil, Immediate Past Chairman, SIRC & Ex-Officio Member, Ernakulam Br., CA. Venugopal C. Govind, Kochi (Resource person), CA. Saji Mathew, Chairman & CA. M.O. Poulse, Treasurer of Ernakulam Br., CA. K. Shanmukha Sundaram, Chairman- SIRC of ICAI, CA. Mathew Joseph, Member, Ernakulam Br., CA. V.X. Jose, Member, SIRC & Ex-officio Member, Ernakulam Br. and CA. Minu Mathew, Secretary & CA Vivek Krishna Govind, Immediate Past Chairman of Ernakulam Br.

SUB-REGIONAL & DIAMOND JUBILEE CONFERENCE OF SIRC OF ICAI & 25TH ANNUAL CONFERENCE OF HUBLI BRANCH OF SIRC AT HUBLI

Organised by SIRC of ICAI – Host: Hubli Branch of SIRC – December 16 & 17, 2011.



Chief Guest CA. K. Shanmukha Sundaram, Chairman-SIRC of ICAI accompanied by CA. Uttam Prakash Agarwal, Past President-ICAI and CA. K. Viswanath, Vice-Chairman-SIRC inaugurating. (L-R:) CA. Madhusudan D. Pise, Secretary & CA. Suresh K. Chenni, Vice-Chairman of Hubli Br., Guest of Honour Mr. C. Sambasiva Reddy, Chairman-Karnataka Vikas Grameena Bank, Dharwad, CA. K.S. Chetty, Chairman-Hubli Branch, CA. Sumermal D. Ostawal, Member-SIRC & Ex-Officio Member-Hubli Br., CA. Sangamesh Yelamali, Chairman-Conference Committee and CA. K.V. Deshpande, Convenor, Conference Committee.

Resource Persons



CA. Uttam Prakash Agarwal
Mumbai



Parama Poojya
Nijagananda Swamiji
Nishkal Mantap, Bailur



CA. Vimal Punmiya
Mumbai



CA. Nagin Kincha
Bengaluru



CA. Chinnamsy Ganesan
Chennai



CA. L. Sridhar
Bengaluru



Mr. Pradeep Singh Kharola
Commissioner of Commercial Taxes,
Bengaluru

SUB-REGIONAL CONFERENCE OF SIRC OF ICAI AT BANGALORE

On the occasion of Diamond Jubilee Year of SIRC of ICAI and Golden Jubilee Year of Bangalore Branch of SIRC of ICAI
Organised by SIRC of ICAI – Host: Bangalore Branch of SIRC
December 23 & 24, 2011.



Hon'ble Justice Mr.K. Sreedhar Rao, High Court of Karnataka & CA. K. Shanmukha Sundaram, Chairman -SIRC of ICAI Inaugurating. (L-R:) CA. S.N. Ravindranath, Secretary - Bangalore Br. CA. K.Raghu, CCM-ICAI, CA. T.R. Venkatesh Babu, Chairman - Bangalore Br., CA.K.Viswanath, Vice Chairman-SIRC of ICAI and CA.Nithin.M, Vice Chairman-Bangalore Br.

Resource Persons



CA. Ashok Raghavan
Bengaluru



CA. Madhukar
N.Hiregange
Bengaluru



CA. Vinay Mruthyunjaya
Bengaluru



CA. R. Bupathy
Chennai



CA. K. Viswanath
Bengaluru



Mr. C. Ashok Kumar
Vice-President, BGS Global
Hospitals, Bengaluru



CA. Mohan R. Lavi
Bengaluru



CA. M.R. Venkatesh
Chennai



CA. S. Venkataramani
Bengaluru



CA. Pratapgiri G. Subramanyam
Bengaluru

Chairman Writes Contd...

The story happened in the days of Lao Tzu in China, and here it goes - There was an old man in a village, very poor, but even kings were jealous of him because he had a beautiful white horse. Kings offered him fabulous prices for the horse, but the man would say, "This horse is not a horse to me, he is a person. And how can you sell a person, a friend?" The man was poor, but he never sold the horse. One morning, he found that the horse was not in the stable. The whole village gathered and they said, "You foolish old man! We knew that someday the horse would be stolen. It would have been better to sell it. What a misfortune!"

The old man said, "Don't go so far as to say that, simply say that the horse is not in the stable. This is the fact; everything else is a judgment. Whether it is a misfortune or a blessing I don't know, because this is just a fragment. Who knows what is going to follow it?" People laughed at the old man. They had always known that he was a little crazy. But after fifteen days, suddenly one night the horse returned. He had not been stolen, he had escaped into the wild, and not only that, he brought a dozen wild horses with him. Again the people gathered and they said, "Old man, you were right. This was not a misfortune; it has indeed proved to be a blessing." The old man said, "Again you are going too far. Just say that the horse is back . . . Who knows whether it is a blessing or not? It is only a fragment. You read a single word in a sentence-how can you judge the whole book?"

This time the people could not say much, but inside they felt that he was wrong. Twelve beautiful horses had come. The old man had an only son who started to train the wild horses. Just a week later he fell from a horse and his legs were broken. The people gathered again and again they judged. They said, "Again you are proved right! It was a misfortune. Your only son has lost the use of his legs, and in your old age he was your only support. Now you are poorer than ever." The old man said, "You are obsessed with judgment. Don't go that far.

Say only that my son has broken his legs. Nobody knows whether this is a misfortune or a blessing. Life comes in fragments and more is never given to you."

It happened that after a few weeks the country went to war, and all the young men of the town were forcibly asked to join the military. Only the old man's son was left, because he was crippled. The whole town was crying and weeping, because it was a losing fight and they knew most of the young people would never come back. They came to the old man and they said, "You were right, old man-this has proved a blessing. Maybe your son is crippled, but he is still with you. Our sons are gone forever." The old man said again, "You go on and on judging. Nobody knows! Only say this that your sons have been forced to enter into the army and my son has not been forced. But only God, the total, knows whether it is a blessing or a misfortune." Judge ye not - otherwise you will never become one with the TOTAL. With fragments you will be obsessed, with small things you will jump to conclusions. Once you judge you have stopped growing.

Judgment means a stale state of mind. And mind always wants judgment, because to be in process is always hazardous and uncomfortable. In fact, the journey never ends. One path ends, another begins: one door closes another opens. You reach a peak; a higher peak is always there.

How very true! And I pray that we all learn our lessons and keep taking life as it comes.

Buoyant of the continuous patronage to the initiatives of SIRC, we have planned CPE programmes for the month of January and the details are published elsewhere in this newsletter. I request the members to make use of the same to enrich their knowledge. On 26th January 2012, the Republic Day would be celebrated at the SIRC Office and at branches in a befitting manner and I request you to be part of the function to relive the birth of Indian Republic.

"There cannot be a more glorious object in creation than a human being replete with

benevolence, meditating in what manner he may render himself most acceptable to the CREATOR by doing good to his creatures." The essence of life lies in our approach to benevolence - be it a little or more and that gives immense satisfaction and meaning to our life. Little we know what is the effect on our doing benevolence but more would be remembered by the beneficiary and that is what is recognized by the society. Let us take a vow that we apportion a portion of our resources either monetary and/or physical for the well-being of the needy. Much significance is attached towards this and we the Chartered Accountants should also on our own volition recognize the need for the uplift of the deserving people and set an example to other professionals.

In this context it is pertinent to record that our Institute as a body had set up the CA Benevolent Fund to help the family of the deceased member and to the medical expenses of the members who are in need of assistance. Our Hon'ble President CA. G. Ramaswamy has taken up the task of substantially increasing the corpus during the year. It is gratifying to learn from the recipients when they expressed gratefulness to the Institute. SIRC appeals to all the Branch Chairmen prior to my personal calls through this column and all the members to contribute liberally to the Chartered Accountants Benevolent Fund besides their contributions to other needy people in the society.

Happy New year and have a great 2012. Let the New Year bring happiness, elation, brotherhood, professional opportunities and the best of health.

With warmest regards

Yours affectionately,



CA. K. SHANMUKHA SUNDARAM

Extension of last date for compliance of CPE hours requirement for Members holding COP

The Council of the Institute has decided to extend the last date for complying with the CPE hours requirement for the calendar year 2011 for the members holding COP by three months, i.e., upto 31st March, 2012.

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- ♣ Budget Report
- ♣ Payroll Processing
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SIRC CALENDAR**JANUARY & FEBRUARY 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
Jan. 4, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on FORENSIC ACCOUNTING			2 hrs
January 6 to 8 Fri to Sunday	#INTERNATIONAL CONFERENCE Accountancy Profession : Leveraging Emerging Challenges for Inclusive Growth			12 hrs
Jan. 10, Tuesday 11.00 a.m. – 01.00 p.m.	**CPE Teleconference on DISCUSSION ON COMPANIES BILL 2011 as introduced in Lok Sabha	CA. S. Santhana Krishnan CCM, ICAI	150/-	2 hrs
Jan. 11, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on NEGATIVE LIST OF SERVICES	CA. K. Sivarajan Chennai	150/-	2 hrs
Jan. 17, Tuesday 11.00 a.m. – 01.00 p.m.	**CPE Teleconference on PRINCIPLES OF INTERNATIONAL TAX	CA. Mahesh P. Sarda CCM, ICAI	150/-	2 hrs
Jan. 18, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on RECENT CASE LAWS IN INCOME TAX	CA. T. G. Suresh Chennai	No Delegate Fee	2 hrs
Jan. 20, 21 & 22 Fri to Sunday	RESIDENTIAL REFRESHER COURSE AT MALAMPUZHA	Details at page 09		14 hrs
Jan. 21, Saturday 09.30 a.m. – 05.00 p.m.	SUB-REGIONAL & DIAMOND JUBILEE CONFERENCE OF SIRC OF ICAI AT VISAKHAPATNAM	Details at page 07		6 hrs
Jan. 21&22 Saturday & Sunday	**BLOOD DONATION CAMP	For Details Refer November 2011 and December 2011 Issues of SIRC Newsletter		-
Jan. 25, Tuesday 11.00 a.m. – 01.00 p.m.	**CPE Teleconference on RECENT DEVELOPMENTS IN PEER REVIEW	CA. Pankaj I.C. Jain CCM, ICAI	150/-	2 hrs
Jan. 25, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on SOFTWARE AS A SERVICE - SECURITY & CHALLENGES	CA. S. Kannan Chennai	150/-	2 hrs
Jan. 26, Thursday	**REPUBLIC DAY CELEBRATIONS	Details below		-
Jan. 27 & 28 Friday & Saturday	Two Day CPE Seminar on RISK BASED INTERNAL AUDIT AT HYDERABAD	Details will be published in the SIRC Website www.sircoficai.org		12 hrs
Jan. 28, Saturday 09.30 a.m. – 05.00 p.m.	*One Day Workshop on INTERNAL AUDIT - BACK TO BASICS	Details will be published in the SIRC Website www.sircoficai.org		6 hrs
Jan. 29, Sunday 09.30 a.m. – 05.00 p.m.	WOMEN'S CA CONFERENCE	Details will be published in the SIRC Website www.sircoficai.org		6 hrs
Feb. 1, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on IMPORTANT AUDITING STANDARDS	CA. G. Anantha Krishnan Hyderabad	150/-	2 hrs
Feb. 7, Tuesday 09.00 a.m. – 05.30 p.m.	*INVESTORS' AWARENESS PROGRAMME	Details will be published in the SIRC Website www.sircoficai.org		6 hrs
Feb. 8, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on AN UPDATE ON FEMA	CA. P. Venkateshan Chennai	150/-	2 hrs
Feb. 15, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on VALUE CREATION IN THE CORPORATE WORLD	CA. A. Viswanathan Chennai	No Delegate Fee	2 hrs

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

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

Programme at Chennai Trade Centre, Nandambakkam, Chennai..

No Delegate Fee for ARS Members for

1. CPE Study Circle Meetings

2. One Day Workshop on Internal Audit

REPUBLIC DAY CELEBRATIONS**Thursday, the 26th January 2012****National Flag Hoisting (8.30 a.m.)**

ICAI Bhawan, Chennai

By

CA. K. Shanmukha Sundaram, Chairman, SIRC of ICAI**ALL ARE WELCOME****Special Session for Students****CPT, PCC/IPCC and Final at 7.15 a.m.****on "How to Approach CA Examinations"**

by

CA. V. Annapoorna, Chennai, Gold Medalist in CA. Final Examination at P. Brahmayya Memorial Hall, ICAI Bhawan, Chennai**CA. S. Murali, Secretary, SIRC, (098947 28200)****CA. K. Shanmukha Sundaram, Chairman, SIRC, (094433 49727)**



CA. K.K. Chythnya
Advocate, Bangalore
chyti@vsnl.net

SEARCH AND SEIZURE – SOME IMPORTANT ASPECTS

Introduction

1. The powers of search and seizure are contained in sections 132, 132A and 132B falling in chapter XIII of the Income tax Act. These provisions provide extraordinary powers to the income tax authorities to invade into the human privacy to unearth undisclosed income.

2. More than 400 hundred years ago, Sir Edward Coke, an English Judge, in Semayne's case (1604) 77 Eng. Rep. 194 gave the legal recognition by observing as under:

"The house of every one is to him as his castle and fortress, as well for his defence against injury and violence as for his repose."

3. Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the taxpayer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorizes it to be exercised.

4. In CIR v. Rossminster Ltd. [1979] 52 TC 160 (HL), Lord Denning concluded as under (page 179):

"This brings me to the end. This case has given us much concern. No one would wish that any of those who defraud the Revenue should go free. They should be found out and brought to justice. But it is fundamental in our law that the means which are adopted to this end should be lawful means. A good end does not justify a bad means. The means must not be such as to offend against the personal freedom, the privacy and the elemental rights of property. Every man is presumed to be innocent until he is found guilty. If his house is to be searched and his property seized on suspicion of an offence, it must be done by due process of law. And due process involves that there must be a valid warrant specifying the offence of which he is suspected and the seizure is limited to those things authorized by the warrant. In this case, as I see it, the warrant was invalid for want of particularity and the search and seizure were not in accordance with anything

"Every man is presumed to be innocent until he is found guilty. If his house is to be searched and his property seized on suspicion of an offence, it must be done by due process of law."



which was authorized by the warrant. It was an illegal and excessive use of power."

5. In Govind v. State of M.P. [1975] 2 SCC 148: AIR 1975 SC 1378 case, the need to guard against the pernicious possibility of a "police-raj", was forcefully articulated.
6. The triple tests distilled by the seven-judge Bench in Maneka Gandhi v. Union of India [1978] 1 SCC 248: AIR 1978 SC 597 deserve special attention, viz., that a law interfering with 'personal liberty' must (a) be consonant with a prescribed procedure which should, (b) be compliant with one or more rights mentioned in article 19, and (c) with article 14 additionally.

Pre-conditions for a valid search:

1. General:

For a search or seizure to be legal it should not be firstly ordered for mala fide, extraneous or for oblique reasons. Secondly, it must be predicated on information received

by the authority who would have reason to believe that it is necessary to conduct such an operation. Thirdly, it should not be in the nature of a roving or fishing exercise. These three factors must be observed rigorously and even punctiliously since the exercise of such powers invariably result in a serious invasion of the privacy and freedom of the citizen as held in the case of S.R. Batliboi and Co. v. Department of IT (Investigation) [2009] 315 ITR 137 (Delhi) HC.

2. As regards the Authorizing Officer:

1. The search authorising officers are *Director General or Director or the Chief Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner*. These authorising officers must have, in consequence of information, reason to believe that the statutory conditions for the exercise of the power to order search exist. The statutory conditions are found in the main body of section 132 (1) in terms of clauses (a), (b) and (c). The authorising officer must record reasons for the belief and he must issue an authorisation in favour of a designated officer to search the premises and exercise the powers set out therein.

2. The Hon'ble Apex Court in the case of Manish Maheshwari v. ACIT [2007] 208 CTR (SC) 97: (2007) 289 ITR 341 (SC) interpreting the expression 'recorded the satisfaction' held that the Act does not say that the satisfaction should be recorded in writing. The expression 'recorded' in writing will include writing by one's own hand and also writing by other means as held in the case of State of T.N. v. Srinivasan [1997] 1 SCC 682.

3. In the case of Amity Hotels (P.) Ltd. v. CIT (2005) 142 Taxman 160 (Delhi), the Court has held that the satisfaction is required to be preceded by the investigation and not that the investigation is required to be preceded by the satisfaction.

3. As regards the Authorized Officer:

1. The persons authorised to carry

out search and seizure are also mentioned in section 132 (1). These officers are *Additional Director or Additional Commissioner or Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer.*

2. Upon authorisation, the aforesaid authorised officers are empowered to exercise the powers specified in clauses (i) to (v) of section 132 (1).
3. Even upon authorisation, it is not that the powers are unbridled and unfettered. As regards the extent of power of the Authorised Officer acting under the authority of section 132, their Lordships in ITO v. Seth Brothers [1969] 74 ITR 836: [1969] 2 SCC 324 have succinctly enunciated the law.

a. Search Warrant:

1. The authorisation issued is popularly called a search warrant. It is on the basis of the search warrant issued by the authorising officer, the authorised officer may exercise the powers of search and seizure.
2. There should be a search warrant for each place of search. In other words, multiple places of search cannot be covered by a single search warrant as held in the case of C. Ramaiah Reddy [2011] 339 ITR 210 (Karn) HC.
3. A warrant issued in respect of one premise cannot be valid used to search another premises as held in the case of Smt. Neelam Agarwal v. DCIT [2007] 17 SOT 579 (ITAT – Luck.)
4. When a search warrant is issued in the name of a person, place to be searched is to be mentioned therein, but it is not necessary that such place or building must belong to that person in whose name search warrant is issued. Such place or building may belong to some

other person who is not covered in search warrant, as long as the books of accounts or other documents, valuables, etc., belonging to person searched are suspected to be lying at such place or building as held in the case of ACIT v. Vinod Goel [200] 111 ITD 70 (ASR.)

5. A search warrant on a company and a joint search warrant on an assessee & his wife for searching locker cannot be used for searching assessee's premises as held by the Lucknow Bench of the ITAT in the case of Narendra Kumar Jain v. DCIT (2001) 119 Taxman Mag. 213.
6. The warrant of authorization need not specify the particulars of documents and books of account as held by the Delhi High Court in the case of S.R. Batliboi and Co. v. Department of IT (Investigation) [2009] 315 ITR 137 (Delhi) HC.
7. One search warrant holds good for one visit. Once the said party exits the premises subject to such, he cannot re-enter on the basis of the earlier search warrant. He needs a fresh search warrant for making another entry for carrying out search. Any subsequent entry into the said premises without of research warrant may be an entry for any collateral purpose but cannot be an entry for exercising powers of search and seizure as held by the Karnataka High Court in the case of C. Ramaiah Reddy [2011] 339 ITR 210.
8. In the case of Suvidha Association v. L.R. Meena, ADIT (Investigation) and others [2010] 320 ITR 461 (Guj.-HC), it has been held that the law does not permit revival of warrants of authorisation which are cancelled once.
9. In the case of Dr. Pratap Singh v. Director of Enforcement [1985] 155

ITR 166 (SC), the Apex Court has opined that it is not obligatory on the part of the authority while issuing a warrant to disclose the material on which he has reason to believe that search is necessary.

b. Joint Warrant v. Common Warrant:

1. A search warrant may be a joint warrant or a common warrant. In the case of http://www.taxindiaonline.com/RC2/subCatDesc.php?subCatDisp_Id=39&file_name=legal/itat/2010/2010-TIOL-591-ITAT-BANG.htm Embassy Classic Pvt. Ltd. v. ACIT (Dated: July 22, 2010) 2010-TIOL-591-ITAT-BANG, the Honourable Bangalore ITAT brought out the difference between the two in the following words:

“In the present case, the warrant of authorization is a common warrant and not a joint warrant. The common warrant issued in the present case has specified in detail the names and address of all the persons to be searched. They are all not living in the same premises. Absolutely there is no communication to show that the warrant of authorization was made against a single unit of domicile. The persons to be searched as mentioned in the warrant were severally living in different places. The only thing is the physical state of the warrant, was a common paper. So the warrant characterized as a common warrant in the present case is entirely different from the case of joint warrant considered by the Hon’ble High Court of Allahabad in the case of Smt. Vandana Verma (2009-TIOL-632-HC-ALL-IT). Therefore, the ITAT did not accept the legal contention against the validity of the assessment and upheld the impugned assessment order as valid”.

2. In the case of Guru Charan Singh v. ACIT, Bareilly (Dated: August 28,

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 Visakhapatnam Branch
 (094407 77760)

CA. P.V.S.P. Kumar,
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 Visakhapatnam Branch,
 (094410 77410)

CA. D. Prasanna Kumar
 Ex-Officio Member,
 Visakhapatnam Br. &
 Member, SIRC
 (098481 92636)

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January 21, 2012
09.30 a.m. to 05.00 p.m.

CPE Credit
6
 HOURS

Technical Sessions: 10.30 a.m. to 05.00 p.m.

An Overview of ESI, PF, Bonus and Gratuity Acts – relevant to Practice
CA. Gopal Krishna Raju, Chennai

Overview of Profession Tax, Luxury Tax and AP Labour Cess – relevant to Practice

CA. B.V.Rao, Visakhapatnam

TDS – An Overview

CA. V.S.N Murthy, Visakhapatnam

Matters relating to TDS – Department perspective

Senior Official from the Income Tax Department

CA. S. Murali
 Secretary, SIRC
 (098947 28200)

CA. K. Shanmukha Sundaram
 Chairman, SIRC
 (094433 49727)

2008) 2008-TIOL-517-ITAT-LKW, the Lucknow Tribunal has held that the search warrant should be issued in the name of individual and not in the name of more than one individual and that issuance of notice commonly addressed is not sufficient to initiate proceedings in individual case, in which case the search warrant would be bad in law.

3. In the case of CIT v. Smt. Vandana Verma [2011] 330 ITR 533 (All) HC, it was held by the Allahabad High Court that the warrant of authorization must be issued individually by the Director/Commissioner at the time of issuing the same. If the same is not issued individually, then assessment cannot be made in an individual capacity. If the warrant was issued jointly, the assessment will have to be made collectively in the name of both the persons in the status of AOP/BOI. This was reiterated by the Karnataka High Court in the case of CIT v. Late Shri P.J. Kumar (ITA No.6005/2010 and 6006/2010).

c. What can be searched?

A search implies preying into hidden places for that which is concealed. If the object sought for is always in plain sight, then there is no search. If the private account books had been kept in the counter openly at all times and that could have been found on inspection at any time of the day, then the seizure of such account books cannot be said to have been made after a search. This was so held in the case of G.M. Agadi and Bros v. CTO 32 STC 243 Mys and reiterated in the case of C. Ramaiah Reddy [2011] 339 ITR 210 Karnataka.

d. What can be seized?

1. The condition for entry into and making search of any building or place is the reason to believe that any books of account or other documents which will be useful for, or relevant to, any proceedings under the Act may be found. If the officer has reason to believe that any books of account or other documents would be useful for, or relevant to, any proceedings under the Act, he is authorised by law to seize those books of account or other documents, and to place marks of identification therein, to make extracts or copies therefrom and also to make a note or an inventory of any articles or other things found in the course of the search.
2. The authorized officer is required to apply his mind as to whether the assets found in the search have been disclosed or not, and if no undisclosed asset is found, no action can be taken under section 132 (1)(iii) or (3) as per S.R. Batliboi and Co. v. Department of IT (Investigation) [2009] 315 ITR 137 (Delhi) HC.
3. In the case of N.K. Textile Mills v. CIT [1966] 62 ITR 58 (Punjab), the Punjab High Court propounded that "it was necessary and essential for authorised officers to take into custody only such books as were considered relevant to or useful for the proceedings in question. It was not open to them to indiscriminately, arbitrarily and without any regard for relevancy or usefulness, seize all the books and documents which are lying in the premises, and, if they did so, the seizure would be beyond the scope of the authorization."

e. How to challenge the validity of search?

1. If the action of the officer issuing the authorization, or of the designated officer is challenged, the officer concerned must satisfy the court about the regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the Court. If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed. But where power is exercised bona fide, and in furtherance of the statutory duties of the tax officers, any error of judgment on the part of the officers will not vitiate the exercise of the power. Where the Commissioner entertains the requisite belief and for reasons recorded by him authorizes a designated officer

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Adv.

to enter and search premises for books of accounts and documents relevant to or useful for any proceeding under the Act, the Court in a petition by an aggrieved person cannot be asked to substitute its own opinion whether an order authorizing search should have been issued. Again, any irregularity in the course of entry, search and seizure committed by the officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken, provided the officer has in executing the authorisation acted bona fide.

2. The special bench in the case of *PROMAIN LTD. v. DCIT* [2005] 95 ITD 489 [DELHI][SB] held that it is only the High Court which can examine the validity of search by ascertaining whether the pre-conditions for the issuance of a warrant of authorization based on existence of reasons to believe as recorded were satisfied or not in a given case in exercise of power of writ vested in them under article 226 of the Constitution. This view was endorsed in the case of *CIT vs. Paras Rice Mills* [2009] 313 ITR 182 (P&H) HC and *CIT, Karnal v. Paras Rice Mills* [2009] 176 Taxman 181 (Punj. & Har.).
3. However, the Rajasthan High Court in the case of *CIT v. Smt. Chitra Devi*

Soni [2009] 313 ITR 174 (Raj) HC and the Karnataka High Court in the case of *C. Ramaiah Reddy* [2011] 339 ITR 210 have held that as the meaning of 'assessment' could even include prior enquiry, the tribunal has the power to examine the validity of the search.

f. Invalid search:

1. In the case of *Gyarsi Lal Gupta & Sons v. ITO* (2005) 94 ITD 329 [JP], the Tribunal has held that even if the information is called for in contravention of the legal provisions, the material obtained thereby can still be used by the Department against the person concerned in the light of the decision of the Apex Court in the case of *Pooran Mal v. Director of Inspection [Investigation]* [1974] 93 ITR 505 (SC) and *Dr. Pratap Singh v. Director of Enforcement* [1985] 155 ITR 166 (SC).
2. In the case of *S.K. Jain v. Deputy Commissioner of Gift-Tax* (2007) 105 ITD 205 (Nag.), the Tribunal has held that it is truth of affair and not manner of getting materials that is to be taken note of for judging validity of reopening; even if information is gathered illegally but if information is correct, such information can always be used.
3. However, in so far as Block assessment

is concerned under section 158 BC, the honourable Karnataka High Court in the case of *C. Ramaiah Reddy* [2011] 339 ITR 210 has held that unless the search has been validly initiated, Block assessment cannot be sustained. This principle should apply even in the scheme of assessment under section 153A.

g. How to carry out search?

1. In the case of *In Re Rajendra Singh* (Bihar Human Rights Commission) reported in ITAT Online on 08.06.2011, it was held that if Search & Seizure action violates "human rights", officers concerned are personally liable to pay compensation.
2. The Authorised Officer cannot keep search proceedings in operation by simply stating in the panchanama that search is temporarily suspended as held in the case *CIT v Sandhya P. Naik* (2002) 124 Taxman 384 (Bom).
3. However, the honourable Karnataka High Court in the case of *C. Ramaiah Reddy* [2011] 339 ITR 210 has held that search has to be carried out uninterruptedly even if it means such continuing for as long as 72 hours.
4. It is a matter of interest as to how the Department would be considered the conflicting decisions of the Bihar human rights commission and of

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Karnataka High Court.

h. Search on third parties:

1. An indiscriminate search frustrates the whole scheme of section 132 and emasculates the protective measures against these draconian powers.
2. The words "other person" employed in the section must only be construed as referring to the "other person" having dealings or transactions with the party who is being searched or whose material is being seized. Otherwise, the provisions may well be seen as violative of the fundamental rights enshrined in articles 14 and 19 as held in the case of S.R. Batliboi and Co. v. Department of IT (Investigation) [2009] 315 ITR 137 (Delhi) HC.
3. In the case of H.L. Sibal v. CIT [1975] 101 ITR 112 (P&H), the belongings of a house-guest of Shri Sibal were searched and some money found therein was seized. The Court had concluded that the authorization for the search of the house-guest was prepared after the planned search of Shri Sibal. Therefore, the Court quashed the said search.

i. When does search start?

In the case of CIT v. Wipro Finance

Ltd. [2010] 323 ITR 467 (Karn) HC, the Karnataka High Court held that the search is initiated not on date of signing warrant of authorisation but on date of initial search carried out.

j. When does search end?

1. The time point when search ends is important for determining the limitation for completing assessment.
2. Section 153B(2) reads as follows;
The authorisation referred to in clause (a) and clause (b) of sub-section (1) shall be deemed to have been executed,—
 - a. *in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued;*
 - b. *in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.*
3. The aforesaid section does not provide clearly when the search ends. It only provides when an authorization is deemed as executed. Further, it does not apply to any and every authorization. It applies to only that

authorization which is referred to in section 153B(1)(a) and (b). The aforesaid clauses refer only to the last of the authorizations. When there are multiple authorizations, the above provision would apply only to the last authorization and not to the earlier ones.

4. A panchnama is nothing but a document recording what has happened in the presence of the witness (panchas). A panchnama may document the search proceedings, with or without any seizure. A panchnama may also document the return of the seized articles or the removal of sales. But, the panchnama that is mentioned in the above section is a panchnama which documents the conclusion of a search. If a panchnama does not, from the facts recorded therein, reveal that a search was at all carried out on the day to which it relates, then it would not be a panchnama relating to a search and, consequently, it would not be a panchnama of the type which finds mention in the aforesaid provision.
5. In the case of CIT v. S.K. Katyal [2009] 308 ITR 168 (Delhi) HC, the Delhi High Court has held as follows:

"(i) a search is essentially an invasion of the privacy of the person whose property or person is subjected to search; (ii) normally, a search must be continuous; (iii) if it cannot be continuous for some plausible reason, the hiatus in the search must be explained; (iv) if no cogent or plausible reason is shown for the hiatus in the search, the second or 'resumed' search would be illegal; (v) by merely mentioning in the Panchnama that a search has been temporarily suspended does not, ipso facto, continue the search. It would have to be seen as a fact as to whether the search continued or had concluded; (vi) merely because a Panchnama is drawn up on a particular date, it does not mean that a search was conducted and/or concluded on that date; (vii) the Panchnama must be a record of a search or seizure for it to qualify as the Panchnama mentioned in Explan. 2(a) to section 158BE of the said Act."

6. The Karnataka High Court in C. Ramaiah Reddy [2011] 339 ITR 210 has held that as soon as the search party leaves, the search ends.

Conclusion

The scope for discussion in respect of search and seizure matter is too wide to be covered in a short article like this. The purpose of this article is to bring out a synopsis of some important facets of this widely recognised scheme of invasion into private life for unearthing black money. ■

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002053	MR. PRABHAKARAN S	FCA	KOCHI	31/10/2010
003608	MR. RAMAMURTHY G	FCA	CHENNAI	17/11/2011
007629	MR. MANI V V	FCA	CHENNAI	03/11/2011
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208261	MS. PARINITH SHETTY	FCA	BANGALORE	07/11/2011

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



CA. J.S. Bhanu Murthy
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NEGATIVE LIST OF SERVICES – Is it a Positive Step?

Background

Tax on services was introduced way back in 1994 by levying tax on 3 select services and over the period of 17 years the scope has been expanded to cover around 120 services. Under the present scheme of service tax provisions, each taxable service is defined in a particular manner and set of rules are introduced to govern / give solution to classification disputes in situation of overlapping entries.

With increasing scope to tax on service industry and to have better tax administration, Government is proposing to tax each and every activity except a few which are listed as not liable. Under the proposed concept, service is specifically defined and a select services / nature of services would be out of levy and rest would be covered under tax net. This concept of negative list is prevalent in many other countries including United Kingdom, New Zealand, Singapore and Australia. This would certainly give substantial increase in revenues to the Government.

Meaning of Negative List of Taxation

Instead of listing out certain services as taxable services and defining these taxable services, 'service' would be defined in a specified manner and a few services are listed as non taxable services. Thus an activity which satisfies the definition of service would be liable to tax, if the same is not covered under the list which is specified as non taxable, and then same would be taxable.

Definition of Service

Term 'Service' is defined in three parts, viz., Means, includes and excludes.

Means part: Service means any activity which does not constitute supply of goods or money or immovable property.

Includes: The definition specifically

"With increasing scope to tax on service industry and to have better tax administration, Government is proposing to tax each and every activity except a few which are listed as not liable."



includes following activities as service:

- A. Right to use an immovable property, which is nothing but renting activity
- B. Construction activity except where receipt of full consideration after issuance of certificate of completion by a competent authority.
- C. Temporary transfer or permitting the use or enjoyment of any intellectual property right.
- D. obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- E. service in relation to lease or hire of goods; and
- F. right to enter any premises- to tax entry fee collected by Museum, Zoo or other entertainment parks

Excludes: Following activities are excluded from purview of services:

- A. Services by an employee to an employer in the course of or in relation to the employment of the person;

- B. Services by a constitutional authority under the Indian Constitution or a member of an Indian legislature or a local self-government in that capacity;
- C. activity of manufacture of goods or an activity value of which is includable for charging duty of excise in terms of the provisions of Central Excise Act, 1944;

Thus Service is defined as anything which does not constitute sale of goods or money or immovable property. Apart from the above, service includes activities such as renting of immovable property, construction of buildings, temporary transfer of copy right, trade mark etc., services relating to leasing and hire purchases and levy of entry fee by parks, Zoo or museum etc. However, services by an employee to employer or by an MLA/MP or other constitutional authority and also activity which is termed as manufacture goods or value which is included in the value of goods for charging duty of excise would be excluded from purview of service.

Only economic activities would be liable to tax

Further, discussion paper provides that only those activities by any person who independently carries out any economic activity, whether or not for a pecuniary profit would be liable to service tax. Economic activity, according to the discussion paper, are such activities which are carried out for consideration, whether or not the consideration is adequate or provided by the recipient of the service, or leads to profit at the end of a period. Looking from other way, services for free of charge or gratis or without any direct or indirect commercial advantage, or as recreation or hobby would get excluded.

Services excluded from taxation

The discussion paper broadly groups

the negative list into 8 categories viz. 1) services by Government and international institutions, 2) Social welfare and public utility activities, 3) services by Financial Sector, 4) Services under Transport Sector, 5) Construction and real estate sector, 6) Education, 7) Health and remaining under the category 'others'.

1) Services by Government and International institutions:

Services by Government, except those notified as taxable would be covered under negative list. Broadly wherever the Government competes with the private sector such services would be taxable and would get excluded from negative list. For example Insurance, transport, port and airport services etc. would be chargeable to tax and not covered under negative list.

Similarly services provided by UNO and such international organizations would be covered under negative list to get excluded from levy. Further, Government has indicated that services provided to such organizations would be exempted by way of specific exemption.

2) Social welfare and public utility related services:

Services by organizations registered as non-profit entities under the Income Tax Act 1961 in matters

relating to public and social welfare activities substantially at or below the costs would be covered under the negative list. Further, Funeral, burial, crematorium and mortuary services would also be not liable to tax. However, what is public interest or social welfare would be a contentious issue.

3) Financial Sector:

Activities of Sale or purchase or acquisition of securities, debts, mutual funds and actionable claims on principal-to-principal basis would be excluded from levy of service tax. However, services in relation to such transactions and where acquisition or sale is in lieu of taxable services then such transaction would be a taxable service.

Further, Interest or discount on cheques, promissory notes, bills of exchange or debt instruments, Dividend on investments, Sale and purchase of foreign currency amongst banks and/or authorized dealers of foreign exchange, would get covered under negative list.

4) Transport Sector:

Transport of passenger except AC Travel by railways would be covered under negative list and hence would not be taxable. Travel by metro or Mono rail even with AC would not be taxable.

5) Construction and real estate sector:

Construction activities relating to specified infrastructure for larger public good such as roads, Dams, and reservoirs etc and construction of residential building comprising a single dwelling unit would be covered under negative list.

Further, renting of personal dwelling where rent per month per house is less than Rs. 1 Lakh would be covered under negative list. (However, the negative list reads as **"Renting of personal dwellings in excess of Rs 1 lakh per month per dwelling"**)

6) Education Sector:

Pre-school, school and recognized education leading to the award of a certificate or degree recognized by a body established by an Indian law would be covered under negative list. Further, vocational training recognized by National council for Vocational Training (NCVT) would also be covered under negative list. However, placement services and donations or similar charges other than tuition fee in relation to admission charged by the institution would be chargeable to service tax.

7) Health Sector:

Services by clinical establishments would be excluded from levy of service tax. However, services in relation to health & fitness, weight reduction programmes, health check-up and cosmetic surgery or plastic surgery would be liable and not covered under negative list.

8) Others:

Following category of services are covered under negative list:

- **Copyright:** Copyright services of original literary, dramatic, musical and artistic works.
- **News related services:** Services provided by independent journalists, PTI & UNI for providing news
- **Sports:** Services provided by sportspersons, as a player, coach or referee/umpire and performing artists in that capacity. However, consideration received for acting as brand ambassadors are taxable
- **Trade Union:** Services provided by a trade union to its members
- **Legal Services:** Representational services provided by an advocate to individuals
- **Services to Members of association:** Services to own members by

THE MONTH THAT WAS (DECEMBER 2011)

1 st	Sub-Regional & Diamond Jubilee Conference of SIRC of ICAI at Guntur
9 th	Sub-Regional & Diamond Jubilee Conference of SIRC of ICAI at Ernakulam
10 th & 11 th	Two Day CPE Seminar on Risk Based Internal Audit
13 th	Seminar on Direct Tax Code (DTC) and its Impacts on the Welfare Activities of the Charity Organisations organized by SIRC of ICAI and Indo International Christian Chamber of Commerce
16 th	CPE Seminar on Ethical Standards
16 th & 17 th	Sub-Regional & Diamond Jubilee Conference of SIRC of ICAI and 25th Annual Conference of Hubli Branch at Hubli
19 th to 24 th	CPE Refresher Course on Taxation
21 st	CPE Seminar on MSME
23 rd & 24 th	Sub-Regional Conference of SIRC of ICAI at Bangalore on the occasion of Diamond Jubilee Year of SIRC of ICAI and Golden Jubilee Year of Bangalore Branch of SIRC
29 th	One Day CPE Seminar
7 th , 14 th , 19 th , 28 th & 30 th	CPE Study Circle Meeting & Teleconferences

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an exempt entity by way of reimbursement of charges

- **Tolls:** Tolls except services in relation to collection of tolls
- **Betting and gambling :** Betting and gambling except services in relation to promoting, marketing or organizing games of chance, including lottery services
- **Advertisements:** Advertisements other than advertisements published in newspapers or broadcast by radio or TV or displayed in other electronic media

Negative List - Certain issues

The definition of service above, could throw open following issues:

- How can service be defined as anything? As per Article 366(12) of the Constitution, goods includes any materials, articles or things.

Having a negative list would mean that every other “thing” is service. Rather than reduce litigation, it may see an increase in litigation.

- Deemed sale under Art. 366(29A) - Whether Sale or Service?

The transactions covered under Ar. 366(29A) are deemed to be sale of goods and once these are covered as sale of goods, the question of treating them as service would not arise. It appears that whatever is treated as sale of goods, the balance would be treated as services. Probably, where the negative list is introduced as a part of GST, this issue may not be relevant, since art. 366(29A) would be deleted as proposed in the constitutional amendment and the rest would be provided by rules.

- Composite contracts other than those covered under Art. 366 (29A)?

What happens to a situation where the transaction is a composite contract involving both sale and service? The answer according to the concept paper is that the inclusion or exclusion under service tax shall be decided based on the ‘Dominant nature of the transaction’. If the dominant nature is of sale then its excluded otherwise the transaction is considered as service. Again there would be ambiguity and more than one view would be possible which further could lead to litigation.

- How is online / internet supply of digitized products to be treated

In UK, supply of digitized products through internet is services while

in media it is sales. One has to see whether some uniformity would be reached especially for the software sector. Software whether customized or packaged is goods as per the decision of the Apex Court. However, Government is again trying to impose service tax on such internet supply of software. This would continue the worries of software industry which is currently getting taxed twice on the sale of software one by State treating it as sale and other by Centre treating the same as service.

- What is the scope of the clause ‘Obligation to refrain from an act, or to tolerate an act or a situation, or to do an act’

From the wordings of the above clause it appears that if you receive any money to do any act or not to do such act or tolerate or resist from doing any act would also be termed as service. This clause would have been inserted to tax Liquidated damages or non- compete fees charged. But the wording of the clause is so expansive that any amount received could be taxed by department under this heading.

As there is a list of non taxable activities, the disputes on classification and taxability would get reduced and also the chain of tax credits at each stage would be continued without break, since almost all business activates would get covered under the domain of taxation. However, on the other hand, issues relating to what are a business activity or what constitutes charitable or social interest and whether a particular coverage under negative list would lead litigation table.

Next issue would be when the negative list shall be implemented. Is it prior to introduction of GST or along with the GST? Both these options have their own merits and limitation. If introduced prior to would certainly be step towards implementing the GST and effective implementation of GST may be smoother. However, the difficulty with this option would be overlapping of certain entries with state list on subject of entertainment tax, luxury tax or VAT on the deemed sale etc., defining basic exemption limit and credit mechanism. On the **other hand the bringing in negative list along with GST** would be more effective from the view that there is

already move towards amendment of constitution to bring in necessary changes to implement GST which would not be tussle between centre and state on a particular entry as in the GST model, the transaction would suffer tax (GST) either as supply of goods or as service.

Other face of Negative list

One of the main arguments advanced by Government through the concept paper on Negative list, for switching over to negative list concept of taxation is that, the proposed system ensures continuation input credit chain without any break. However, the continuation of input credit chain depends on the rationalized credit mechanism which allows credit of tax paid on each and every activity without restricting. Unfortunately, the present set of definition of input and input service are do not allow credit on many activities for eg., construction related activities, insurance and travel activities and the services procured for benefit of employees. If such a restrictive credit mechanism continues, introduction of negative list would certainly increase the cost of production / services to ultimate consumer.

Suggestion:

Government should take into account the feedback and suggestions from, forums of experts, Industry, consumer Associations etc. A good GST system would work only if the credit mechanism is open, transparent and without artificial barriers. ■

A Delhi based CA firm having offices at Mumbai, Bangalore and Jaipur seeks Merger offers from Audit based proprietorship firms in existence for about 5-7 years at Hyderabad. Please contact Mr. Manoj Sharma at 09873485885 / manoj.sharma@snr.net.in Advt.

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Legal Decision Update – Direct Taxes

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

Not a Charitable Institution

In **CIT v. Truck Operators Association (2011) 243 CTR (P & H) 302** where the assessee, an association of truck operators constituted for facilitating its members to carry on the trade of transportation, charged fees from its members before the transportation based on the distance involved, the membership and payment of fees were mandatory and the element of voluntary contribution was missing, the Punjab & Haryana High Court observed that the assessee was vigorously pursuing transportation business by receiving freight charges on behalf of its members and that the activities adopted by it for the welfare of truck drivers, cleaners and mechanics of its members were in the nature of staff welfare activities as are common in other business organisations could not be termed for general public utility within the meaning of section 2(15) and held that the assessee was, therefore, not entitled to registration under section 12AA.

Business Loss

The loss incurred by the assessee-company due to theft of materials in its factory premises is deductible as a business loss and the fact that the police could not recover the goods or that the guilty persons were not punished cannot go against the claim of the assessee opined the Calcutta High Court in **Dheeraj Associates P. Ltd. v. CIT (2011) 338 ITR 207 (Cal)**.

Interest on Borrowed Capital

The Delhi High Court has in **CIT v. Tulip Star Hotels Ltd. (2011) 338 ITR 482 (Del)** where the assessee-company carrying on the business of owning, running and managing hotels, borrowed funds for making investment in shares of the subsidiary company which in turn used the funds for acquiring a hotel, taken the view that the expenditure towards payment of interest on borrowed funds was incurred by the assessee for business purposes and was deductible under section 36(1)(iii).

Deemed Dividend

In **Shyama Charan Gupta v. CIT (2011) 337 ITR 511 (All)**, the Allahabad High Court has held that while the advance received by the assessee-managing director from the private limited company towards salary which was due to him and was credited to his account monthly could not be treated as deemed dividend under section 2(22)(e), the advance of commission on profits over and above that amount drawn during the course of the year before the profit was determined

and accrued to him was to be treated as deemed dividend.

Income from Other Sources

Where the assessee-company let out its factory with all machinery and there was nothing on record to show that the letting out was temporary and the assessee intended to resume its business, the lease rent was assessable under the head 'Income from other sources' held the Madras High Court in **CIT v. Venkateswara Agro Chemicals & Minerals P. Ltd. (2011) 338 ITR 428 (Mad)**.

Speculative Transaction

The Bombay High Court has in **CIT v. Bharat R. Ruia (HUF) (2011) 337 ITR 452 (Bom)** held that the amendment of the proviso to section 43(5) by the Finance Act, 2005 with effect from 1.4.2006 by insertion of clause (d) thereto providing that exchange permitted derivative transaction shall not be deemed to be a speculative transaction is prospective in nature and, therefore, the exchange traded derivative transactions carried on by the assessee during the previous year relevant to the assessment year 2003-04 were speculative transactions and the loss incurred in such transactions constituted speculative loss and not business loss.

Revision

In **Bhartia Industries Ltd. v. CIT (2011) 243 CTR (Cal) 328** where the Assessing Officer had allowed deduction of expenditure incurred by the assessee on voluntary retirement scheme of its employees as per the decisions of the jurisdictional High Court and the Commissioner set aside the assessment order under section 263 on the ground that allowance of the said deduction was contrary to Circular dated 23.1.2001 issued by the Central Board of Direct Taxes, the Calcutta High Court observed that where a Board Circular was in conflict with the law laid down by the High Courts or Supreme Court, the quasi-judicial authorities should ignore such Circular and held that since the assessment order passed by the Assessing Officer allowing the said deduction was in conformity with the decisions of the jurisdictional High Court which were binding on him, the Commissioner was not justified in setting aside the same for the reason that allowing the said deduction was contrary to the Board Circular.

Interest under Sections 234B & 234C

Where on the last day of the financial year, the assessee was not liable to pay advance tax as per the law then prevailing

but the liability to pay advance tax arose due to a subsequent amendment made with retrospective effect, interest could not be levied under sections 234B and 234C ruled the Calcutta High Court in **Emami Ltd. v. CIT (2011) 337 ITR 470 (Cal)**.

Interest under Section 244A

The Karnataka High Court has in **CIT & Anr. v. Vijaya Bank (2011) 338 ITR 489 (Kar)** held that interest under section 244A is allowable on refund of excess self-assessment tax paid from the date of payment thereof till the date of refund.

Prosecution

In **ITO v. R. Soundararajan (2011) 337 ITR 531 (Mad)** where the facts were that the assessee, a tax practitioner, furnished on behalf of his client a return of income and a certificate of tax deduction at source claiming refund of tax deducted at source, the refund order sent to the client was encashed by the client through his bank account, the certificate of tax deduction at source was later found to be bogus and the addition of the refund amount made to the income of the assessee was deleted by the appellate authorities, the Madras High Court observed that there was no evidence to prove that the assessee fabricated the bogus tax deduction certificate and that no investigation had been conducted to show that the client was a fictitious person and held that the acquittal of the assessee by the trial court was proper.

Precedent

The Madhya Pradesh High Court has in **National Textile Corporation Ltd. v. CIT (2011) 338 ITR 371 (MP)** ruled that the Tribunal had no jurisdiction to comment upon the decision of the jurisdictional High Court and in particular the manner in which it was rendered nor had jurisdiction to ignore the decision, that it had no jurisdiction to hold that the decision of the jurisdictional High Court is per incuriam and that it had also no jurisdiction to find fault with the decision of the jurisdictional High Court so as to avoid its binding effect.

Tax Deduction at Source

In **CIT (TDS) v. ITC Ltd. (2011) 338 ITR 598 (Del)**, the Delhi High Court held that where the assessee, a hotelier, charged tips in the bill by way of a fixed percentage or when the customer indicated the amount on the bill as a tip, the tip went into the receipt of the assessee-employer which was subsequently disbursed to the employees and that the assessee was obliged to deduct tax at source on such tips under section 192. ■

For Attention of Members & Students

RESTORATION OF MEMBERSHIP & CERTIFICATE OF PRACTICE

The names members who have not paid their Membership fee and/or Certificate of Practice fee for the year 2011-12 on or before 30.09.2011 were removed w.e.f. 01.10.2011 in the Register of Members. The notifications in regard to removal of membership and cancellation of Certificate of Practice w.e.f. 01.10.2011 are under issue.

Regulations provide for retrospective restoration of Membership and Certificate of Practice provided the application in the prescribed Form 9/101 (available on the website www.icaai.org) complete in all respects, together with restoration fees of Rs.1,200/- is received by the Institute on or before 31.03.2012. Members falling within the jurisdiction of Southern Region should send their application to The Institute of Chartered Accountants of India, ICAI Bhawan, No.122 M. G. Road, Nungambakkam, Chennai – 600034.

EXTENSION OF COMPANY LAW SETTLEMENT SCHEME, 2011

In continuation of the Ministry's General Circulars No. 59/2011 dated 05.08.2011, No. 60/2011 dated 10.08.2011 and No. 65/2011 dated 04.10.2011 on the subject cited above, it is stated that the said scheme has been extended up to 15th January, 2012. It is further stated that this Scheme will not be extended beyond 15.01.2012. All the terms and conditions of the General Circulars No. 59/2011 dated 05.08.2011 and No. 60/2011 dated 10.08.2011 will remain the same.

EXTENSION OF TIME LIMIT FOR FILING DIN4 FOR UPDATING PAN DETAILS

In continuation of General Circulars No. 32/2011 dated 31.05.2011 and No.36/2011 dated 04.10.2011 on the subject cited above, the time for filing form DIN-4 by DIN holders for furnishing PAN and to update PAN details has been extended up to 29.02.2012.

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@icaai.in.

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COACHING CLASSES AT SIRC OF ICAI

Three months intensified Coaching classes for PCC/IPCC course for November 2012 Examinations Commences on **February 21, 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.)

Fee: ₹ 4,000/- (for both groups) - ₹ 2,000/- (for one group)

- Fee remittance by 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., Course and Group) to be sent to SIRC of ICAI, 122 MG Road, Chennai-34.
- For latest announcements and information visit www.sircoficai.org - Ph: 044-3021 0322 / 3989 3989 - Fax: 044 - 3021 0355 - Email: sircclasses@icai.in; sirc@icai.in

FREQUENTLY ASKED QUESTIONS (FAQs) ON IPCE Unit Scheme, Verification of Answer Books and Exemption(s) in a paper(s)

A set of Frequently Asked Questions (FAQs) on the following topics relating to CA examinations has been compiled and hosted on the ICAI website www.icai.org for the benefit of students and other users. The weblinks are also indicated against the topics.

IPCE unit scheme	http://220.227.161.86/24597faq_ipcc_exam.pdf
Verification of answer books	http://220.227.161.86/23803FAQs_verification_marks.pdf
Exemption(s) in a paper(s)	http://220.227.161.86/24309announ14197.pdf

Students may refer to them for their guidance. - Examination Department, ICAI

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.

TWO DAYS NATIONAL CONVENTION FOR CA STUDENTS - BANGALORE

Organised by Board of Studies of ICAI - Hosted by: SICASA and Bangalore Branch of SIRC of ICAI

On Saturday, January 28 & 29, 2012 at Koramangala Indoor Stadium, Koramangala, Bangalore



Registration: 08.30 am to 09.30 am

Day 1 - 28.01.2012 – Saturday - 09:30 a.m.

Inaugural Session

CA. G. Ramaswamy, President, ICAI
CA. Jaydeep Narendra Shah, Vice-president, ICAI
CA. V. Murali, Chairman, Board of Studies, ICAI
CA. K. Shanmukha Sundaram, Chairman, SIRC of ICAI

Special Session **Strategies for Success**
CA. V. Murali, Chairman, Board of Studies

Technical Session – I : International Taxation

Session Chairman : **CA. T. P. Ostwal**, Mumbai

Topics for Student Speakers

- Overview of International Taxation
- International Taxation – Emerging Areas
- Transfer Pricing – Future & Future

Special Session **How to be Boss of Your Own**

CA. Gurunath, Bengaluru
CA. Guruprasad, Bengaluru

Technical Session – II : Corporate Law & Auditing

Session Chairman : **CA. M. P. Vijay Kumar**, Chennai

Topics for Student Speakers

- New Schedule VI - Overview
- Difference between India AS 1 and existing Schedule VI
- Issues in Schedule VI – Eg. MAT Computation, Audit Coverage, etc.,

Cultural Extravaganza

Students are hereby requested to register for the convention at the earliest. The details for registration is as follows

Registration Fee : ₹ 400/- per student
 If Registered before 18.01.2012 ₹ 350/- per student
 Accommodation : ₹ 150/- per student
 Payment by Cash/DD/Cheque to be drawn in favor of "UDAAN" payable at Bangalore

For Registration Queries Contact : Ms. Rajalakshmi, Bangalore Branch of SIRC of ICAI, ICAI Bhawan, # 16/0, Millers Tank Bed Area, Vasanthanagar Bangalore - 560 052. Ph. +91-80-30563509; 30563500.
 E-mails: bangalore@icai.org; blrsicasa@icai.org

Day 2 - 29.01.2012 – Sunday - 09:30 a.m.

Special Session **India's Illicit Wealth Abroad**
CA. M R Venkatesh, Chennai

Technical Session – III : Taxation

Session Chairman : **CA. Dr. Girish Ahuja**, New Delhi

Topics for Student Speakers

- Introduction to DTC
- Procedural Aspects of TDS
- MAT V/s. AMT

Technical Session – IV : Information Technology

Session Chairman : **CA. Babu Jayendran**, Bengaluru

Topics for Student Speakers

- Impact & Challenges for Auditors
- Using Computer Assisted Audit Techniques
- The power of Leveraging a CA's domain knowledge with Technology.

Special Session **How to become CFO of a Company**

CA. Venkat K N, Bangalore
CA. Neeta Revankar, Bangalore

Special Session **How to Overcome failure in CA**

CA. Hariharan K, Chennai

Special Session **Interaction with Board of Studies**

CA V. Murali, Chairman, Board of Studies
Shri Vijay Kapur, Director, Board of Studies

Valedictory Session

CA. C. S. Srinivas, Chairman, SICASA & Convention Director, 098450 63387

CA. V. Murali, Chairman, Board of Studies & Convention Chairman, 093810 46952

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0 98451 49310

BLOOD DONATION CAMP

Blood Donation Camp has been Rescheduled to January 21 & 22, 2012. For more details refer November 2011 & December 2011 issue of SIRC Newsletter.

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Therefore, my friends as one of your blood, as one that lives and dies with you, let tell you that we want strength, strength, and every time strength.

NATIONAL CONVENTION FOR CA STUDENTS

December 12&13, 2011 - Chennai.



Hon'ble Mr. Justice P.Jyothimani, Judge Madras High Court inaugurating National Convention For CA Students-Chennai on December 12,2011. (L-R) Ms. Saranya Kumari, Vice-Chairperson, SICASA, Mr. A.P. Lijil Lakshman, Secretary, SICASA, CA. C. S. Srinivas, Chairman-SICASA, CA. Jaydeep Narendra Shah, Vice President, ICAI, CA. G.Ramaswamy, President, ICAI, CA.K.Shanmukha Sundaram, Chairman, SIRC of ICAI and CA.V.Murali, Chairman, Board of Studies.

INAUGURATION OF ICAI BHAWAN OF NELLORE BRANCH OF SIRC OF ICAI

December 30, 2011 - Nellore.



Chief Guest CA. G. Ramaswamy, President, ICAI inaugurated the "ICAI Bhawan" of Nellore Branch of SIRC of ICAI in the presence of CA. Jaydeep Narendra Shah, Vice-President, ICAI, Standing First Row (L-R): CA. J. Venkateswarulu, CCM-ICAI, CA. A. Sankaranarayana, Chairman- SICASA, Nellore Br., CA. K. Shanmukha Sundaram, Chairman, SIRC, CA. M. Chandramouli, Chairman, Nellore Br., CA. M. Devaraja Reddy, CCM-ICAI, CA. V.M.V. Subba Rao, Vice-Chairman, Nellore Br., Standing Second Row (L-R): CA. G.V.V. Satyanarayana, Member-SIRC, CA. K. Viswanath, Vice-Chairman, SIRC, CA. Gopal Krishna Raju, Member-SIRC, CA. Naresh Chandra Gelli V, Member-SIRC, CA. P.R. Aruloli, Member-SIRC.



CA. V. Murali, Chairman-Board of Studies, ICAI addressing the students at the inauguration of GMCS Course on December 7, 2011 at Chennai. (L-R): CA. P.R. Aruloli, Member-GMCS Co-ordination Committee, SIRC, CA. G. Sivaprakash, Faculty and Mr. P.S. Vasudevan, Corporate Trainer.



CA. V. Murali, Chairman-Board of Studies, ICAI presenting a memento to Chief Guest CA. G. V. Raman, Past Chairman-SIRC of ICAI. (L-R): Mr. P.S. Vasudevan, Corporate Trainer, Students and CA. K.M. Padmanaban, Faculty.

TWO DAY SICASA CONFERENCE ON INTERNATIONAL TAXATION

December 30 & 31, 2011 - Chennai.



CA. G. Narayanaswamy, Past Central Council Member, ICAI delivering the inaugural address (L-R): Mr. A.P. Lijil Lakshman, Secretary, SICASA, CA. C.S. Srinivas, Chairman, SICASA, CA. T.G. Suresh, Programme Coordinator, Ms. Saranya Kumari, Vice-Chairperson, SICASA.



CA. K. Shanmukha Sundaram, Chairman-SIRC of ICAI at the Valedictory Session. Seated (L-R): CA. T.G. Suresh, Chennai, Programme Co-ordinator, CA. C.S. Srinivas, Chairman-SICASA, CA. Gopal Krishna Raju, Member-SIRC with Office Bearers and Managing Committee Members of SICASA.

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CPE SEMINAR ON MSME

Organised by Committee on Banking Insurance and Pension of SIRC of ICAI - December 21, 2011 - Chennai.



CS. S. Dhanapal
Chennai



CA. Chinnsamy Ganesan
Chennai



CA. Divakar Vijayasaratthy
Chennai

◀ CA. V. Murali, Chairman-Committee on Banking, Insurance & Pension-ICAI inaugurating. (L-R): CA. Gopal Krishna Raju, Chairman-Committee on Banking, Insurance & Pension, SIRC, CA. K. Shanmukha Sundaram, Chairman-SIRC of ICAI, CS. S. Dhanapal, Resource Person and CA. R. Kumar.

ONE DAY CPE SEMINAR - December 29, 2011 - Chennai.



CA. R. Subramanian
Chennai



CA. Rohit Channazhi
Chennai



CA. R.G. Rajan
Chennai



CA. S. Ramakrishnan
Chennai

◀ CA. K. Shanmukha Sundaram, Chairman, SIRC of ICAI delivering the inaugural address. (L-R): CA. P.R. Aruloli, Member, SIRC, CA. R. Subramanian, Resource Person, CA. Gopal Krishna Raju, Member, SIRC.

SEMINAR ON DTC

Organised jointly by SIRC of ICAI and Indo International Christian Chamber of Commerce (IICCC) - December 13, 2011 - Chennai.



Chief Guest Mr. G.C. Jain, IRS, CCIT-I, Chennai (6th from left) inaugurating (L-R): Mr. J.S.A. Rajendran, State Vice-President-IICCC, Dr. Daniel Mosses, Vice Chairman-IICCC, Mr. D. Dhaya Devadas, Mr. H.K. Chaudhary, IRS, Director of Income Tax-Exemption, Chennai (Moderator-Panel Discussion), CA. P.R. Aruloli, Chairman, Taxation Committee-SIRC of ICAI, CA. K. Shanmukha Sundaram, Chairman-SIRC of ICAI, CA. John Moris, Convenor, Taxation & Finance Panel-IICCC, Mr. C. Ebenezer, President-IICCC-Tamil Nadu and (Panelists-Panel Discussion) CA. N. Nedunchelian, Member-Committee for Co-operatives and NPO Sectors, CA. M. Kandasami, Chennai & Mr. David Nash, CEO, The Banyan.

WOMENS CONFERENCE-MARCHING AHEAD

on December 11, 2011 at Salem.



Chief Guest CA. K. Shanmukha Sundaram, Chairman-SIRC of ICAI releasing the Souvenir at the Inaugural Session and the first copy received by CA. Priya Bhansali, Coimbatore, First National Convenor of Women's Steering Group, ICAI at the "Women's Conference - Marching Ahead" held on December 11, 2011 organised by Salem Branch of SIRC of ICAI at Salem. (L-R): CA. V. Madhukar, Secretary-Salem Branch, CA. M. Sekar, Chairman-Salem Branch, CA. S. Murali, Secretary-SIRC of ICAI, CA. S. Rajeswari, Chennai and CA. Saradha Ashok, WSG Co-ordinator, Salem.

CPE SEMINAR ON ETHICAL STANDARDS

December 16, 2011 - Chennai.

Resource Persons



CA. K. Ravi
Chennai



CA. Sriram Gopalakrishnan
Chennai

CPE STUDY CIRCLE MEETINGS

December 2011 at SIRC Chennai.

Dec. 7, 2011



CA. Mohanan Kuttikat
Ernakulam

Dec. 14, 2011



CA. S. Swaminathan
Chennai

Dec. 28, 2011



CA. K. Madhu Sudhana Rao
Chennai

Convenor of recently formed CPE Study Circle of SIRC of ICAI



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