



Tax Audit



44th Regional Conference of SIRC of ICAI
18th & 19th August 2012, Bangalore

Chairman writes ...

My Dear Professional Colleagues,

44th Regional Conference of SIRC of ICAI held at Bangalore

As a Team, SIRC achieved yet another goal when it successfully organized the 44th Regional Conference of SIRC on 18th and 19th August 2012 at Bangalore attended by around 3400 delegates from different parts of the Southern Region, from other Regions and from abroad. To achieve success in any endeavour I believe that team work is most essential, and the members of SIRC have amply demonstrated what “**Success**” and “**Team Work**” means when I received the fullest support from –

- CA. Jaydeep Narendra Shah, President, ICAI
- CA. Subodh Kumar Agrawal, Vice-President, ICAI
- Other Office-bearers of SIRC and other colleagues in the Regional Council
- Central Council Members from Southern Region
- CA. M. Nithin, Chairman, Bangalore Branch of SIRC and other members of the Managing Committee of the Branch
- Chairmen of Sub-Committees of Conference and Members of the Conference Committee
- Eminent Resource Persons
- Chairmen and Members of the 36 Branches of SIRC
- Convenors of CPE Study Circles, Chapters and Groups
- Delegates of the Conference
- Student Volunteers
- Officers and Staff of SIRC of ICAI, DCO-Bangalore and Staff of Bangalore Branch of SIRC of ICAI

The gracious presence of Dr. M. Veerappa Moily, Union Minister of Power and Corporate Affairs, Dr. K. Rahman Khan, Former Deputy Chairman, Rajya Sabha at the inaugural session and CA. B.P. Rao, Past President, ICAI at the Valedictory session added immense value to the two day conference. I derive immense happiness and deem it a proud privilege to express the heartiest and sincere thanks of SIRC

to the dignitaries for their presence and enlightening, inspiring and motivational address.

Theme of the Conference:

Keeping in mind the enormous amount of responsibility cast on our profession and at the same time the trust and faith the Government and the various stakeholders of the society at large has in our profession, the members of the Conference Committee and I had the unanimous view that the theme of the Conference shall be **VISHWAS** which means **Trust, Faith, Confidence, Reliance, Belief** which is the foundation and core of our profession and all human relationships, with the Tag Line “Enhance Values, Inspire Trust”

Lord Sri Krishna in the Bahgavad Gita says: “Ye tu dharmamrutam idam, Yathoktam paryupasate, Sraddhadhana mat parama, Bhaktas te tiva me priyah.” which means “Those who follow the path of devotional service (sraddha) engaging themselves with faith (vishwas) and making Me their goal are very dear to Me.”

It also applies to everyone and more so to our professionals as we are looked upon as the custodians of the financial health of the Nation and the guardians of national economy

The **Tag line of the Theme VISHWAS is “Enhance Values, Inspire Trust”** and the Conference Committee had selected subjects for deliberations which focussed on this Theme besides an interesting panel discussion on the profession’s expectations, challenges and the future.

The background to the choice of the Theme & Tag Line is the recent happenings in the global economy including India, and what has been reported and debated in many economic and professional forums and literature: Recent high-profile corporate collapses have led to increased scrutiny of deficiencies in the financial reporting process and corporate disclosure requirements. This has had a negative and cumulative impact on the perceived credibility of financial reporting. This issue is now at the forefront of public debate about the accounting profession and its effectiveness. The decline in reporting credibility is prevalent across capital markets worldwide, with the scale of the problem partly attributable to the ‘unprecedented level of share prices in many markets’.

Research has shown that corporate financial distress is the result of the combined effects of failures in business, governance and reporting. It is acknowledged that business failure is an inherent market feature. Mistakes and other failures of judgement will occur in any open economy. This does not necessarily mean that they occur deliberately, or fraudulently, particularly by, or with, the assistance of, accountants. However, action can and should be taken to minimise governance and reporting deficiencies. Accountants can assist boards and management in these respects.

Restoration of the public’s confidence in the accounting profession is of paramount importance, and rightly so. This profession has suffered significant undermining in the level of confidence and trust the public holds in its work, by virtue of a number of major corporate collapses both in India and internationally.

The profession has to Enhance its Core Values, to be able to inspire Trust in those that they serve. All professionals share certain basic values such as integrity, objectivity, competence and professionalism. We need to enhance these set of core values and timeless principles that can help us to do right thing, at the right time, all the time. These core values serve as both beliefs and boundaries, beliefs in the form of positive concepts one can be committed to, and boundaries in the form of limits that should not be violated.

I dedicate the success of this 44th Regional Conference “VISHWAS” to the entire professional fraternity who stood by us in all the initiatives of SIRC and more particularly in the conduct of the 44th Regional Conference. It would be my sincere request and desire that we as a team take the profession forward and bring laurels and keep the Flag of the Institute flying high.

For the benefit of those who could not attend the conference, I have published a small report on the conference together with some photographs of the conference in this issue of the Newsletter.

In addition to the Regional Conference, SIRC and its branches have continued to conduct many CPE Programmes on the themes of practical relevance such as professional development, direct taxes, financial due diligence, information technology, capital markets, transfer pricing, insurance and banking sector, tax audit etc.,

The Economy

As observed by "The Economist" magazine, one of India's strengths is its corporate sector which is, in general, profitable, well run and has healthy balance sheets. But the Indian Corporate sector, majority of which are family owned, has long had pockets of indebtedness too. Promoters, with a view to maintain their controlling stakes in these organisations have resorted to debt financing (primarily through Indian banks) rather than on equity (which might have resulted in ownership dilution but has the silverlining of wealth distribution amongst the public).

A recent statistic released by Reserve Bank of India indicates a restructuring of corporate loans to the level of \$ 43 billion as of March 2012. Though this amount represents 2% of the GDP and below the levels of other countries which had faced financial crisis, there is a strong case for these corporates to go for equity dilution, which, inter alia, would lead balancing corporate development with socio economic development. Members of our Institute have to prevail on their clients to espouse this model as it also represents sustainable economic development.

According to statistics private corporate investments which peaked 17.3% of GDP in 2007-2008 fell to 12.1% in 2010-11. To augment funds available for developmental activities, Government of India should go for expenditure switching, as recommended by the Reserve Bank of India.

Professional Areas to Excel

Our members, particularly the newly qualified, who have chosen professional practice as their careers, should start focusing on Practicing Indirect Taxation such as Service Tax so that the stakeholders would be immensely benefited by our competence in this area. SIRC and its branches have lined up number of Workshops on Service Tax as a Practice Area so that practical and practice oriented knowledge could be imbibed in them.

Likewise our young members, should explore the possibility of becoming social entrepreneurs to use their entrepreneurial skills arising out of our unique articleship training to make a difference to society, especially for the under privileged sections. I call upon the readers to intimate us the details of our members who are social entrepreneurs whose experience could be shared amongst our members through the pages of SIRC Newsletters, so that we can continue to spread the message that ICAI is a partner in Nation Building amongst the masses as well.

Business enterprises, immaterial of their size, have started resorting to arbitration as

a dispute settlement mechanism in a notable way. In view of the inherent advantages, such as final and binding decisions, international recognition of awards, neutrality (in terms of place of arbitration, procedures, language used, nationality), special competency, of arbitrators (mostly chosen by parties themselves) and confidentiality, arbitration has emerged as the corporate world's answer to the long and winding road of the Judicial system.

Members of our Institute, who have been maintaining the image as complete Business Solutions Providers to various types of business enterprises should prompt their clients to embrace the Alternative Dispute Redressal (ADR) mechanism. With a post qualification certification course in Arbitration by our Institute, members can look forward arbitration as an important avenue for professional development in the days to come.

Theme of this Newsletter – Tax Audit

Continuing our initiative to release theme based issues of the SIRC Newsletter, this issue is focusing on **Tax Audit**. The article Tax Audit under 44AB of the Income Tax Act, 1961 – An overview discusses the need for tax audit, its importance to business and profession, scope of Section 44 AB, consequences if companies follow different accounting year other than financial year, issues relating to Audit Report. Similarly the write up Tax Audit – Protection from Penalties Leviable discusses various types of penalties and suggestions to avoid levy of penalty including recent developments in this regard.

To balance the contents of this issue we are carrying an article on Issues on Para 46 A of AS 11 relating to bifurcation of exchange difference partly to interest and partly to exchange difference discusses the clarification issued by the Ministry of Corporate Affairs with respect to paras 6 of AS 11 and para 4 (e) of AS 16 vis a vis clause 46 A of AS 11.

This issue also carries usual features viz., Updates on Direct Taxes and Indirect Taxes and the Column by Shri Henry Richard, Registrar of Companies, Tamilnadu, on Corporate Laws.

Branch Visit

During August 2012 I had the opportunity to visit Ernakulam which hosted the National Seminar on Direct Taxes, which was very well organized and very well attended and had the pleasure of interacting with the members from various parts of Kerala.

Our Members in Industry

Business enterprises today are operating

among unprecedented uncertainty also called as external risks. The larger the uncertainty, the more worrying and several are the threats to our business enterprises. To manage such external risk, our members in industry require selecting the right analytical tools and incorporating risk into their strategic decision making. This is an essential competence which our members need to absorb for their long term career development in the interest of the enterprises in which they serve and the economy at large.

The job market has moved from a positive start at the beginning of the year to a deceleration in hiring activity at present. There has been widespread news that the new recruitment/job market is also attracting fraudsters who are resorting to cheating and unethical practices. Our newly qualified members who are aspiring to go for industry have to be careful about the corrupt recruiters who are cheating jobseekers and enterprises.

Students Related Activities

SICASA and its Branches have continued to conduct numerous programmes of varied nature for the benefit of the student community. SICASA has hosted the National CA Convention at Chennai attracting number of students across the Southern Region to exhibit their knowledge and technical skills amongst their peers. Special sessions by experts were arranged as part of the Convention. I express our gratitude to Hon'ble Thiru D. Jayakumar, Speaker, Tamil Nadu Legislative Assembly who have not only inaugurated the convention but gave it an interesting twist by conducting a mini Quiz Programme in his own style which impressed one and all present at the convention. SIRC had conducted the Regional Level Elocution Contest and Quiz Contest paving the way for the winners to participate in the National Level Contest. While I congratulate the winners, I wish them all the best to emerge winners in the National level competitions.

With Best wishes and till I write to you the next month,

I remain in the service of the profession.

Yours in professional service



CA. K. VISWANATH
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SIRC CALENDAR SEPTEMBER & OCTOBER 2012

Contact: Dr. T. Paramasivan, Senior Deputy Director (Tech.) – ICAI - Phone: 044 – 30210320 / 321 – Email: sirc@icai.in

DATE and TIME	PROGRAM DETAILS	RESOURCE PERSON	FEE (₹)	CPE CREDIT
Sep. 1, Saturday 09.30 a.m. – 05.30 p.m.	**CPE NATIONAL SEMINAR	Details at Page 07 of August 2012 Issue of SIRC Newsletter	800/-	6 hrs
Sep. 3 & 4, Mon & Tue 08.00 a.m. – 05.00 p.m.	@ALL INDIA CPE CONFERENCE	Details has been hosted in the SIRC website www.sircoficai.org	No Delegate Fee	12 hrs
Sep. 8, Saturday 09.30 a.m. – 05.30 p.m.	** CPE SEMINAR ON TAXATION	Details at page 07	750/-	6 hrs
Sep. 12, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on AUDIT SAMPLING	CA. R. Sivakumar Chennai	150/-	2 hrs
Sep. 14, Friday 04.00 p.m. – 08.00 p.m.	*CPE Programme on Standards on Auditing SA 700, SA 705 & SA 706	CA. Bhavani Balasubramanian Chennai	500/-	4 hrs
Sep. 20, 21 Thursday & Friday 09.30 a.m. – 05.30 p.m.	**Workshop on Enabling Service Tax Practice	Details will be hosted in the SIRC website www.sircoficai.org	1500/-	12 hrs
Sep. 26, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on PRACTICAL ISSUES IN TDS	CA. P. Petchi Chennai	150/-	2 hrs
Sep. 27, Thursday 04.00 p.m. – 08.00 p.m.	** Workshop on Various Ethical Issues	Details will be hosted in the SIRC website www.sircoficai.org	300/-	4 hrs
Oct. 03, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on INVESTMENT OPPORTUNITIES IN COMMODITY MARKET	CA. AP Prakasan Chennai	150/-	2 hrs
Oct. 05, Friday 06.30 p.m. – 08.30 p.m.	*P. Brahmayya Memorial Lecture	Details at Page 19		
Oct. 10, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on IT SECURITY	Mr. Ravishankar Mumbai	150/-	2 hrs

NO CPE PROGRAMMES ON SEP. 19, 2012

* Programmes at P. Brahmayya Memorial Hall, "ICAI Bhawan", SIRC Premises, Chennai – 600034.
 ** Programme at "ICAI Bhawan", SIRC Premises, Chennai – 600034.
 @ Programme at Hotel Savera, 146, Dr. Radhakrishnan Salai, Chennai - 600 004.

<h2 style="margin: 0;">CPE SEMINAR ON TAXATION</h2> <p>Organised by SIRC of ICAI under the auspices of the Taxation Committee of SIRC</p> <p>Saturday, September 8, 2012 - 09.30 a.m. - 05.30 p.m.</p> <p>Technical Sessions - 10.15 a.m. to 05.30 p.m.</p> <p>Reassessments in Income Tax Act CA. T. Banusekar, Chennai</p> <p>Losses c/f and set off CA. T.G. Suresh, Chennai</p> <p>Reverse Charge & Joint Charge mechanism under Service Tax CA. Vijay Anand, Chennai</p> <p>Exemption and Negative list under Service Tax Adv. K. Vaitheeswaran, Chennai</p>	<p style="text-align: right;">P. Brahmayya Memorial Hall, ICAI Bhawan No.122, Mahatma Gandhi Road, Nungambakkam, Chennai - 600034</p> <p style="text-align: right;">CPE Credit 6 HOURS</p> <p style="text-align: right;">Registration: 09.00 a.m.</p> <div style="background-color: #333; color: white; padding: 5px; text-align: center;">DELEGATE FEE</div> <p style="text-align: right;">Members - ₹ 750/-</p> <p>Delegate fee by way of Cash or by Cheque/DD drawn in favour of 'SIRC of ICAI' payable at Chennai may be sent to SIRC of ICAI, ICAI Bhawan, No. 122, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034. Phone: 044-30210320, Fax: 044-30210355; Email: sirc@icai.in</p> <p>CA. P.V. Rajarajeswaran Secretary, SIRC</p> <p>CA. E. Phalgun Kumar Chairman Taxation Committee, SIRC</p> <p>CA. K. Viswanath Chairman, SIRC</p>
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TAX AUDIT – PROTECTION FROM PENALTIES LEVIABLE

1. INTRODUCTION

1.1 Tax audit is made compulsory u/s. 44AB of the Income tax Act, 1961 for those

- a) carrying on business having sales, turnover or gross receipts, as the case may be, exceed or exceeds Rs.60.00 lacs in the previous year ending 31.03.2012 (Rs.1 crore for and from the previous year ending 31.03.2013)
- b) carrying on profession having gross receipts exceed Rs.15 lacs in the previous year ending 31.03.2012 (Rs.25 lacs for and from the previous year ending 31.03.2013)
- c) carrying on business the income from which needs to be computed on a presumptive basis u/s 44AE, sec 44BB and sec 44BBB and the assessee claims that the income earned is less than the prescribed minimum amount or percentage, as the case may be.
- d) carrying on business the income from which needs to be computed on a presumptive basis u/s 44AD and the assessee claims that his income earned is lower than the prescribed percentage (8%) and his income does not exceed the maximum amount not chargeable to tax.

1.2 The persons covered above need to get the accounts audited before the specified date and furnish the same by that date. Specified date for this purpose is 30th September of every assessment year.

2. PENALTIES LEVIABLE

2.1 Sec 271B, inserted by the FA 1984, provides for levy of penalty for non-compliance of the provisions of sec. 44AB. According to that section, the assessing office may direct that the assessee shall pay penalty for

- a) non getting the books of account audited or
- b) not furnishing the audit report as per sec 44AB

2.2 The penalty so leviable shall be ½ % of the sales, turnover, or gross receipts or Rs.1.50 lacs whichever is less.

2.3 The provisions of sec. 271B is not violative of Article 19(1)(g) and Article 14 of the Constitution¹.

2.4 As per sec 44AB, audit report is to be obtained before the specified date and NOT “on or before” the specified date. Therefore, one can hold a view that penalty can be levied wherever audit report is dated as 30th September of the assessment year.

3. WHERE PENALTY CANNOT BE LEVIED

3.1 The recent amendment of sec 44AD making it separate from other provisions relating to presumptive income requires a careful study. In all other provisions relating to presumptive income, the audit under sec 44AB is mandatory in case the assessee claims the income from such business is less than the prescribed percentage or quantum, as the case may be, irrespective of the fact whether the total income of the assessee is less than basic limit or otherwise. However, under the amended sec 44AB(1)(d), there is no need to get the books audited u/s 44AB when the income from the business otherwise required to

be computed u/s. 44AD is less than 8 % of the turnover but the total income itself is less than the basic limit of that year. In those cases, levy of penalty for not getting the accounts audited is not applicable at all.

3.2 Sec 44AA requires the assessee to maintain the books. As per sec 271A, penalty can be levied in case where the books are not maintained as per sec 44AA. Where the case of the assessee falls under sec 44AA and sec 44AB and the assessee claims that he did not maintain books of account, levy of penalty under both the sections namely, 271A and 271B are not possible. Where penalty is already levied u/s 271A for not maintaining books of account, another penalty u/s. 271B for not getting the accounts audited cannot be levied².

3.3 Following are the instances in which the courts/tribunals have reversed the penalty levied u/s. 271B

- a. The assessee was engaged in the business of buying and selling units and shares and no delivery was taken. The account was settled by crediting the difference and net difference so credited was reflected in the profit and loss account. It was held that no turnover was effected and therefore the levy of penalty was held to be not in accordance with law³.
- b. The assessee was engaged in the advertisement business and only acted as an agent between principal and media and earned commission. Penalty was levied for non-compliance of sec. 271B considering the total transaction value. The levy of penalty was cancelled since the assessee was acting as

1 *Abhay Kumar & Co – 164 ITR 148*

2 *Ram Prakash C Puri – 77 ITD 210*

3 *Growmore Exports Ltd – 78 ITD 95*

agent and his commission was the only turnover and not the entire amount transacted⁴.

- c. Where the approval of the joint commissioner was not obtained, levy of penalty is held to be not valid⁵.
- d. The assessing officer did not mention about the initiation of penalty proceedings in the assessment order. Therefore, subsequent levy of penalty was held to be invalid⁶.

4. PROTECTION FROM LEVY OF PENALTY

- 4.1 Section 273B provides that notwithstanding anything contained in sec 271B, no penalty shall be imposable for any failure referred to in sec 271B if the assessee proves that there was reasonable cause for the said failure.
- 4.2 The onus is on the assessee to prove the existence of reasonable cause for failure and if he proves so, no penalty shall be levied.
- 4.3 The word used in sec.271B is “may” and not “shall”. Therefore, the adjudicating authority shall have to exercise the discretion after considering the non-obstante clause provided in sec 273B (i.e.,

reasonable cause). Existence or absence of a reasonable cause is essentially a question of fact⁷.

- 4.4 Levy of penalty under sec 271B is not mandatory but discretionary⁸.
- 4.5 Following are the instances in which the courts/tribunals have held that there was reasonable cause
 - a) Illness of an accountant of the assessee⁹.
 - b) Illness of the Chartered Accountant of the assessee¹⁰.
 - c) Illness of the partner and subsequent his undergoing surgery¹¹.
 - d) Books impounded by the department¹².
 - e) Bona fide belief that the assessee is not covered by sec 44AB¹³.
 - f) Delay in obtaining branch reports from overseas branches¹⁴.
 - g) Delay due to time consumed in collection of details from customers who are upcountry constituents and pressure of work of Chartered Accountant¹⁵.
 - h) Current year audit report is

filed belatedly because of delay in completion of audit last year¹⁶.

- i) Delay was due to late appointment of auditors under Co-op societies Act¹⁷.
- j) Delay was due to the delay in finalizing the accounts by the Accountant General’s office¹⁸.
- k) Delay is for few days¹⁹.

5. REMEDIES

- 5.1 The order levying penalty u/s. 271B is an appeal-able order. The aggrieved assessee is entitled to file an appeal u/s 246A to the Commissioner of Income tax (Appeals). Alternatively, a revision petition u/s. 264 can also be filed to the Commissioner of Income tax.
- 5.2 Assessee may also make a petition to Commissioner of Income tax u/s. 273A for waiver or reduction of the penalty levied after satisfying the conditions mentioned in that section.

6. RECENT DEVELOPMENTS

- 6.1 After the concept of annexure less returns introduced, the need to file the tax audit report arises only when the assessee is required file the hard copy of the enclosure to the return of income and not otherwise.
- 6.2 Since this provision is open for misuse, the days are not far off when the Revenue may introduce a condition that the soft copy of the audit report needs to be uploaded while filing the return of income. ■

4 Heros Publicity services 248 ITR 256
 5 Sree Malathi Chit funds – 278 ITR 258
 6 Indian Handloom Textiles – 68 ITD 560
 7 Anantharam Veerasinghaiah & Co – 142 ITR 755
 8 Haryana Agro Services – 279 ITR 113
 9 Karthika Entrepreneurs – 45 ITD 70
 10 Gayathri Coal Supply Co – 63 ITD 237
 11 K Ravi Kumar – 29 ITD 537
 12 Babulal Jain – 251 ITR 656

13 Wadiwala & Co – 72 TTJ Ahd Trib
 14 Data software Research Co P Ltd – 288 ITR 289
 15 H Ajitbhai & Co – 45 ITD 262
 16 Kamlesh R Agarwal 282 ITR 117 (AT)
 17 Tanjavur Silk Handloom _ 263 ITR 334
 18 Rajastan Rajya Vidyut Prasaran Nigam – 262 ITR 262
 19 Ramakrishna Stores – 253 ITR 175

THE MONTH THAT WAS (AUGUST 2012)	
4 th	National Seminar on Direct Taxes at Ernakulam
10 th	Workshop on Information Technology – Emerging Opportunities
15 th	Independence Day Celebration
18 th & 19 th	44 th Regional Conference of SIRC of ICAI
24 th	Mega CPE Conference on Capital Markets
29 th	CPE Hands on Practical Workshop on Advanced Excel
29 th	CPE Seminar on Banking and Insurance
31 st	CPE Seminar on Tax Audit
1 st , 6 th , 8 th , 22 nd , 24 th & 29 th	CPE Study Circle Meetings & Teleconferences

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

Invitation for Contribution of Articles

SIRC of ICAI invites Articles from Members for publication in the SIRC Newsletter. SIRC is releasing Theme Based monthly Newsletter. The theme finalized for the October, November & December 2012 issues are as follows:

Month	Theme	Articles to reach SIRC on or before
October	Transfer Pricing	September 20, 2012
November	Information Technology	October 10, 2012
December	Financial Management & Capital Markets	November 10, 2012

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 on or before the above said dates.

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 (including coaching classes for CPT/IPCC/Final levels), please send an email with details of subjects / topics which could be handled by you to sirc@icai.in.



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TAX AUDIT UNDER 44AB OF THE INCOME TAX ACT, 1961 – AN OVERVIEW

Need for Tax Audit

The Tax Audit was introduced by section 11 of the Finance Act, 1984, which inserted a new Section 44AB with effect from 1st April 1985 (A.Y.1985-86). This section makes it obligatory for a person carrying on a business to get his accounts audited by a Chartered Accountant and to furnish by the specified date, the report in the prescribed form of such audit, if the total sales turnover or gross receipts in **business** in the relevant previous year exceed Rs. 60 lakhs. For a **profession**, the provisions of Tax Audit become applicable if his gross receipts in profession exceed Rs. 15 lakhs. As observed by the Finance Minister, while presenting the Union Budget for 1984-85, and as stated in the Memorandum explaining the provisions of Finance Bill, 1984, the compulsory Audit is intended to ensure proper maintenance of books of accounts and other records, in order to reflect the true income of the tax payer and to facilitate the administration of tax laws by proper presentation of accounts before the tax authorities. This would also save the time of assessing officers' considerably in carrying out the verification. The scope of verification was enlarged by Finance Act, 1997 to provide that Audit under the section would be required to in section 44AD/44AE/44AF, if such person claims that his income is lower than the amount of income deemed under these sections as presumptive income w.e.f.A.Y.1998-99.

A question may arise in the case of an assessee whose income is not chargeable to income tax by reason of a specific exemption contained in the Law or otherwise, as to whether he is required to get his accounts audited and to furnish such report under section 44AB. Such cases may cover those Assesseees who are wholly outside the purview of the income tax laws as well as those whose income is otherwise exempt under the Act. It is felt that neither Section 44AB

nor any other provisions of the Act stipulate exemption from compulsory tax audit to any person whose income is exempt from tax. The section makes it mandatory for every person carrying on Business or profession to get his/her accounts audited where conditions laid down in the section are satisfied and to furnish the report of such Audit in the prescribed form.

Business and Profession

The word business has been defined in several judicial pronouncements. In *SENAIRAM DOONGARMAL v CIT 42 ITR 392 (sc)*, the word business is not defined exhaustively in the Act, but it denotes an activity with the object of earning profit. To say that a business is being carried on means that profit is to be earned by a process or production. In *Barendra Prasad Ray v. ITO 129 ITR 295(sc)* the supreme Court held that the expression business does not necessarily mean trade or manufacture only; it is being used as including within its scope, professions, vocations and callings for a fairly long time.

The word Profession includes vocation. In *C. Rajagopalachariar Vs. CIT 50 ITR 196 (Mad)*, the Madras High Court has held that a vocation is only a way of living or sphere of activity for which one has special fitness. It is not necessary that such activity should be one indulged in for earning a livelihood before it is called vocation. A motive for making a profit is not an essential condition of a vocation. In *PADMANABHAN KRISHNA MENON vs. CIT 29 ITR 954* the word vocation has wide meaning. It means the way in which a person passes his life or the pursuit to which he devotes his time.

Who has to get accounts audited?

Now after knowing the purpose and necessity of Tax Audit, the next question arises as to the applicability of Tax Audit. Audit under section 44AB is applicable to four categories of assesseees. Now let

me explain each category one by one.

The first category covers any person carrying on a business whose total sales, turnover or gross receipts exceed Rupees Sixty Lakhs during the previous year. Here we should be careful about each word I said. Though the words Total Sales, Turnover and Gross Receipts seem to give the same meaning, each one has its own meaning. Various Legal forums have interpreted these words to have different meaning. The limit for this category was increased from Rs.40 lakhs to Rs.60 lakhs only by Finance Act, 2010 but with effect from 01.04.2011. Hence for the current Assessment Year the limit would be Rs.60 lakhs.

The Second Category covers any person who is carrying on a profession whose gross receipts exceed Rs.15 lakhs. This limit also was increased from Rs.10 lakhs to Rs.15 lakhs by Finance Act, 2010 with effect from 01.04.2011. Hence for the current Assessment Year the limit would be Rs.15 lakhs.

The Third Category covers persons whose income is assessed on a presumptive basis under section 44AE, 44BB or 44BBB. Where such assessee declare an income lesser than that presumed under the Sections 44AE, 44BB or 44BBB, they are required get their accounts audited in accordance with Section 44AB.

The Fourth Category is of recent origin. It was brought into the act by virtue of Finance (No. 2) Act, 2009, with effect from 01.04.2011. This category covers those persons who declare a lower income than the amount presumed under section 44AD. The difference between the fourth and the third category is that, in the case of the fourth category, the assesseees are subject to audit under section 44AB only if their income exceeds the basic exemption limit.

At this juncture it is worth quoting the amendments brought to Section 44AF

and 44AD by Finance (No.2) Act, 2009. The said Act has now merged Section 44AF and Section 44AD of the Income Tax Act. The benefit of presumptive income under section 44AD and 44AF is now not restricted to civil contractions contracts and Retail Trade alone. Now any individuals and partnership firm excluding an LLP whose turnover does not exceed Rs.60 lakhs can avail this benefit. They just have to declare an income of 8% of gross turnover or a higher amount as income.

Any person who is covered by the above four categories is required to get his accounts audited by an accountant before 30th September each year. Now certain issues arise regarding the applicability of tax audit on account of a combination of the above four categories. ICAI has clarified quite a few of these issues through its Guidance Note on Tax Audit under Section 44AB of the Income Tax Act.

A question may arise as to the limit applicable if the assessee carries on both business and profession. For e.g. when a person has a business which has a turnover of say 61 lakhs and a professions whose gross receipt is just 9 lakhs, a question may arise as to whether the accounts of the profession are also subject to audit. ICAI has clarified the issue saying that both the business and profession are subject to audit though the gross receipts of the profession do not exceed Rs.15 lakhs. However if the business turnover is Rs.50 lakhs and professional receipts are Rs.10 lakhs, tax audit will not be applicable.

Where a person has more than one business, then in calculating the turnover for Section 44AB, the total turnover of all the business put together should be taken. It should also be noted that for calculating the turnover any turnover of business covered under presumptive income sections like Section 44B or 44BB or 44BBA or 44BBB or 44AD or 44AE should be excluded.

Let's consider another situation. A firm has achieved a total gross turnover of Rs.65 lakhs. Sales return during the year amounts to Rs.10 lakhs. Out of the Sales Return of Rs.10 Lakhs Rs.4 lakhs belongs to the current year and Rs. 6 lakhs are returns of previous year. Now again the question arises as to the applicability of tax audit. If the total sales return is deducted, then the firm will not be subject to tax audit. ICAI through its guidance note has clarified that for the purpose of Section 44AB, sales return should be deducted from

total turnover and that no distinction needs to be made as to the current year sales return and previous year sales return. Hence the firm will not be subject to Tax Audit

Let me give you another example. A firm has a total turnover 59 lakhs. During the year the firm had sold a car which was held for business use for Rs.2.5 lakhs. On adding up the two, the turnover becomes Rs.61.5 lakhs. Will tax audit be applicable in this situation? Here again ICAI has clarified that turnover will not include any amount received on account of sale of Fixed asset. Even though it was originally held for business use, Tax audit will not be applicable.

Who can carry out Tax Audit?

After the applicability of Tax Audit, the next question arises regarding who can conduct Tax Audit. Section 44AB requires that the accounts should be audited by an Accountant. The explanation to Section 44AB states that the word accountant shall have the same meaning as the explanation to Section 288(2). The Explanation to Section 288(2) states that

“accountant” means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), and includes, in relation to any State, any person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered in that State.

Section 226 of the Companies Act, 1956 says that a person holding a certificate issued by a Part B State may also be appointed as an auditor. But this provision has no relevance today. No person is eligible to be appointed as an auditor by virtue of this provision today. Hence effectively only a Chartered Accountant holding a valid Certificate of Practice can carry out Tax Audit under section 44AB. This proves the level of trust we have been entrusted with. It will be in the duty of us all future Chartered Accountants to uphold this trust. After all C and A are the Alphabets of trust.

This monopolist trust vested on Chartered Accountants was also upheld by the Supreme Court in the Case of T.D. Venkata Rao v. Union of India [1999] 237 ITR 315 (SC). In this instant case, T.D. Venkata Rao, an Income Tax Practitioner, had questioned the legal validity of allowing only CAs to Audit under section 44AB. Supreme Court

upheld the superiority of CAs by noting that Chartered Accountants, by reason of their training have special aptitude in the matter of audits and no other person can be held eligible to conduct audit under Section 44AB. Supreme Court further held that CAs are a Class by themselves meaning that CAs are the brand for auditing itself.

Exception to Tax Audit

Once a person gets covered under any one of the four categories, Tax audit becomes mandatory. But there are two exceptions to tax audit. The first proviso to Section 44AB, exempts business covered under Section 44B and 44BBA from the purview of tax audit. But the second proviso is something more interesting. The second proviso says that if the accounts of a person are to be audited under any other law, it would be sufficient if the accounts are audited under that law before the 30th of September. The accounts need not once again be audited by an Accountant but the report in form 3CA and 3CD needs to be obtained from an Accountant.

The effects of this section arouse much fascination. Since Companies are required to be audited under the Companies Act, 1956, they need not be audited once again under Section 44AB. It is sufficient if the audit reports in the prescribed forms are obtained. This is even more fascinating in the Case of Co-operative Societies. Co-ops are required to be audited under the Co-operative Societies Act, but the auditor of a co-op need not be a CA. Even then a co-op need not be once again audited under Section 44AB.

Consequences if Companies follows different Accounting Year other than Financial Year

Another Fascinating situation arises out of this proviso. Everyone is aware that under the income tax act, previous year means the financial year beginning from 1st April. But there is no such restriction under the Companies Act. Hence Companies may adopt the calendar year i.e. January to December as their Accounting Year. In such a situation a question arises where by using the above proviso, a Tax Auditor issue Form 3CA and Form 3CD for the previous year without auditing the accounts.

The CBDT clarified this issue vide Circular no.561 dated 22/05/1990. CBDT said that the second proviso is applicable only when the accounting year is same as the previous year. If the

accounting year is different from the previous year then fresh audit has to be conducted. In this case, even though, the company was subject to statutory audit, the Tax auditor has to issue his report only in form 3CB and not in 3CA. Isn't it fascinating?

Audit Report

Section 44AB requires the tax Auditor to submit the Audit report in the prescribed form and setting forth the prescribed particulars. Sub-rule 1 of rule 6G provides that the report of Audit of Accounts of a person required to be furnished under section 44AB shall

- (a) in the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in Form.3CA;
- (b) in the case of a person who carries on business or profession but not being a person referred to in clause (a), in Form No.3CB;

Sub-rule (2) of Rule 6(G) further provides that the particulars which are required to be furnished under 44AB shall be in Form No.3CD;

It may thus be noted that the Audit report is in two parts. The first part requires the tax auditor to give his opinion as to whether or not the accounts audited by him give a true and fair view:

- i. in the case of a Balance Sheet of the State of affairs as at the date of ending the accounting year;
- ii. in the case of the Profit and loss account, the profit or loss of the Assessee for the relevant Accounting year.

The Second part of the report states that the Statement of particulars required to be furnished under Section 44AB is annexed to the audit report in Form 3CD. The tax auditor is required to give his opinion whether the prescribed particulars furnished by the Assessee are true and correct.

In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, it is recommended that a disclosure be made to the effect that corresponding comparative figures of the previous year, if given are not audited.

Points to be noted in respect of certain items of report of 3CD

Form 3CD contains 32 clauses on

ANNOUNCEMENT TO MEMBERS

61st ANNUAL GENERAL MEETING OF SIRC OF ICAI

It is hereby informed to the Members that the date for the **61st Annual General Meeting of SIRC of ICAI** will be communicated to the Members in due course.

CA. P.V. Rajarajeswaran
Secretary, SIRC

various items, the details of which are to be provided in the prescribed manner. I have detailed below two of the critical items which are subject to interpretation (due to limited discussion)

Method of Accounting

The Finance Act, 1995 has amended the section 145 with effect from assessment year 1997-98 to provide that the income chargeable under the head "Profits & gains of business or profession" or "Income from other sources" must be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. It has also been provided that central government may notify in the Official Gazette from time to time the accounting Standards to be followed by any class assesses or in respect of any class of income. The hybrid system accounting viz. mixture of cash and mercantile hitherto allowed to be followed by the assessee is not permitted from the A.Y 1997-98. However the assessee may adopt cash system of accounting for other business. Once the choice of method of accounting is decided, the assessee must follow consistently the method of accounting employed. If he employs different methods for different businesses regularly and consistently, the profits would have to be computed in accordance with the respective methods, provided the result is a proper determination of profits. As regards the accrual system of accounting the Institute has published a "Guidance Note On Accrual Basis Of Accounting" which may be referred to.

It may be noted that in view of amendment made by the companies (Amendment) Act, 1988 in sec. 209 of the Companies Act, every company is required to keep books of accounts on accrual basis. In other words, a company governed by the Companies Act, 1956 cannot follow cash system of accounting unless exempted under the Companies Act of 1956 are however,

not applicable to the entities other than companies.

Under sub-clause (b), whether there has been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year is to be stated. As already noted, an assessee can follow either cash or mercantile system of accounting.

If there is any change, the effect thereof has to be stated under this clause. Insofar as the question of effect of such change on profit or loss is concerned, the concept of materiality is the basic governing factor. If it is not possible to quantify the effect of the change in the method of accounting, appropriate disclosure should be made under this clause.

THE CALCUTTA HIGH COURT IN SNOW WHITE FOOD PRODUCTS Vs CIT (1983) 141 ITR 861, & MADRAS HIGH COURT IN CIT Vs CORBORANDUM UNIVERSAL LIMITED (1966) 149 ITR 759 and several other decisions like CIT Vs MOPEDS INDIA Ltd.(1998) 173 ITR 347, TRIVENI ENGG. WORKS Ltd Vs CIT (1987) 167 ITR 742 (AI), CIT Vs GANGA TRUST FUND (1986) 162 ITR 612 (GUJ) have held that it is open to an assessee to change the method of accounting provided the changed method is the regular method of accounting and the assessee has not merely abandoned or changed it for a casual period to suit his own purposes. Any such change which is followed consistently has to be accepted by the Department, even if it results in the reduction of tax liability

The tax auditor should apply reasonable checks to the earlier year's accounts to ascertain whether there is any change in the method of accounting as compared to that of the year under audit, after obtaining a written confirmation

from the assessee as to the method of accounting followed.

The tax auditor has to report the details of the deviations in the method of accounting in the previous year from AS (IT) & the effect thereon on the profit or loss. The tax auditor while reporting on the prior period & extraordinary items should report only such items which fall within the meaning of prior period items & extraordinary items in the relevant AS(IT). Attention is invited to AS(IT)-II, para 10, according to which any change in an accounting policy which has material effect is required to be disclosed. As stated above, a change in the method of the valuation of closing stock would amount to a change in an accounting policy and has to be stated in the financial statements. The tax auditor should ensure that in case the same is not stated in the financial statements, the fact should be suitably stated under clause 11(d). He may rely on the various pronouncements and clarifications made by the ICAI.

Particulars of Depreciation allowable as per Income Tax Act, 1961

Having regards to the nature of requirements prescribed, it may be necessary for the tax auditor to examine:-

- a) Classification of the asset
- b) Classification thereof to a block
- c) The working of actual cost or Written Down Value
- d) The date of acquisition and on which it is put to use
- e) The applicable rate of depreciation
- f) Adjustments required – specified as well as on account of sale etc..

The word "allowable" implies that the depreciation should be permissible as a deduction as per the provisions of the Act and the rules. This would require exercise of judgement having regard to the facts and circumstances of the cases developments in law from time to time, etc.

For the purpose of determining the rate of depreciation, the tax auditor has to determine the classification of assets into various blocks. The purpose for which the asset is used is also very material in this regard. Hence the tax auditor should ensure that the classification has made by the assessee

is in consonance with legal principles. In this connection, he should traverse through judicial pronouncements as well as through the past assessment history of the assessee, and upon an analysis thereof, if he comes to the conclusion that the matter is not free for doubt or controversy, he has to indicate the fact in his report by way of suitable qualification. It may also be necessary to rely upon technical data for determining the proper classification of the block since the tax auditor is not a technical expert, he has to obtain suitable certificate from concerned experts.

Once the classification has been ascertained and checked properly, the rates applicable as per the Income Tax Rules, 1962, relevant clarifications from the Department and judicial decisions.

If there is any dispute with regard to the classification of an asset in a particular block or the rate of depreciation applied, the tax auditor must give his workings with suitable reasons. Further there may be disputes in earlier years between the assessee and the Department regarding classification, rate of depreciation etc. And the tax auditor should give a suitable disclosure depending upon the facts and circumstances of the case. Alternatively where the tax auditor adopts the system of classification different from the one adopted by the assessee suitable disclosure should be made regarding the effect thereof.

Therefore be advisable to put a suitable note with regard to those items in respect of disputes for the earlier years are not resolved up to the date of giving the audit report and it should be clarified that the amount of depreciation allowable may change as a result of any decision which may be received after the audit report is given.

The additions/deductions during the year have to be reported with dates. The tax auditor is advised to get the details each asset or block of asset added during the year or disposed during the year with the dates of acquisition/disposal.

Details have to be given in respect of adjustments on account of three factors.

The first adjustment relates to modified value added tax credit claimed and allowed under central Excise Rules under 1944 in respect of assets acquired on or after 1st March, 1994. Explanation 9 to Sec.43(1) of the act provided that where as asset is or has been acquired on or after 1st day of March, 1994 by an assessee, the actual cost of an asset

shall be reduced by the amount of duty of Excise or the additional duty leviable under Sec.3 of the Customs tariff Act, 1974 (51 of 1975) in respect of which a claim of credit has been made and allowed under the central excise Rules, 1944. It is necessary, therefore for the tax auditor to examine details of asset acquired on or after 1st March, 1994 and the details of MODVAT credit claimed and allowed in respect of those assets

The second adjustment relates to the change in the rate of exchange of currency. Sec 43 A deals with the adjustment on account of change in the rate exchange of currency. AS -11(revised) issued by the ICAI deals with accounting for effects of changes in foreign exchange rates. Therefore the tax auditor should refer to them and arrive at a judgement as to whether the adjustment as contemplated is the said provisions of law & AS 11 has been made properly

The third adjustment relates to the subsidy or grant or reimbursement, by whatever name called

Finally, the amount of depreciation allowable and the WDV at the yearend have to be stated. Whenever a claim for the depreciation involves any reliance on any judgement or opinion or other contentions (as to its classification, rate applicable, cost, date on which put to use etc.), it may be advisable for tax auditor to disclose full particulars thereof and the basis on which the depreciation allowable has been determined and vouched by him.

There are judicial pronouncements to the effect that the depreciation which is not claimed by the assessee should not be thrust on him. SHRI SAHAKARI KARKHANA Ltd. 177 ITR 443 [BOMBAY], BECO ENGINEERING Ltd. 148 ITR 478 [P&H], PREMIER AUTOMOBILES Ltd. 206 ITR 1 [BOM], MACHINE TOOLS CORP. OF INDIA Ltd 201 ITR 101 (KAR), and Andhra Cotton Mills Ltd. 209 ITR 404 (A.P.) However there are certain other judicial pronouncements to the effect that allowance of depreciation is mandatory whether the assessee has claimed the same or not. ALLAHABAD GLASS WORKS (1961) 42 ITR 439 (AI), DASAPRAKASH BOTTLING COMPANY Vs CIT [1980] 122 ITR 9 [Mad], CIT Vs SOUTHRN PETRO CHEMICAL INDUSTRIES CORPORATION Ltd (NO.2) [1998] 233 ITR 400 (MAD)

Mode of Furnishing of Tax Audit Reports

As per the age old practice, the assessee were required to get the Tax Audit Reports in the prescribed forms from an Accountant and file the same by the prescribed due date along with their return of Income. But with the advent of e-filing and ITR series of return forms, the situation has changed completely. As per the ITR philosophy, Returns are annexure less. No annexure like the computation sheet, Audited Financial Statements and Audit reports needs to be annexed.

As per the current scheme, the assessee has to obtain the tax audit report from the Tax auditor before 30th September and using the details given in it, prepare the applicable ITR form and file it either manually or electronically with the Income Tax Department. The Audit Reports are to be furnished only on the request of the Assessing Officer. But this scheme has many defects. There is no way to ascertain whether the accounts have been really audited or not. CBDT should consider a scheme of e-filing of Tax audit forms directly by the Tax auditor using his digital signature to remove this difficulty.

Penalty for failure to get accounts audited

Non compliance of any provision of the Income Tax Act attracts huge penalty. Similarly the non compliance of Section 44AB attracts penalty under section 271B of the Income Tax Act, 1961. If any person who is required to get his accounts audited by an Accountant before the specified date fails to do so shall be liable for penalty under section 271B. The amount of penalty shall be half a percent of turnover / gross receipts or Rs.150000/- whichever is lower. The maximum penalty under this section was increased from one lakh to one and a half lakhs by the Finance Act, 2010, with effect from 01.04.2011. This penalty shows the seriousness that the Government affixes towards Tax Audit under section 44AB.

However no penalty may be levied if here is a reasonable cause for such failure. For e.g. in a firm it may so happen that the partner who manages the entire accounting and finance is not in the country and has gone abroad. In such a situation, the other partners will not be in a position to offer explanations to the Tax Auditor to complete his audit. Hence the accounts may not get audited by the due date. A similar situation also

arises when the accountant quits the firm just before the end of September. But what serves as a reasonable cause is always uncertain.

Limitation on No of Tax Audits

In order to ensure quality and equitable distribution of audit work done by Chartered Accountants, ICAI has fixed a maximum limit for the Tax audit assignments that can be taken by a CA or a firm of CAs. This limit is set at 45 assignments per person. For if a firm of CAs has 3 partners, the maximum number of Tax audits that can be taken up by the firm will be 45*3 i.e. 135. If the firm takes all the 135, partners cannot take any audit in their personal capacity. If a person is found to have accepted more than 45 assignments in a year, he would be deemed to have been involved in professional misconduct.

References

1. Guidance Note on Tax Audit under section 44AB of the Income Tax Audit – ICAI publication
2. Guide on Tax Audit by Mr.P.L.Subramanian
3. Practical Guide to Tax Audit by Mr. Rajkumar S.Adukia

Four Weeks Residential Programme on Professional Skills Development at IICA Manesar

Board of Studies is pleased to announce the 1st Batch of ICAI Four Weeks Residential Programme on Professional Skills Development from 10th September, 2012 at IICA Manesar.

Objective

This programme offers a unique opportunity and would focus on development of communication skills, leadership skills, personal traits for effective functioning in business organization and profession. Keeping in view the basic emphasis of the programme on Development of Communication and Writing skills and also to imbibe confidence in the participants the content of the programme have been thoroughly revised. More emphasis is given on soft skills, developing personality trait and communication skills of the participants by allocating more time towards these topics.

Eligibility

All the students who have passed Chartered Accountancy IPCC/ PCC/ PE- II examination and pursuing last year of article training or completed Articleship training are invited to join the course. Recently qualified Chartered Accountants are also

welcome to join the course.

Salient Features

- Part of Articleship Training
- No need for Separate GMCS
- Participants pursuing residential programme will be granted Special Leave (s) [only for applicable days] for attending Campus Placement [Excluding Orientation Programme as it is exempted for Participants of Residential Programme].

Registration

Registration may be made by paying 20% of fees, i.e., Rs. 8,000/- or full fees, i.e. Rs. 40,000/- through Credit card or Net Banking facility using online payment portal.

In view of **limited seats** please send your registration as early as possible. Registration is normally on **First-come-First-serve basis**, subject to logical criteria.

For further details refer the Board of Studies Announcements under Students icon on the Home Page of ICAI website www.icai.org

**Director
Board of Studies, ICAI**

Increase in fee for Duplicate Certificate of Membership and Certificate of Practice as an Associate or Fellow – Amendment to the Regulation 184 of the Chartered Accountants Regulations, 1988

This is to inform all concerned that with the issuance of the Notification No.1-CA [?]/145/2012 on August 1, 2012, the fee for Duplicate Certificate of Membership as an Associate or Fellow as well as Certificate of Practice as an Associate or Fellow respectively has been increased to Five Hundred rupees and fee for any other duplicate certificate issued under these regulations has also been increased to Two Hundred Rupees with effect from August 1, 2012.

The said notification is available on the Institute's website www.icai.org at the link <http://220.227.161.86/27508notification17036.pdf> for information of all concerned.

In case of loss/damage of original script certificate of membership or certificate of practice as an associate or fellow, members may file an **affidavit** to the concerned Regional office of ICAI in the prescribed format available on the Institute's website www.icai.org at the link http://220.227.161.86/8604onfo_faidsc.doc along with application for issuance of duplicate certificate and amount of aforesaid fees which is payable by cheque (in the case of local members) and by demand draft, in favour of The Secretary, The Institute of Chartered Accountants of India, New Delhi or the Decentralized office to which the members belongs. It is clarified that an affidavit is not required to be executed if the original mutilated, torn or damaged certificate is returned to ICAI.

Secretary, ICAI



CA. L. Venkatesan
Chennai

l.venkatesan@hotmail.com

ISSUES ON PARA 46 A OF AS 11 RELATING TO BIFURCATION OF EXCHANGE DIFFERENCE PARTLY TO INTEREST AND PARTLY TO EXCHANGE DIFFERENCE

The Ministry of Corporate Affairs (MCA) based on representation received from Industrial associations has clarified vide Circular no 25/12 dated 9 8 2012 in file No 17/33/2008-CL-V that para 6 of AS 11 and para 4(e) of As 16 shall not apply to a company applying Clause 46 A of Accounting Standard 11.

This means that entire exchange difference can be capitalized without need to bifurcate between interest and exchange difference subject to certain conditions

NOTIFICATION DATED 29 TH DECEMBER 2011 ON PARA 46 A; The following are the extract of the notification on para 46 A.

- “In respect of accounting periods commencing on or after the 1st April, 2011, for an enterprise which had earlier exercised the option under paragraph 46 and at the option of any other enterprise (such option to be irrevocable and to be applied to all such foreign currency monetary items), the exchange differences arising on reporting of long-term foreign currency monetary items at rates different from those at which they were initially recorded during the period, or reported in previous financial statements, in so far as they relate to the acquisition of a depreciable capital asset, can be added to or deducted from the cost of the asset and shall be depreciated over the balance life of the asset, and in other cases, can be accumulated in a "Foreign Currency Monetary Item Translation Difference Account" in the enterprise's financial statements and amortized over the balance period of such long term asset or liability, by recognition as income or expense in each of such periods, with the exception of exchange

differences dealt with in accordance with the provisions of paragraph 15 of the said rules.

- To exercise the option referred to in sub-paragraph (1), an asset or liability shall be designated as a long term foreign currency monetary item, if the asset or liability is expressed in a foreign currency and has a term of twelve months or more at the date of origination of the asset or the liability.

Now that MCA has clarified non applicability of para 6 of AS 11 and para 4(e) of AS 16 to a company applying clause 46 A of Accounting standard 11. The effect of this clarification that there is no need to bifurcate the exchange differences in to Interest portion as para 6(e) of AS 16 and as per old ASI 10 (Published in 'The Chartered Accountant', November 2003, pp. 492-493).

This clarification raises following further issues;

ISSUE NO 1.

Does this clarification is applicable to only to those who have opted to exercise the option in terms of para 46 A from 1 4 2011 or will it be applicable also to those who have exercised option from 7 12 2006 under para 46 of AS 11 ie those who have exercised option under GSR 225 E dated 31 3 2009 from 7 12 2006.

ANSWER

Para 46 A says In respect of accounting periods commencing on or after the 1st April, 2011, for an enterprise which had earlier exercised the option under paragraph 46 and at the option of any other enterprise (such option to be irrevocable and to be applied to all such foreign currency monetary items),

Thus para 46A covers both who have opted under para 46 based on earlier notification and those who have opted

under para 46 A representing companies who have not opted from 7 6 2006, but would like to exercise the option from 1 4 2011 under para 46A. Further the operation of Para 46 has been extended upto 31 3 2020 vide MCA notification dated 29th December 2011 in file no 17/133/2008. Hence so long as there is a valid option either under para 46 or 46 A of AS 11, the above explanation by MCA will apply to both the options from 1 4 2011. However the above explanation dated 9 8 2012 cannot retrospectively applied to those who have opted under para 46 from 7 12 2006 for the period from 7 12 2006 to 31 3 2011 but will apply only from 1 4 2011. For those who have opted from 1 4 2011 under para 46A, this explanation will apply from 1 4 2011.

ISSUE NO 2

A company who have opted under para 46/46 A of as 11 has finalized the Accounts for the year ended 31 3 2012 by applying the principle of para 6 of AS 11 and 4(e) of As 16- partly treating exchange difference for the year as interest and written off under Finance Cost and partly treated as exchange difference under AS 11 and capitalized under Fixed asset or carried over in the Balance Sheet as Foreign currency Monetary item translation difference account. Can it write back in the accounts for the year ended 31 3 2013 such interest written off in the previous year to fall in line with the above explanation.

ANSWER

Para 46 A which includes para 46 is effective from 1 4 2011. This explanation amounts to a change in accounting policy. There is no bar in accounting a change in Accounting policy from 1 4 2011. The entry can be suitably reversed during the current year and accounted as a change in Accounting policy As per para 29 of AS 5 **A change in an**

accounting policy should be made only if the adoption of a different accounting policy is required by statute or for compliance with an accounting standard or if it is considered that the change would result in a more appropriate presentation of the financial statements of the enterprise. As this explanation is provided by the authorizes concerned under the provisions of Law, this change can be adopted from 1 4 2011.

As per para 32 of AS 5 Any change in an accounting policy which has a material effect should be disclosed. The impact of, and the adjustments resulting from, such change, if material, should be shown in the financial statements of the period in which such change is made, to reflect the effect of such change.

Hence suitable disclosure to be made in the accounts for the year ended 31.3.2013 for the reversal of amount if any Such a change will not amount to a prior period item as there no mistake in the previous year and the explanation is given during the current year only.

ISSUE NO 3

The company has treated the exchange difference for the first quarter ended 30 6 2012 as in question no 2. Can this amount be reversed in the second quarter.

ANSWER

Yes, in terms of AS 5 and AS 24 the results for the second quarter should be arrived at after reversing this entry , arrive at to date figures minus first quarter results to arrive at the second quarter results. The reversal will be reflected in the second quarter results. Suitable disclosures may be made in the second quarter results as per AS 5.

ISSUE NO 4

Will para 6 of AS 11 and 4(e) of AS 16 – bifurcation of interest and exchange difference will apply exchange differences as per AS 11 to those who have not opted to exercise option under para 46/46 A.

ANSWER

YES These provisions will continue to apply to those who have not opted the

option under para 46/46 A of AS 11. The Revised Schedule VI have a specific provision to show adjustment towards interest cost as per para 4(e) of AS 16 as a separate item under Finance cost . Hence para 6 of AS 11 and para 4 (e) of As 16 should be applied in such cases.

Question No 5

Would you suggest any other voluntary disclosures for those adopting option under para 46/46A.

ANSWER

As a good corporate Governance policy, the option under para 46 and 46A provide an opportunity for different interpretations compared to those who have not opted. This is also not in line with FAQ issued by ICAI on AS 11. Hence one may give details of difference in net carrying value of Fixed asset between exercising the option and not exercising the option. This will enable the reader of Balance Sheet to appreciate impact of exchange differences in the Financial statements compared with those who have not exercised the option or any other standards. ■

Important Telephone Numbers and Email-IDs at Southern Region Office and SIRC of ICAI

Sl. No.	Details of Services provided	Telephone Numbers	Email id
1	Membership issues	044-30210305, 044-30210306 044-30210307	sromem@icai.in
2	Issues relating to firms	044-30210350	srofrm@icai.in
3	Matters relating to articleship training	044-30210315, 044-30210316 044-30210317	sroart@icai.in
4	Registration relating to CPT, IPCC, Final and Orientation Course	044-30210310, 044-30210311 044-30210312	srobos@icai.in
5	Student Counsellor All queries relating to CA Course	044-30210334	sro_counsellor@icai.in
6	ITT Training for IPCC Students	044-30210314, 044-30210328	sroit@icai.in
7	SIRC, Newsletter, CPE Programmes for Members	044-30320320, 044-30210321 044-30210323	sirc@icai.in
8	Coaching Classes for CA Course CPT/ IPCC/Final	044-30210322	sircclasses@icai.in
9	Sale of Publications Counter	044-30210332	sircpubn@icai.in

Readers may kindly appreciate in view of the enormity of the students and membership base of SRO of ICAI, please check the initial details available at the www.icai.org or www.sircoficai.org and resort to Email communication to have appropriate response. Telephone enquiry may be kept as the last resort.

Eligibility of a Paid Assistant Working with a Firm of Chartered Accountants for the Purpose of Engagement of Articled Assistants.

Eligibility of a paid assistant working with a firm of chartered accountants for the purpose of engagement of articled assistants - Amendment to the Regulation 43 of the Chartered Accountants Regulations, 1988

This is to inform all concerned that with the issuance of the Notification No.1-CA [?] /145/2012 on August 1, 2012, the period of employment of a paid assistant with the same firm of Chartered Accountants for the purpose of engagement of articled assistants has been increased from twelve months to three years with effect from August 1, 2012.

The said notification is available on the Institute's website at the link <http://220.227.161.86/27508notification17036.pdf> for information of all concerned.

Secretary, ICAI

Procedure for Verification of Answer Books of Chartered Accountants Examination - May 2012

Procedure for Verification of Answer Books of Chartered Accountants-Final, PCE, IPCE / ATE / IPCE Units, Examinations-May 2012 and CPT-June 2012 can be viewed directly under the link http://www.icai.org/new_post.html?post_id=8645&cj_id=219

OBITUARY

M.No	Name	Status	Place	Date of Death
013313	MR. SIVASUBRAMANIAN S	FCA	MADURAI	30/07/2012
020190	MR. ASHOK K P	FCA	CHENNAI	06/09/2011
020689	MR. SANKAR S	ACA	TIRUPUR	24/04/2012

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

Last date for submission of online applications of MEF 2012-13

Last date for submission of online applications of MEF 2012-13 has been extended upto 31st August, 2012 and submission of hard copy of the Declaration upto **10th September, 2012.**

Report on 44th Regional Conference of SIRC of ICAI-VISHWAS

(Enhance Values, Inspire Trust)

18th & August 19, 2012 Bangalore

Day 1: 18th August 2012

The Southern India Regional Council of the Institute of Chartered Accountants of India organized "VISHWAS" its 44th Regional Conference at Bangalore on 18th & 19th August 2012. Hosted by Bangalore Branch of SIRC of ICAI, the Conference was attended by around 3400 Chartered Accountants across the Southern Region and members from other States and members abroad.

Hon'ble Dr. M. Veerappa Moily, Hon'ble Union Minister of Power and Corporate Affairs, and Chief Guest at the inaugural session, while inaugurating the Conference appreciated the role of Chartered Accountants to the nation's development by their expert knowledge and professional excellence. He lauded them as the custodian of the national economy. He called upon the Chartered Accountants to share their inputs and to be pro-active to the reforms that the Government initiates in the Corporate Sector, Power Sector, Agriculture Sector and other areas. He remarked that by strengthening the financial systems and processes in the country the Nation will be the superpower in the very near future.

Dr. K. Rahman Khan, Former Deputy Chairman, Rajya Sabha and Guest of Honour at the inaugural session recalled the growth of the profession in its 63 year of existence. He exhorted the members to come together periodically and more frequently to share their knowledge with the changing scenario in the profession. He attributed his position and success to the excellent training, exposure, interaction he had when he did his CA course and as a Chartered Accountant and wished many more laurels to the Institute.

CA. Jaydeep Narendra Shah, President-ICAI during his Presidential Address shared the various initiatives taken by the Institute for its members and students and the steps taken to bring in newer and professional opportunities. He referred to various committees formed by the Government and offered the services of the Institute in any sphere of activity that the Government needs.

CA. Subodh Kumar Agrawal, Vice-President, ICAI in his special address touched upon the priorities before the Institute, the challenges facing the profession and the closer interaction the Institute is having with the Government and wanted the members to be closely in touch with the activities of the Institute to provide the best of services to the professional fraternity.

The inaugural session was followed by five technical sessions on Transfer Pricing, Listing of SMEs, Service Tax, Audit and Assurance with eminent resource persons sharing their rich experience amongst the delegates.

CA. Vijay S. Iyer of New Delhi highlighted the nuances of provisions and its applicability in regard to the Transfer Pricing of Domestic Transactions citing Supreme Court Judgements. Mr. Ashish Kumar Chauhan of Mumbai stressed the need for a SME platform, SEBI Guidelines, Direct Listing Norms and how it provides a great opportunity to the entrepreneurs to raise equity capital for the growth and expansion of SMEs. The panel discussion on Works Contract – Service Tax and VAT with eminent panelists CA. K.K. Chytanya, Bangalore, anchoring the panel, CA. S. Venkataramani, Bangalore, CA. V. Raghuraman, Bangalore and CA. R. Vishnu Moorthi discussed at length on the recent amendments to the Service Tax and VAT, its implications with reference to works contract and answered the queries of the delegates in a lucid and candid manner. Mr. Joseph Vellapalli, Senior Advocate, New Delhi highlighted the inclusion of areas in the Negative List and issues arising out of it in the area of service tax and its impact on the corporate and business enterprises, through a good power point presentation. CA. P.R. Ramesh, Hyderabad pointed out the current concern in the audit and assurance area in his presentation, widening of expectation gap, technology, lack of paper trail and documents, regulatory activism, Element of Trust, Effectiveness of Audit Process, etc., in a nutshell.

The first days' programme concluded with a dance / musical entertainment and dinner.

At the inaugural session, CA. K. Viswanath, Chairman, SIRC welcomed the dignitaries and the delegates. CA. D. Prasanna Kumar, Vice-Chairman, SIRC introduced the Chief Guest and CA. P.R. Suresh, Treasurer, SIRC introduced Dr. K. Rahman Khan, the Guest of Honour. CA. P.V. Rajarajeswaran, Secretary, SIRC proposed hearty vote of thanks

Day 2: 19th August 2012

Inaugurated by Hon'ble Union Minister of Power and Corporate Affairs on 18th August 2012, the 44th Regional Conference of SIRC of ICAI continued its deliberations on the second and concluding day on 19th August 2012.

The second day deliberations started with the session on Spirituality addressed by Sri Swami Nirbhayananda Saraswati and four Technical Sessions devoted to topics and themes of Current Importance of national economy viz. Important Amendments to Direct Taxes, Profession-Expectations, challenges & the future, Indian Economy Vs. Global Economic Scenario, Opportunities & Challenges in Cloud Computing.

Sri Swami Nirbhayananda Saraswati in his hour long speech to the Chartered Accountants fraternity emphasized the need to enhance values which would in turn inspire trust and quoted the speeches of world leaders who preached and followed the spirit of ethical values.

Dr. Girish Ahuja, New Delhi touched upon the recent amendments in Direct Tax Laws in a simple and lucid manner explaining the Interpretation and the Impact of such amendments.

The panel discussion on the challenges before the profession was coordinated by CA. K.S. Ravishankar with other panelists CA. Venugopal C. Govind, CA.T.V. Mohandas Pai, CA. Suresh Senapathy and CA. Shyam Ramadhyani who shared their expert knowledge and rich experience of the Profession giving their perceptions on the challenges before the profession and at the same time giving valuable inputs and direction for the institute and the profession for the future.

Mr. B.S. Raghavan, Former Chief Secretary, Govt. of Tripura travelled through the evolution of economy pre-independence, post-independence and the current Indian Scenario vis-à-vis global economic Scenario with his powerful presentation and thoughts.

A Session on Cloud computing was dealt with by Sri Keith Prabhu, Mumbai highlighting the recent trends in Information Technology and cloud computing and how the technology offers several opportunities for organizations and enumerated such opportunities such as reduction in CAPEX, rapid provisioning and release of computing resources, reduction in cost, easy implementation and management and at the same time pointed out the challenges such as privacy and security, reliability and availability, cloud suitability, regulatory hurdles, migration costs and how well it will reward if it is addressed in a pragmatic manner.

The conference concluded with a valedictory address by CA. B.P. Rao, Past President-ICAI who was the Chief Guest. CA. B.P. Rao traced back the history and the growth of the profession, the pro-active steps the Institute has been taking in providing continuing professional education and its commitment to the stake holders and the society at large. Appreciating the SIRC for its services to its members and students and the effective and elaborate arrangements made for the Conference, he wished SIRC many more laurels.

At the valedictory session, the Best Branch of SIRC and Best Branch of SICASA Awards for their performance in the year 2011 was presented.

The Conference was attended by around 3400 Chartered Accountants across Southern Region. Hosted by Bangalore Branch of SIRC of ICAI, the Conference was organised by the Southern India Regional Council of the Institute of Chartered Accountants of India under the Chairmanship of CA. K. Viswanath.

**ICAI's Regional Meet Concludes
with rich knowledge dissemination**

Impressions

44th Regional Conference of SIRC of ICAI
VISHWAS - Enhance Values, Inspire Trust
held on 18th & 19th August, 2012 - Bangalore

First, let me congratulate you for the excellent leadership exhibited by you in organizing a world class conference VISHWAS in Banagaore.

You have sent a strong message to those participants who have registered just for the sake of earning 12 hours of CPE credit that they have missed important deliberations even if they have missed one technical session of the conference. The delegates of VISHWAS have been fed with not only high quality of food but also with high class discussions on technical subjects and a great entertainment programme

I once again congratulate you and Team VISHWAS for the great show.

CA. B.P. Rao, Past President, Bangalore

May I congratulate you and the members of the Conference Committee on the excellent organization of our Annual Regional Conference, which concluded on Sunday, 19th August 2012.

The topics were contemporary and well presented and there was much learning to take away. The physical arrangements including food courts were well conceived and efficiently run. My congratulations to the Committee which oversaw this effort.

CA. Prince Asirvatham, Bangalore

CONGRATS to you and the team for the grand success of the SIRC (Regional) Conference at Bangalore! It was indeed a mammoth event

requiring coordination, commitment and precision management and I must say that on all counts, the team under your guidance has proved its mettle as a good event organiser.

Kudos to you and the team and we look forward to more such rewarding and enriching experiences, in due course..

CA. Ravi Shankar Raman, Bangalore

Such a very good combination of members to organize a very beautiful, memorable, knowledgeable, delightful Conference.

V - Vision - Opportunities & Challenges ahead for CAs in future

I - Inspire - Inspiring the Trust

S - Sensational - Presenting information in a way that is intended to provoke public interest and excitement

W - Weird - A person's destiny; involving or suggesting the supernatural; fantastic

A - Awesome - Extremely impressive or daunting; inspiring great admiration; extremely good; excellent

S - Sovereignty - Quality of having Supreme, Independent Authority over his followers

CA. A. Ravichandran, Pudukottai

The Southern India Regional Council of The Institute of Chartered Accountants of India

and

The President & Members of
The Managing Committee of
The Society of Auditors, Chennai

Cordially invite you to the
P.BRAHMAYYA MEMORIAL LECTURE
by

CA. CHETAN D. DALAL
Chairman & Managing Director,
Chetan Dalal Investigation and Management Services Pvt. Ltd

On Friday, the 5th October 2012 at 06:30 p.m.
At P.Brahmayya Memorial Hall, ICAI Premises
ICAI Bhawan, 122, Mahatma Gandhi Road, Chennai 600 034

CA. P. ANAND
President - The Society of Auditors

CA. K. VISWANATH
Chairman - SIRC

Announcement for GMCS-I Course

The General Management & Communication Skills (GMCS) Course, presently being organized for 15 days for the CA students shall be organized twice during the period of articulated training as under:

(i) GMCS-I (15 days) - during 1st year of articulated training

(ii) GMCS-II (15 days) - after completion of 18 months of training but before completion of articulated training

In view of the above, students, who have registered for Articled Training on or after 1st May, 2012 are required to undergo GMCS-I Course during the 1st year of articulated training.

The eligible students are required to register for GMCS-I Course at the respective Regional Council and Branch, since it is a regulatory requirement and part of the articulated training.

(Vijay Kapur)
Director, Board of Studies, ICAI

Direct Entry to the Chartered Accountancy Course - Exemption from passing Common Proficiency Test (CPT) to certain categories of students.

(1) Categories of students exempted from Passing the Common Proficiency Test (CPT)

- (A) Graduates or Post Graduates in Commerce having secured in aggregate a minimum of 55% of the total marks or its equivalent grade in the examination conducted by any recognised University (including Open University) by studying any three papers of 100 marks each out of Accounting, Auditing, Mercantile Laws, Corporate Laws, Economics, Management (including Financial Management), Taxation (including Direct Tax Laws and Indirect Tax Laws), Costing, Business Administration or Management Accounting; or, Graduates or Post Graduates other than those falling under Commerce stream having secured in aggregate a minimum of 60% of the total marks or its equivalent grade in the examination conducted by any recognised University (including Open University).

Provisional Registration: Students who are pursuing the Final year of Graduation Course shall be eligible for provisional registration to the Intermediate (Integrated Professional Competence) Course. Such students would be required to submit satisfactory proof of having passed the graduation examination with the specified percentage of marks within six months, from the date of appearance in the final year graduation examination (i.e. from the day of commencement of the examination). During the period of provisional registration, a student can undergo and complete Information Technology Training (ITT) and Orientation Course. It is clarified that in their case, the practical training shall commence only on becoming a Graduate with specified percentage of marks. Such students shall be eligible for appearing in the Intermediate (Integrated Professional Competence) Examination on completion of nine months of practical training. If such students fail to produce the proof within the aforesaid period, his provisional registration shall stand cancelled and the registration and other fees, as the case may be, paid by him shall not be refunded/ adjusted and no credit shall also be given for the theoretical education undergone.

- (B) Candidates who have passed the Intermediate level examination or its equivalent examination by whatever name called conducted by The Institute of Cost Accountants of India or by The Institute of Company Secretaries of India.

2. Admission to Practical Training (Articled Training)

- (i) Students covered under the category mentioned at (A) above, i.e. Commerce Graduates or Post Graduates or Non-Commerce Graduates or Post Graduates with specified percentage of marks shall be eligible for admission to three years articulated training, on completion of -

- (a) Information Technology Training; and
(b) Orientation Course

- (ii) Students covered under category (B) above, i.e. those who have passed Intermediate level examination of The Institute of Cost Accountants of India or The Institute of Company Secretaries of India shall be eligible for admission to three years articulated training on -

- (a) Passing of 1st Group or Both Groups of Intermediate (Integrated Professional Competence) Examination; or Accounting Technician level Examination;
(b) Completion of Information Technology Training; and
(c) Completion of Orientation Course

3. Eligibility to appear in the Intermediate (Integrated Professional Competence) Examination

- (i) Applicable for students falling under Category (A) above

A candidate shall be eligible for admission to the Intermediate (Integrated Professional Competence) Examination if he -

- (a) is registered for the Intermediate (Integrated Professional Competence) Course; and
(b) has completed nine months of practical training (including study course for a period of eight months which shall commence from the date of registration to the Course).

- (ii) Applicable for students falling under Category (B) above

A candidate shall be eligible for admission to the Intermediate (Integrated Professional Competence) Examination if he -

- (a) is registered for the Intermediate (Integrated Professional Competence) Course; and
(b) has undergone a study course for a period of eight months commencing from the date of registration to the Course.

4. One-time Relaxation in Eligibility Criteria for students registering upto 30th September, 2012

The Council, in order to mitigate the hardships being faced by the students registering under Direct Entry Scheme to Chartered Accountancy Course upto 30th September, 2012, has relaxed the eligibility criteria as a one time dispensation, as under, so as to be eligible to appear in the Intermediate (Integrated Professional Competence) Examination to be held in May, 2013.

Students registered for the articulated training till 30th September, 2012 have been permitted to complete Orientation Course and Information Technology Training (ITT) latest by 31st March, 2013 instead of before registration for practical training.

Such students shall be eligible to appear in the Intermediate (IPC) Examination to be held in May, 2013 by completing 7 months of articulated training and study course concurrently, instead of 9 months of articulated training and 8 months of study course respectively.

Students registered for Intermediate (IPC) Course by passing Intermediate level examination of The Institute of Cost Accountants of India/ The Institute of Company Secretaries of India shall have to undergo 7 months of study course instead of 8 months as prescribed under Regulations, so as to become eligible to appear in the May, 2013 Examination".

Applicants who fulfil the requirements, may register for the Intermediate (Integrated Professional Competence) Course by downloading "Registration Form for admission to the Intermediate (Integrated Professional Competence) Course under Direct Entry Scheme" by submitting the filled-in applications to respective Offices of the ICAI as mentioned in the application form.

Regarding eligibility criteria including fee structure for the fresh students registering and existing CPT/ IPCC/ PE-II/ PCC students converting (under the transition scheme), as the case may be, under the Direct Entry Scheme students may required to visit the Institute's website <http://www.icai.org> for further details. ■

DISCLAIMER

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

ICAI Awards for Excellence in Financial Reporting 2011-12

The entries for the ICAI Annual Competition, 'ICAI Awards for Excellence in Financial Reporting' of the Research Committee of the ICAI for the year 2011-12 are now open.

The Competition is being held under thirteen categories based on functional and turnover based classification of various industries. For details about the Competition including the important factors for selection of awardees, conditions for entry to the competition and the entry form required to be submitted by the participating entities, please visit [http://220.227.161.86/27423research1695 details.pdf](http://220.227.161.86/27423research1695%20details.pdf). The last date for receipt of entities is **30th September 2012**.

GREEN INITIATIVES OF MINISTRY OF CORPORATE AFFAIRS

Mr. Henry Richard
Registrar of Companies
Tamil Nadu, Andaman & Nicobar Islands
Chennai

One of the significant aspect of MCA-21 is GREEN INITIATIVE of the Ministry of Corporate Affairs with primary focus on paperless state of functioning not only in the Ministry of Corporate Affairs but also in the corporate sector as a whole. MCA-21, by itself is a huge leap forward in making the Office of Registrar of Companies paperless barring a few areas of activity like the Legal Department which continues to function with physical files as the Courts have not yet recognized or implemented the GREEN INITIATIVE. The Ministry has taken forward this Initiative to cover the Corporate Sector by issuing series of Circulars, notably, Circular Nos. 17/2011, 18/2011, 21/2011, 27/2011, 29/2011, 35/2011 and 72/2011. All these circulars attempt to inculcate the Green Initiative at the heart of Corporate Sector giving legal recognition to electronic based transactions.

In Circular No. 17/2011 and 18/2011, Ministry has clarified that the requirements of Sections 53 and 219 will be deemed properly complied if the notices for the General Meeting and copies of the Annual Report containing Balance Sheet, P&L Account, etc., are sent to email address of the Member of the company and the company should fully display these documents in their website and issue suitable advertisement in newspapers both in vernacular language and English. In case the email id of the shareholder/member is not available, these documents will be sent through Post as contemplated in Section 53 of the Companies Act, 1956. It is learnt that the effect of these two circulars would be saving of several tons of papers and consequently several crores of Rupees which are normally spent by companies for printing Annual Reports and sending through posts. In Circular No.21/11, Ministry emphasized the need for electronic voting which will be in compliance with Section 192A of the Companies Act, 1956 read with the Companies (Passing of Resolution by Postal Ballots) Rules 2001. For this purpose, the Ministry has recognized NSDL and CDSL subject to the certification from Standardization Testing & Quality Certificate (STQC) Directorate, Department of Information & Technology. In circular No. 27/2011 and 35/2011, the Ministry has laid down detailed guidelines for conducting meetings through Video Conferencing. If the Board Meeting and General Meeting are conducted in compliance with the conditions stipulated in the said circulars, it would be

deemed proper compliance of the relevant sections under which these meetings are held. However, the Ministry has clarified that conducting of such meetings through Video Conferencing is not mandatory but the companies are free to utilize Video Conference facility for Board Meeting and General Meeting which will have legal validity if the conditions specified in Circular are complied with.

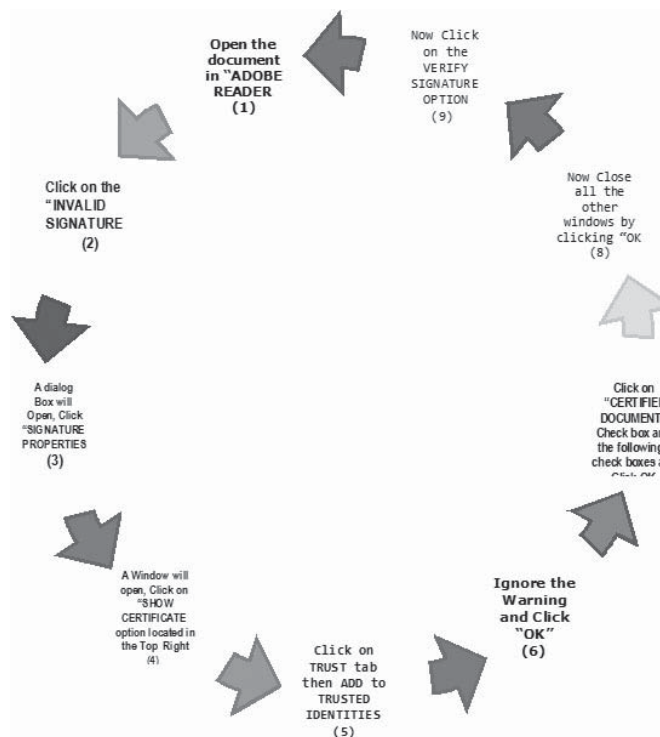
In Circular No. 29/2011, Ministry made it mandatory for ROC to issue E-Certificates. In other words, the erstwhile practice of making physical certificates like Certificate of Incorporation, Commencement of Business Certificates, etc. and sending through posts has been discontinued subsequent to the issue of said circular. These digitally signed certificates are sent through email and print out of the same can be taken by the stakeholder /company. However, many stakeholders / Companies are not aware that such digitally signed certificates sent through email should be validated before presenting them to Banks or any other Authority.

The Validation Process involves "9 STEPS" which are detailed below:-

Once validation process is completed, Right TICK Symbol will appear on the Digitally signature of ROC. It means that the validation process is completed and only such Validated Digital Certificates should be presented to the Banks etc. In case, if any Stakeholder/company require further guidance in this regard, they can contact Manager – Registrar's Front Office at No.79, GN Chetty Road, T.Nagar, Chennai-600017.

The Green Initiative of the MCA not only enhances the ease of functioning of the office of ROC, but also the offices of Professionals/ Stakeholders/Companies. These initiatives have also resulted in substantial saving of money in terms of less paper work which ultimately leave a green footprint and earn carbon credit for the nation as a whole.

The stakeholders/professionals/companies must make full use of these Green Initiatives taken up by the Ministry and avoid paper work. Even the Investors who have any grievance with the company should utilize the mode of filing E-complaints instead of sending physical complaints to the Registrar. Thus the stakeholders / investors/companies/professionals ought to jointly endeavor to accomplish the goal of MCA in Green Initiatives launched by the Ministry. ■



Updates on Direct Taxes

1. **Premium for leave encashment policy deductible under section 37**

In CIT v. Hindustan Latex Ltd (2012) 74 DTR (Ker) 212 the assessee took an insurance policy to cover itself against liabilities that may arise on account of claims made by the employees towards leave encashment. It paid premium on the said policy and claimed the same as deduction under section 37 of the Act. The court upheld the claim of deduction and opined that the contention of the Revenue for applying section 43B(f) as arbitrary. The court cited the precedent in Excel Industries Ltd v. Union of India (2007) 292 ITR 470 (Cal) in which it was held that the amendment brought in for inserting clause (f) to section 43B as arbitrary and inconsistent with the objects disclosed for the insertion of original section 43B of the Act. The court held that the decision of the Calcutta High Court has not been challenged before the apex court and applying the 'rule of consistency' the Revenue having not challenged the decision in one case cannot challenge the same in the case of another assessee. The decision hence was in favour of the assessee.

2. **Squaring up of loan by sale of shares being a reasonable cause will not attract section 271E**

In CIT v. Triumph International Finance (I) Ltd (2012) 74 DTR (Bom) 57 the assessee squared up the loans by transfer of shares to the lender. The transaction between the assessee and the lender was in the nature of inter-corporate deposit which was agreed to be adjusted by transfer of shares and passing of journal entries and settlement of the balance by means of account payee cheque. The court held that it would be an empty formality to repay the loan / deposit by account payee cheque and receive back almost the same amount towards the sale price of shares. Neither the genuineness of the receipt of loan nor the transaction of repayment through journal entry was in doubt. The transaction being in contravention of the provisions of section 269T attracts penalty envisaged in section 271E of the Act but the transaction was a bonafide transaction and there was a reasonable cause for applying section 273B. Accordingly it was held that no

penalty under section 271E could be imposed for the contravention of the provision of section 269T of the Act.

3. **Time limit for investment under section 54EC is extended by the period the bonds were not available in the period of next six months**

In CIT v. Cello Plast (2012) 24 Taxmann.com 111 (Bom) the assessee having long-term capital gain of Rs.49.36 lakhs acquired REC bonds specified in section 54EC beyond the period of six months from the date of sale, since the bonds were not available for certain period of time within the time limit of six months. The AO disallowed the claim of deduction on the ground that the assessee could have subscribed to the bonds when it was available within the specified period. The court held that the REC bonds were available only for a limited period of time within six months, cannot prejudice the assessee's right to exercise the same upto the last date. Accordingly, it held that the acquisition of bonds after the expiry of six months soon after it was made available, is also eligible for deduction under section 54EC. Further it held that the choice of subscribing to any of the specified bonds is with the assessee, who cannot be compelled to subscribe to a specified bond for the reason that other specified bond was not available within the specified time.

4. **Section 14A disallowance will not apply to income deductible under Chapter VI-A**

In CIT v. Kribhco (2012) 23 Taxmann.com 312 (Del) the assessee a co-operative society eligible for deduction under section 80-P was subjected to some disallowance by applying section 14A in respect of incomes eligible for the said deduction under section 80-P. The court held that section 14A could be applied only in respect of 'incomes which do not form part of the total income' and will not apply to incomes which are included in computation of total income and later eligible for deduction under Chapter VI-A of the Act. The court observed that incomes eligible for 100% deduction are first included for computing 'gross total income' as defined in section 80-B and the deductions under Chapter VI-A not exceeding the income so included

are deducted subsequently to arrive at the total income. It held that section 14A cannot be invoked in respect of incomes for which deduction under Chapter VI-A are claimed.

5. **Commission paid to doctors for referrals being illegal, are not eligible for deduction**

In CIT v. KAP Scan & Diagnostic Centre P Ltd (2012) 344 ITR 476 (P&H) the assessee engaged in the business of CT scan, ultrasound and X-rays claimed expenditure by way commission paid to doctors for referring patients to the assessee for performing various tests. The court held that as per the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002 the demanding of such commission as bad in law. Both the payment and receipt hence are contrary to the professional regulation. The court accordingly held that the commission paid to doctors for referring patients for various tests could not be allowed as business expenditure. The court while rendering the judgment distinguished the same from the apex court decision in the case of Dr.T.A.Quereshi v. CIT (2006) 287 ITR 547 (SC).

6. **Inter-trust donation out of current year income is eligible for exemption**

In Director of Income-tax (Exemption) v. Bagri Foundation (2012) 344 ITR 193 (Del) the assessee trust donated Rs.25 lakhs as corpus donation to another trust and claimed the same as application of income. The claim of the assessee was disallowed for the reason that the said donations were out of accumulations from the income of earlier years. The court held that any donation made out of current year income to another trust amounts to application of income. With regard to the contention of the Revenue that the amounts paid were out of past years accumulations, the court held that accumulation upto 15% being an unfettered right and out of such accumulation when corpus donation is given to another trust, it amounts to application of income. It held that the past accumulations could not be proved as beyond the prescribed limit of 15% and hence the claim of the assessee was allowable. ■

CA. J. Murali
Chennai
jmuraliandco@gmail.com

Updates on Indirect Taxes

1. **PENALTY FOR WRONG AVAILMENT OF ITC**

Service Tax – Penalty – Telephone Service – CENVAT Credit – Wrongful availment of credit – Assessee not paying tax on roaming charges received from other operators but availing of CENVAT Credit on output services in excess of prescribed limit – Availment of CENVAT Credit for exempted services not disclosed – Not mere omission to give correct information but deliberate suppression – Extended period of limitation available - Penalty under Sec 76 and 78 attracted – Finance Act (32 of 1994), ss.68, 73(1) proviso, 76,78 – Service Tax Credit Rules, 2002, rr. 3(5), 4,6 – Service Tax Rules, 1994, r.6.

[2012] 53 VST 139 (Raj)

Vodafone Digilink Ltd. Vs. Commissioner of Central Excise, Jaipur – II.

2. **TRANSIT PASS ROUTE IS NOT FINAL**

Value Added Tax – Seizure of goods – Goods in transit through state – Transit declaration form mentioning Kanpur as one of the stop within the state – Authorities cannot insist vehicle should pass through particular road in city – Seizure on ground vehicle took route other than disclosed in transit declaration – Not Permissible.

[2012] 53 VST 158 (All)

Yuvraj Trading Company Vs. Commissioner of Commercial Tax

3. **UNJUST ENRICHMENT**

Sales Tax – Refund – Unjust Enrichment – Tax paid on purchase of coal for captive thermal power plant – Presumption that burden of tax passed on to customer not discharged – Refund cannot be ordered.

[2012] 53 VST 176 (All)

Kanoria Chemicals & Industries Ltd. Vs. Northern Coalfield Ltd.

4. **APPEAL REMEDY THROUGH APPEAL FORUMS ONLY**

The Haryana Value Added Tax Act, 2003 – Section 23 – Appeals to the prescribed authority – Whether a writ petition filed by the assessee bye-passing statutory remedies can be entertained by the High Court?

Held NO

CWP No.16751 of 2011

Larsen & Toubro Ltd. Vs. The State of Haryana.

5. **CENVAT Credit – Service provided for SEZ Unit / Developers – Not equated with exempted services – Restriction clauses under the CENVAT Credit does not apply.**

[2012] 25 STR 136 (Tri.-Bang.)

Sobha Developers Ltd. Vs. CCE, LTU, Bangalore.

6. **SERVICE TAX TO BE PAID FOR WHOLE AMOUNT**

Computer Training Institute – Franchise paying 20% of the collections to franchisor and service tax paid on balance 80% - Assessee liable to pay service tax on the whole amount and can take credit on service tax paid to the franchisor.

[2012] 25 STR 239 (Tri.-Mumbai)

M. Power (Arena Multimedia) Vs. CCE, Pune III.

7. **BASE TRANSCEIVER STATION NEITHER CAPITAL GOODS NOR INPUT.**

Service Tax – CENVAT Credit – Cellular Telephone Service – Capital Goods – Inputs – Tower and parts thereof, Prefabricated building, chairs and printers – Items Neither “Capital Goods” nor “Inputs” – CENVAT Credit of duty paid thereon not permissible – Finance Act 1994 – CENVAT Credit Rules, 2004, r.2(a) (A), 2(K) – Central Excise Tariff Act, 1985.

[2012] 49 VST 432 (CESTAT - Mumbai)

Bharti Airtel Ltd. Vs. Commissioner of Central Excise.

8. **REPLACEMENT AND WARRANTY TAXABLE**

Sales Tax – Sales – Definition – Authorised dealer of vehicles manufactures – Replacement of parts by dealer from ready stock under warranty agreement between manufacturer and customer – Reimbursement of cost of parts by manufacture – Amounts received liable to tax – Bombay Sales Tax Act (51 of 1959), s. 2(28).

[2012] 47 VST 511 (Bom)

Navnit Motors Pv. Ltd. Vs. State of Maharashtra

9. **Sales Tax – Composition of tax – Revision – Dealer Regularly assessed at concessional rate of tax under composition scheme – revision after five years on ground original application by dealer not available in department's record and only photocopy available – Original produced by dealer – Revision not permissible – Karnataka Sales Tax Act (25 of 1957), ss. 17(6), 22A(1).**

[2012] 47 VST 275 (Karn)

Lakshminarayana Electricals Vs. State of Karnataka

10. **Service Tax – CENVAT Credit – Refund – Limitation – Application for refund of amount taken as CENVAT Credit of tax paid on input services used from April 2007 to June 2007 – Rejection on ground application received on February 18, 2009 as per records time – Barred – Pleading by application that claim filed on March 31, 2008 producing acknowledgement bearing date of receipt but without ant signature of receiving officer and that application filed again on February 18, 2009 on being asked to resubmit rejected – Commissioner's repot confirming practice of acknowledging letters by putting dated stamp without signature of receiving persons – Application dated February 18, 2009 also acknowledged similar manner – Rejection as time barred – Not justified – CENVAT Credit rules, 2004, r.5.**

[2012] 47 VST 278 (CESTAT – New Delhi)

Orient Craft Limited Vs. Commissioner of Central Excise, Delhi III

11. **Service Tax – Erection of pandal or shamiana – Provision not treating Hindu by itself as social function – Hindu marriages earns status of “Social Function” only when “Pandal” or “Shamaina” used – Service component involved – Writ petition challenging levy of tax on erection of pandal or shamiana for Hindu marriage on ground of being religious function dismissed – Finance Act (32 of 1994), s. 65(77a), (77b), (105)(zzw).**

[2012] 47 VST 285 (Delhi)

All India tent dealers' welfare association Vs. Union of India

12. **LOCAL STOCK TRANSFER NO FORM F**

Sales Tax – Central Sales Tax –

Exemption – Stock Transfer – Application by agent of Principal Outside for Form F for purpose of transfer of Stock from outside state – Agent seeking to purchase goods from principal for sale within State – Not entitled to Form F – Central Sales Tax Act (74 of 1956), ss. 6A, 7(3).

[2012] 47 VST 298 (Gauhati)

S.R. Das & Sons Vs. State of Tripura

13. **Service Tax – Penalty – Construction services – appellant engaged in executing contracts for setting up of high tension transmission lines – paying tax with interest before issue of show-cause notice – Finding**

by commissioner that there was confusion regarding category under which erection of transmission towers taxable – On facts reasonable cause for delay in payment – No finding of Suppression of fact mis-declaration – Penalty under section 76 and 78 not leviable – Finance Act (32 of 1994), ss. 76,78,80.

[2012] 47 VST 322 (CESTAT – Ahd)

Kalpataru Power Transmission Ltd. Vs. Commissioner of Service Tax, Ahmedabad

14. **Sales Tax – Delay in payment of tax – Penal interest – Levy automatic – Whether dealer voluntarily pays**

tax not material – Dealers claiming exemption in respect of Dyes and chemicals used in execution of Dyeing contracts – Later upon resolution by dyers association admitting tax to extent of fifty per cent on dyes and making payment – Liable to pay interest for delay in payment of Tax – Tamilnadu General Sales Tax Act (1 of 1959), ss. 3B(2)(b), 24(3).

[2012] 47 VST 358 (Mad)

Kongoor Textile Process Vs. Joint Commissioner (CT), Chepauk, Chennai

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

Members are requested to remit the current year's fee for continuance of membership - Associate/Fellow/Certificate of Practice as the case may be by **30th September 2012** as per following applicable schedule of fees.

Particulars of Fees	Annual membership Fee (Rupees)
Annual membership Fee	
Associate Fee	800
Fellow Fee	2200
Certificate of Practice Fee	2000

For details about fee for fresh enrollment including COP etc, please refer to announcement hosted on the website at link <http://220.227.161.86/22068announ12483.pdf>

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 pay their fee on line by clicking online payments link on the homepage of www.icai.org Members who are senior citizens i.e. have attained the age of 65 years as on 1st April will be required to pay the fees at concessional rates which are as under:-

Fee for Senior Members (Above 65 years as on 01.04.2012)

Particulars of Fees	Annual membership Fee (Rupees)
Annual membership Fee	
Associate Fee	600
Fellow Fee	1600
Certificate of Practice Fee	1500

COACHING CLASSES FOR THE STUDENTS OF CA COURSE - ORGANISED BY SIRC OF ICAI AT CHENNAI

Date of Commencement	Duration	Course	Timings	Fees	Highlights
06/09/2012	2 MONTHS	CPT (Morning Batch)	6.30 am to 12.30 pm	Rs.3,000/-	* Renowned Faculty
NOV.2012	4 MONTHS	IPCC – GR-I (For May, 2013 Exam)	6.30 am to 09.30 am	Rs.2,000/-	
NOV.2012	4 MONTHS	IPCC – GR-II (For May, 2013 Exam)	5.30 pm to 08.30 pm	Rs.2,000/-	
NOV.2012	4 MONTHS	FINAL – GR-I (For May, 2013 Exam)	6.30 am to 09.30 am	Rs.2,500/-	
NOV.2012	4 MONTHS	FINAL – GR-II (For May, 2013 Exam)	5.30 pm to 08.30 pm	Rs.2,500/-	
CRASH COURSES :					
SEP.2012	3 DAYS	IPCC & FINAL (SUBJECT WISE) for November, 2012 Exam	10.00 am to 5.00 pm		* Classes are conducted since 1965
NOV.2012	10 DAYS	CPT RAPID REVISION CLASSES for December, 2012 Exam	10.00 am to 5.00 pm	Rs.1,500/-	* Affordable fees
MOCK TESTS :					
OCT.2012		IPCC & FINAL (Forenoon & Afternoon) For November, 2012 Exam	10.00 am to 5.00 pm	No Charges	* Backing of ICAI
DEC.2012		CPT (For December, 2012 Exam)	10.30 am to 4.00 pm	No Charges	
For further details contact SIRC Office, First Floor, Main Building, ICAI Bhawan, 122, Mahatma Gandhi Road, Chennai - 600 034.					
Ph : 044-30210320/321/322/323 Email : sircclasses@icai.in Website : sircoficai.org					