



# CMA E - BULLETIN

## The Institute of Cost Accountants of India

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## Editorial Preface

Greetings!!!

During the past three decades, the Indian economy has grown impressively, at an average annual rate of 6.4 per cent. From 2002 to 2011, when the average rate was 7.7 per cent, India seemed to be closing in on China. The economic potential of its vast population, expected to be the world's largest by the middle of the next decade. But the situation changes dramatically. Growth has slowed to 4.4 per cent a year; the rupee is in free fall, resulting in higher prices for imported goods; and the specter of a potential crisis, brought on by rising inflation and crippling budget deficits.

Structural problems were inherent in India's unusual model of economic development, which relied on a limited pool of skilled labour rather than an abundant supply of cheap, unskilled, semi-literate labour. This meant that India specialized in call centers, writing software for European companies and providing back-office services for American health insurers and law firms and the like, rather than in a manufacturing model. Other economies that have developed successfully - Taiwan, Singapore, South Korea and China - relied in their early years on manufacturing, which provided more jobs for the poor.

According to Morgan Stanley, various growth indicators show that the economy is taking longer to come out of the stagflation-type environment. Morgan Stanley has pointed out that a weak growth trend lasting for 4 -5 quarters would increase the risk of a vicious cycle building whereby the economy becomes vulnerable.

At this crucial juncture the landmark Companies Bill has been enacted, replacing the nearly six-decade old regulations that governed corporates in the country. After being approved by Parliament last month and receiving assent from President the new laws have been now Gazetted.

We are pleased to release the fifth issue of "CMA E-Bulletin" before our esteemed readers. We have inserted three important segments in this issue viz. "Companies Bill 2013", "Provident Fund" and "Wealth Tax" for the benefit of the readers. Hope you will enjoy reading this issue of e-bulletin. We look forward to your valuable suggestions and comments for further improvement in it.

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For Further Development of  
***CMA E-BULLETIN***

## Indian Economy

### Highlights

#### ➤ *Services sector PMI falls to lowest since April 2009*

Companies in India's vast services sector suffered a fall-off in activity for the first time in nearly two years in July, according to a survey released on Monday, hurting chances for a recovery in growth in Asia's third-largest economy.

#### ➤ *RBI to reverse cash steps only after rupee stabilizes*

The Reserve Bank of India Governor Duvvuri Subbarao said on 2<sup>nd</sup> August, 2013 that the central bank would roll back recent cash tightening measures only after it determines stability has been restored in the foreign exchange market.

#### ➤ *Emerging market output contracts in July: HSBC*

A HSBC survey said that private sector activity across the emerging market economies including India contracted for the first time in over four years in July as manufacturing output registered a decline and services sector witnessed stagnation.

Source: PTI, dated: August 6, 2013

#### ➤ *Experts see rupee strengthening this week*

Bankers and analysts say the rupee is likely to claw its way back to 60-levels this week, helped by the recent measures taken by RBI coupled with a weak dollar after US jobs data eased concerns over early withdrawal of stimulus by the US Fed.

Source: BT Online Bureau, dated: August 5, 2013

#### ➤ *Will rollback steps after Re stabilizes: RBI*

In order to rescue the rupee, the central bank had imposed various restrictions on the futures

market by way of raising the margins and limiting the positions that market participants can take.

- RBI has not stifled growth: Subbarao
- RBI maintains status quo on interest rates

Source: BT Online Bureau, dated: August 2, 2013

#### ➤ *Growth in core industries slumps in June*

Showing no sign of recovery, growth rate of eight core infrastructure industries in India slumped to a four-month low of 0.1 per cent in June, mainly due to declining output of crude oil, coal, power and natural gas.

Source: PTI, dated: August 1, 2013

#### ➤ *Main focus is on curtailing rupee volatility: Subbarao*

Though the RBI governor indicated that he is not in favour of floating sovereign bonds to prop up the rupee, he has not ruled out the possibility.

- RBI risks its credibility to save the falling rupee
- Don't raise hopes, rate cut only after Re stabilises

Source: Anand Adhikari, dated: July 31, 2013

#### ➤ *Food Bill to put pressure on inflation: RBI*

The UPA Government's proposed Food Security Bill carries a slew of "economic consequences", including pressures on fiscal deficit, growth and inflation, Reserve Bank Governor D Subbarao said on Tuesday.

Source: PTI, dated: July 31, 2013

#### ➤ *Costlier onion, veggies push inflation to 5-mth high of 5.79 %*

Dated: August 14, 2013

Rising prices of onions and other vegetables pushed inflation to a five-month high of 5.79 per cent in July even as the government and RBI battled to stabilize the rupee.

#### ➤ *India's GDP growth forecast to 6% for FY14: Credit Suisse*

Dated: August 13, 2013

Global financial services firm Credit Suisse

has lowered India's GDP growth forecast for this fiscal year to 6 per cent from 6.5 per cent, and for financial year 2014-15 to 7 per cent from 7.5 per cent.

➤ **Retail inflation a tad lower at 9.64% in July**

**Dated: August 12, 2013**

Retail inflation marginally declined to 9.64 per cent in July from 9.87 per cent in the preceding month as prices of cereal, pulses, fruits and sugar softened.

➤ **Indian railways' earnings for Apr-July 2013 up by nearly 11%**

**Dated: August 12, 2013**

Railways have earned Rs 44,260.16 crore between April and July this year compared to Rs 39,969.24 crore in the same period last year, marking an increase of 10.74 per cent.

➤ **Indian economy sees positive momentum: OECD**

**Dated: August 08, 2013**

The Indian economy is witnessing a positive momentum while neighbouring China's growth is losing steam, according to Paris-based think tank OECD.

➤ **Post office investment options and their tax benefits**

**Dated: August 19, 2013**

Taxability of some of the post office investment products:

**a. Public provident fund :** Any individual can invest from Rs 500 to Rs 1,00,000 in a public provident fund in a financial year. The deposits can be made in lump sum or in 12 installments. The rate of interest effective April 1 is 8.7 per cent per annum. The entire investment is eligible for deduction under Section 80C of the Income-tax Act, 1961 ('IT Act') subject to a limit of Rs 1,00,000. Interest earned on this deposit is exempt from tax and the investment is not chargeable to wealth tax.

**b. National savings certificates:** National saving certificates (NSCs) are more like fixed deposits with the post office wherein you

purchase a certificate that is generally redeemable in a specified time period. These certificates are for five and 10 years. The five-year certificate provides a return of 8.5 per cent compounded six monthly and the 10-year one provides a rate of return of 8.8 per cent. These certificates are in denominations of Rs 100, Rs 500, Rs 1,000, Rs 5,000 and Rs 10,000. Tax deduction is available up to Rs 1,00,000 under Section 80C of the IT Act. The interest earned every year on NSC gets reinvested and forms part of the capital and also entails deduction under Section 80C, except the final year's interest, which does not get reinvested. It is not chargeable to wealth tax.

**c. Post office savings account :** Any individual can open a savings account with the post office. It works like a normal savings account opened in a bank with a cheque facility. The saving bank generally earns a return of 4 per cent per annum. Interest up to Rs 3,500 is exempt from tax under Section 10(15) of the IT Act. Further, a deduction of Rs 10,000 is also available for the interest under Section 80TTA of the IT Act.

**d. Monthly income scheme :** Under monthly income scheme, an investor is required to make a one-time deposit. The maximum amount of deposit is Rs 4,50,000 in a single account and Rs 9,00,000 in a joint account. The rate of interest offered is 8.4 per cent and the scheme yields monthly income on the deposits made. The maturity proceeds are after five years. Earlier a bonus of 5 per cent was paid on maturity, which has been discontinued from December 1, 2011. Interest income is liable to tax, but the investment is not chargeable to wealth tax.

**e. Time deposit scheme:** Under a time deposit scheme, a term deposit is opened for five years with a minimum amount of Rs 200. The rate of interest offered is 8.2 per cent for the first year, which increases to 8.4 per cent in the fifth year. The investment for five years qualifies as a deduction under Section 80C of the IT Act subject to a maximum of Rs 1,00,000. The investment is not chargeable to wealth tax.

**f. Recurring deposits :** Any individual can open a recurring deposit account. The minimum investment to be made in such account is Rs 10 with no upper limit. A depositor generally makes 60 deposits over a term of five years. The rate of interest available is 8.3 per cent from April 1. The entire amount along with interest can be withdrawn after five years. Interest income is liable to tax, but the investment is not chargeable to wealth tax.

## *Banking*

### Highlights

➤ **Bank Rate**

**RBI/2013-14/146, [RPCD.CO.RRB.RCB.BC. No. 13/03.05.33/2013-14], dated: July 15, 2013**

Bank Rate stands adjusted by 200 basis points from 8.25 per cent to 10.25 per cent with effect from July 15, 2013. All penal in reserve requirements, which are specifically linked to the Bank Rate, also stand revised as indicated in Annex.

**Penal Interest Rates which are linked to the Bank Rate:**

Item	Existing Rate	Revised Rate (Effective from July 15, 2013)
Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls).	Bank Rate plus 3.0 percentage points (11.25 per cent) or Bank Rate plus 5.0 percentage points (13.25 per cent).	Bank Rate plus 3.0 percentage points (13.25 per cent) or Bank Rate plus 5.0 percentage points (15.25 per cent).

➤ **Import of Gold by Nominated Banks/ Agencies/Entities**

**RBI/2013-14/148, [A.P. (DIR Series) Circular No.15], dated: July 22, 2013**

Attention of Authorized Persons is drawn to the Reserve Bank's A.P. (DIR Series) Circulars No. 103, 107 and 122 dated May 13, June 04 and June 27, 2013 respectively on the captioned subject. As per these instructions, certain restrictions were imposed on the import of various forms of gold by nominated banks/

nominated agencies/premier or star trading houses/SEZ units/EoUs which have been permitted to import gold for use in the domestic sector. None of these restrictions was applicable to import of gold for the purpose of exports or to import of gold by units in SEZ exclusively for the purposes of exports. Based on a review of the above instructions and in consultation with Government of India, it has been decided to rationalize the import of gold in any form/purity including import of gold coins/dore into the country.

➤ **Liquidity Adjustment Facility**

**RBI/2013-14/142, [FMD.MOAG. No. 80/01.01.001/2013-14], dated: July 16, 2013**

RBI has decided that the overall allocation of funds under the LAF will be limited to one per cent of the Net Demand and Time Liabilities (NDTL) of the banking system, reckoned as Rs.75,000 crore for this purpose. The allocation to individual banks will be made in proportion to their bids, subject to the overall ceiling. This change in LAF will come into effect from July 17, 2013.

➤ **ATM transactions — Enhancement of customer service**

**RBI/2013-14/171, [DPSS. CO.PD.No. 289/02.10.002/2013-2014], dated: August 1, 2013**

The Reserve Bank of India has issued a number of instructions to banks regarding enhancement of customer service as well as handling of customer complaints at ATMs. Despite this, certain operational issues continue to persist giving rise to customer complaints/suggestions on the matter. Based on a review of the developments and with a view to further improve the customer service through enhancement of efficiency in ATM operations, banks are advised to initiate action.

➤ **Priority Sector Lending Reporting— Definition of "disbursement"**

**RBI/2013-14/156, [RPCD.CO.Plan. BC 15/04.09.01/2013-14], dated: July 24, 2013**

Disbursement to be reported in the monthly and yearly reporting formats is defined as under: (1) Cash credit/over draft account and running accounts of similar nature: Debit summation

minus interest and other charges or sanctioned limit, whichever is lower for the particular period under consideration (monthly/quarterly/half yearly/yearly).

(2) Term Loans: Debit summation minus interest and other charges for particular period under consideration (monthly/quarterly/half yearly/yearly).

- ***Increase in Cash Reserve Ratio (CRR)***  
RBI/2013-14/159 UBD.BPD. [(SCB). CIR. No. 1/12.03.000/2013-14], dated: July 24, 2013

RBI decides to increase requirement of minimum daily cash reserve ratio (CRR) balance maintenance to 99 per cent effective from first day of fortnight beginning July 27, 2013.

- ***Credit Information Companies (Regulation) Act, 2005—Compliance***  
RBI/2013-14/157 RPCD.CO., [RRB.BC.No.14/03.05.33/2013-14], dated: July 23, 2013

RBI notices that a large number of RRBs are not members of any Credit Information Company as required under Credit Information Companies (Regulation) Act 2005. Therefore, immediate steps may be taken by Regional Rural Banks (RRBs) to become members of at least any one CIC.

- ***Liquidity Adjustment Facility—Standalone Primary Dealers***  
RBI/2013-14/153 FMD., [MOAG. No. 83/01.01.001/2013-14], dated: July 23, 2013

RBI decides to cap total amount of funds available to a standalone Primary Dealer (PD) under Liquidity Adjustment Facility (LAF) at 100 per cent of individual PD's net owned funds as per latest audited balance sheet. Said changes in LAF will come into effect from July 24, 2013.

- ***RBI puts more restrictions on its gold import policy to squeeze current account deficit (CAD)***  
RBI/2013-14/148, [A.P. (DIR Series) Circular No.15], dated: July 22, 2013

It mandates that banks and nominated agencies should retain 20 percent (or one fifth) of every

lot of gold imports in customs bonded warehouses. Also, for domestic use, nominated banks and importing agencies have been made responsible for making gold available only to entities engaged in jewellery business and bullion dealers supplying gold to jewellers.

- ***Risk Management and Inter-bank Dealings***

[A.P. (DIR Series) Circular No. 18], dated: August 1, 2013

If an FII wishes to enter into a hedge contract for the exposure relating to that part of the securities held by it against which it has issued any PN/ODI, it must have a mandate from the PN/ODI holder for the purpose.

## *Foreign Trade*

### Highlights

- ***Export Policy of Onions***

As per Notification No. 35/2013, dated: August 14, 2013 Central Government amends para 2 of Notification No.03 (RE-2012)/2009-14 dated 29.06.2012, according to which Export of onion for the item description at Serial Number 51 & 52 of Schedule 2 of ITC (HS) Classification of Export & Import Items shall be permitted subject to a Minimum Export Price (MEP) of US\$ 650 per Metric Ton F.O.B. or as notified by DGFT from time-to-time.

- ***Amendment in the policy for import of Ammonium Nitrate***

As per Notification No. 34/2013, dated: August 14, 2013 Import of Ammonium Nitrate of certain specification would require prior permission from Chief Controller of Explosives.

- ***Grant of relaxation for import of steel and steel products from the applicability of Steel and Steel Products (Quality Control) Second Order, 2012***

As per Notification No. 33/2013, dated: August

07, 2013 Central Government grants exemption to the Import of steel and steel products for major industrial/infrastructure projects from the applicability of Steel and Steel Products (Quality Control) Second Order, 2012.

➤ ***Permission to The Cotton Corporation of India Ltd. for export of cotton (Tariff Codes 5201 and 5203) during the cotton season 2012-13***

As per Notification No. 32/2013, dated: August 02, 2013 Export of cotton have been relaxed for The Cotton Corporation of India Ltd., a Public Sector Undertaking under Ministry of Textiles, during the current cotton season 2012-13.

➤ ***Amendments in the Foreign Trade Policy (FTP) 2009-2014***

As per Notification No. 31/2013, dated: August 01, 2013 Inputs actually used in manufacture of the export product should only be imported under the authorization. Similarly inputs actually imported must be used in the export product. This has to be established in respect of every Advance Authorization/DFIA.

➤ ***Amendments in Para 3.12.7 of Foreign Trade Policy regarding goods imported against SFIS***

As per Notification, No. 30/2013, dated: August 01, 2013 Goods imported/procured against SFIS scrips can be alienated on completion of 3 years from the date of import/procurement.

➤ ***Entitlement for Cross Examination***

It was not possible to lay down any rigid rules as to when in compliance of principles of natural justice opportunity to cross-examine should be given—In the application of the concept of fair play there had to be flexibility.

*2013 (8) TMI 584—DELHI HIGH COURT  
Shahid Balwa, Vinod Goenka Versus The Directorate of Enforcement*

➤ ***Violation of FEMA***

Imposition of Penalty—Definition of Person u/s 2(u) —BCCI as well as Governing Council for IPL were persons within the definition of Section 2(u) of the Act.

*2013 (8) TMI 435—BOMBAY HIGH COURT  
Shashank Vyankatesh Manohar Versus Union of India through Ministry of Finance, The Directorate of Enforcement*

➤ ***Relevant fact U/s 10 of Evidence Act***

In a case a conspiracy if there was reasonable ground to believe that two or more persons have conspired together to commit an offence then by virtue of Section 10 of the Evidence Act, anything said, done or written by one of such persons in reference to their common intention, was a relevant fact as against each of the persons.

*2013 (8) TMI 400—DELHI HIGH COURT  
S. K. Jain Versus M. G. Attri*



## *Income Tax*

### Case Laws

➤ ***FEMA***

Whether the petitioner, who returned to India after six years from Saudi Arabia, ought to have been granted the same facilities qua his bank accounts maintained with State bank of India (SBI), which are available to a Non-Resident Indian (NRI)—Regulation A.15 of the Foreign Exchange Manual would be applicable to the petitioner.

*2013 (8) TMI 511—DELHI HIGH COURT  
Basant Kumar Sharma Versus Government of India*

### Highlights

➤ ***Statement of income paid or credited by Venture Capital Company/Fund to be furnished under section 115U***

As per Notification No. 59/2013-IT, dated: August 05, 2013 Income-tax (13th Amendment) Rules, 2013, Statement of income paid or credited by Venture Capital Company or Venture Capital Fund to be furnished under section 115U.

*For details visit <http://incometaxindia.gov.in/home.asp>*

➤ ***Exemption u/s 35(1) (ii)—Approved Scientific Research Associations/ Institutions—Centre for Development of Telematics (C-DOT)***

As per Notification, No. 62/2013-IT, dated: August 13, 2013 The organization "Centre for Development of Telematics (C-DOT), New Delhi (PAN-AAATC3895K) has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5D of the Income-tax Rules, 1962 (said Rules), from 1-4-2002 onwards in the category of 'Scientific Research Association'.

For details visit :

<http://incometaxindia.gov.in/home.asp>

➤ ***Double Taxation Agreement***

Notification No. 63/2013-IT, dated: August 14, 2013 provides agreement for avoidance of Double Taxation and Prevention of fiscal evasion with foreign countries-Sweden-amendment in Notification No-GSR 705(E), dated: 17-12-1997.

For details visit :

<http://incometaxindia.gov.in/home.asp>

➤ ***Agreement between the Government of the Republic of India and the Government of the Oriental Republic of Uruguay for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital***

As per circular number CIF. No. 500/138 2002-FTD-II, dated: August 16, 2013 Agreement between the Government of the Republic of India and the Government of the Oriental Republic of Uruguay for the avoidance of Double Taxation and the Prevention of Fiscal evasion with respect to taxes on income and on capital shall be given effect to in the Union of India with effect from the 1st day of April, 2014.

For details visit :

<http://incometaxindia.gov.in/home.asp>

## Case Laws

➤ ***Conversion from leasehold to freehold would not impact taxability of capital gains***

Rejects Revenue's contention that property sold within 3 days after conversion from leasehold to freehold taxable as short term gain; Conversion of leasehold land to freehold amounts to improvement of title, since property was owned prior to such conversion; Such conversion would not have any impact on determination of holding period; Period over which asset held relevant, not the nature of title over property; Capital gains on sale of land taxable as long term: *Allahabad HC Rama Rani Kalia [TS-399-HC-2013(ALL)]*

➤ ***Payer liable for TDS default though expense not claimed as deduction***

Upholds order u/s 201 for failure to deduct tax at source (TDS) u/s 194A on interest, despite no deduction claimed for such interest; Expression "any income by way of interest" used in Sec 194A to be viewed from recipient's perspective; Accounting/ tax treatment given by payer not relevant; Sec. 40(a)(ia) does not override provisions of Sec. 201, but they operate on different objectives; Distinguishes reliance on ITAT ruling in Pfizer Ltd; Rejects assessee's argument that Revenue can't initiate 201 proceedings, where it failed to take action against recipient & time limit for reopening of assessment expired; Assessee failed to adduce evidence showing that recipient declared interest as income and paid tax thereon : *Cochin ITAT.*

*Agreenco Fibre Foam (P) Ltd [TS-395-ITAT-2013(COCH)]*

➤ ***Assessee employed abroad a non-resident, India stay of 182 days not 60, relevant***

Employee staying outside India for purpose of employment a 'non-resident' in India, as stay in India did not exceed 182 days; Condition regarding 60 days stay in India coupled with 365 days stay in earlier 4 years stands relaxed in view of Explanation (a) to Sec. 6(1); Relaxation applies to Indian citizens leaving India for



the purpose of employment outside; Earlier employment in India before leaving India for working for another group company, not relevant for residential status; Employee was staying abroad for the purpose of employment since 2004; Reliance placed on AAR rulings in British Gas & Anurag Chaudhari : *Delhi ITAT Raj Jain [TS-389-ITAT-2013(DEL)]*

➤ **Stock exchange demutualisation expenditure results in capital base expansion, capital in nature**

Stock exchange demutualization expenses, capital in nature; Direct expenditure on capital base expansion is not revenue expense, though it may help in profit making; Distinguished SC ruling in Empire Jute; Upholds Sec 14A disallowance, by applying Rule 8D; Sufficient time devoted by top management to monitor investments : *Ahmedabad ITAT Vadodara Stock Exchange Ltd. [TS-379-ITAT-2013(Ahd)]*

➤ **Rejects capital gain exemption on property purchased in "married major" daughter's name**

Capital gains exemption u/s 54B/54F not available on properties purchased in name of married major daughters of assessee; Liberal view taken by AP HC in Late Mir Gulam Ali Khan, can't be stretched to any or every case; AP HC had interpreted term 'assessee' as used in Sec. 54 to include legal representative; Distinguishes other rulings where property purchased in joint name or wife's/ minor daughter's name; Refuses to consider unregistered purchase possession agreement with daughter, as it doesn't transfer of assets to assessee's name : *Visakhapatnam ITAT. Ganta Vijaya Lakshmi [TS-370-ITAT-2013(VIZ)]*

➤ **No salary TDS default on monthly fixed payment of medical reimbursement, LTA**

Employer not in default on salary TDS if fixed monthly sum towards medical expense and leave travel concession paid to employees; Employer eventually allowed exemption only against submission of proof of actual expenses incurred; Rejects Revenue's contention that

employer paid fixed allowances irrespective of its utilization each month; Payment of reimbursement-perquisite before actually incurred by employee did not partake character of salary; TDS on income under the head 'salaries' as on the last date of the previous year relevant; Liability of person deducting tax at source cannot be greater than the liability of person on whose behalf TDS is made : *Bangalore ITAT.*

*Infosys BPO [TS-372-ITAT-2013(Bang)]*

➤ **Levy of anti-dumping duty relevant for ALP of imported products**

Anti-dumping duty levied by Government on imported product clearly indicates that such product exported to India by foreign parties at a very low price; Hence, fact of levy of anti-dumping duty relevant for determining ALP of imported products; Product comparability though very important for CUP, it can't be ignored while applying TNMM; It assumes higher importance when market conditions are different for different products; Rejects use of internal TNMM based on margin for non-AE segment due to difference in products; Quality of product very important for comparability under CUP as it can affect prices : *Mumbai ITAT*

*Merck Limited [TS-197-ITAT-2013(Mum)-TP]*

➤ **Abhinav Bindra not a professional sportsman, Awards/prizes not taxable**

Allows relief to Abhinav Bindra relying on CBDT Circular No. 447 of 1986 on rewards/prizes/gifts; Circular provides that awards received by sportsman who is not a professional, will be in the nature of a gift and/or personal testimonial; Abhinav Bindra an amateur not a professional sportsman & covered by relief as per the circular; Rejects Revenue's stand that circular not applicable after the modification of Sec 10(17A) and Sec 56(2)(v) : *Delhi ITAT.*

*Abhinav Bindra [TS-344-ITAT-2013(DEL)]*

➤ **Sec 14A dis-allowance even applicable to MAT u/s 115JB**

Sec 14A disallowance applicable while

computing 'book profits' under MAT u/s 115JB; Interprets the term "expenditure relatable to exempt income" used in Sec 115JB which is similar to language used in Sec 14A; Rejects assessee's argument that amount specifically debited to P&L account w.r.t. exempt income can be added to book profits; Relies on coordinate bench ruling in Esquire P. Ltd:

*Mumbai ITAT.*

*RBK Share Broking Pvt. Ltd [TS-338-ITAT-2013(Mum)]*

➤ **Services of MF distributors not professional or technical, no TDS attracted**

No TDS applicable on payments by Asset Management company to Mutual Fund (MF) distributors; Services specifically excluded u/s 194H as section excludes TDS on commission or brokerage paid on securities; Services also do not fall within the term 'Professional Services' u/s 194J; MF brokers' services cannot be termed as 'technical services', as brokers do not require any special qualification nor do they provide any technical know-how:

*Chennai ITAT*

*Sundaram Asset Management [TS-336-ITAT-2013(CHNY)]*

➤ **SICA provisions to prevail over IT Act; BIFR entitled to waive interest**

Provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) to prevail over the Income Tax Act; BIFR can give waiver of interest levied under IT Act under rehabilitation scheme; Even though CBDT Circular No. 683 appoints DGIT (Admin) as nodal authority to deal with BIFR, failure of AO/CIT to inform DGIT about BIFR proceedings can't make BIFR scheme invalid; BIFR had applied mind while granting interest waiver:

*Delhi HC*

*Lord Chloro Alkalies Ltd [TS-331-HC-2013(DEL)]*

➤ **Sec.80-IB benefit available project-wise, without setting-off losses from other projects**

Loss from one eligible undertaking not to be set-off against profit from another, for computing Sec 80-IB deduction; Deduction u/s 80-IB not to exceed gross total income before allowing Chapter VI-A deductions; Assessee

entitled to Sec. 80-IB benefit to the extent of profits of eligible undertaking, despite reporting 'business loss'; Assessee also earned 'Income from other sources'; Reliance placed on SC ruling in Canara Workshop and AP HC ruling in Visakha Industries Ltd:

*Chennai ITAT*

*Shriram Properties Pvt. Ltd. [TS-334-ITAT-2013(CHNY)]*

➤ **Section 50-C**

Section 50-C of the Act cannot be applied to the sale agreements entered into before the introduction of the said provisions i.e. before 1-4-2003 especially when delay in execution and registration of conveyance is sufficiently explained and there is no allegation of suppression of actual consideration.

*2013 (8) TMI 632-ITAT MUMBAI*

*Administrator of Estate of Late Mr. E. F. Dinshaw Versus Income Tax Officer, Mumbai*

## Customs

### Highlights

➤ **Amendment in Baggage Rules, 1998**

As per Notification No. 84 /2013-Customs (N.T.), dated: August 19, 2013, Central Government hereby makes the following rules to further amend the Baggage Rules, 1998, namely :

1. (1) These rules may be called the Baggage (Second Amendment) Rules, 2013.
- (2) They shall come in to force on the 26th day of August, 2013.
2. In the Baggage Rules, 1998, in Annex I, after item 5 relating to Gold or silver, in any form, other than ornaments, "6-Flat Panel (LCD/LED/Plasma) Television." shall be inserted.

### Case Laws

➤ **Import of low quality rough diamonds—prohibited**

Import of low quality rough diamonds—prohibited goods—the extent of over-valuation

which if allowed would have resulted in repatriation of foreign currency itself would show that this was a case where no lenient view was called for—Therefore the decision to absolutely confiscate the rough diamonds under seizure had to be upheld.

*2013 (8) TMI 506—CESTAT AHMEDABAD  
PRAKASH SANCHETI Versus COMMISSIONER OF  
CUSTOMS, AHMEDABAD*

### ➤ **Smuggling of goods**

Cut & polished diamonds and Gold jewellery recovered from the baggage/person — Accounting procedures—No evidence had been brought on record by the department which establish that the assessee was involved in the activity of illegal import or smuggling of diamonds.

*2013 (8) TMI 433—CESTAT MUMBAI  
I. P. PATEL & CO. Versus COMMISSIONER OF  
CUSTOMS (AIRPORT), MUMBAI*

### ➤ **Enhancement of Assessable Value— Smuggling of Goods u/s 2(39)**

Since no licence was produced by assessee even in Tribunal, those goods were smuggled goods under section 2(39) of Customs Act, 1962 for which all tyres were liable for confiscation under section 111(d).

*2013 (8) TMI 546—CESTAT NEW DELHI  
Matwar and Co. Versus C. C., Ghaziabad*

### ➤ **Smuggled goods**

Once the goods are held to be smuggled goods under section 2 (39) of Customs Act, 1962, there was no scope at all to interfere to the adjudication.

*2013 (8) TMI 542—CESTAT NEW DELHI  
Narendra Steel Alloys Versus CC, Noida*

### ➤ **Valuation of imported goods**

If the cost of technical know-how payment of royalty had no nexus with the working of the imported goods then such payment was not includable in the price of the imported goods.

*2013 (8) TMI 580—CESTAT MUMBAI  
COMMISSIONER OF CUSTOMS (I), MUMBAI  
VERSUS MAX ATOTECH LTD*

### ➤ **Remission of Duty**

Shortage of Goods—Section 23 of the Customs Act, 1962—shortage was genuine and did not occur due to negligence, such losses occurred due to natural causes like the nature of the goods being susceptible to moisture, weigh-bridge difference and handling loss due to loading and unloading of the materials at both ends—remission allowed.

*2013 (8) TMI 509—CESTAT KOLKATA  
COMMISSIONER OF CENTRAL EXCISE, CUSTOMS  
& SERVICE TAX, BHUBANE-SWAR-I VERSUS M/  
S. INDIAN METALS & FERRO ALLOYS LTD.*

### ➤ **Fixation of Brand rate of Duty Drawback**

Assessee was entitled to All Industry Rate Drawback @ 1.1% under Heading No. 8418 as stands admitted by the original authority—the option of fixation of brand rate available to assessee in terms of Circular cannot be denied.

*2013 (8) TMI 233—GOVERNMENT OF INDIA  
IN RE: THERMAX LIMITED*

### ➤ **Liability of AAI for goods misplaced or stolen**

The goods belonging to the plaintiff (importer) went missing while they were in the care and custody of the defendant Authority.—AAI cannot deny its liability.

*2013 (8) TMI 621—DELHI HIGH COURT  
AIRPORT AUTHORITY OF INDIA Versus DEEPAK  
INDUSTRIES LTD*

## *Service Tax*

### **Case Laws**

#### ➤ **Storage and warehousing services**

Storage of crude oil is only incidental to the main activity of transportation and the vessels are hired only when pumping of crude cannot be made through pipelines laid under the sea bed or in specific weather conditions.—stay granted.

*2013 (8) TMI 640—CESTAT MUMBAI  
THE SHIPPING CORPORATION OF INDIA LTD  
VERSUS COMMISSIONER OF CENTRAL EXCISE  
& SERVICE TAX (LTU), MUMBAI*

➤ **Import of service—Section 66A(2)**

Project office is not doing any work other than the work relating to the project and would get wound up once the project is completed—not a permanent establishment—prima facie services are provided to self—hence service rendered by a company to itself cannot be subjected to service tax.

*2013 (8) TMI 638—CESTAT NEW DELHI  
M/s SNC LAVALIN INC VERSUS COMMISSIONER  
OF SERVICE TAX, DELHI, GURGAON*

➤ **Commercial or Industrial Construction Service u/s 65(105)(zzq)**

Assessee under a bona fide belief that ultimately the marketing complex would be used for the persons, namely, unemployed youth and women vendors and not for commercial purpose—prima facie extended period of limitation is not applicable.

*2013 (8) TMI 604—CESTAT KOLKATA  
M/s. National Building Construction Corporation Ltd.  
and M/s. Simplex Projects Ltd. Versus Commissioner  
of Central Excise, Shillong*

➤ **Manufacture or Business Auxiliary Service—multi piece packaging**

The definition covers not only packing but also re-packing—multi-piece packaging is done on the soaps already packed—thus it would amount to repacking and accordingly the activity would be covered under the definition of 'manufacture' u/s 2(f) (iii)—matter remanded back for verification.

*2013 (8) TMI 600—CESTAT MUMBAI  
DESHMUKH SERVICES VERSUS COMMISSIONER  
OF CENTRAL EXCISE, SERVICE TAX & CUSTOMS,  
NAGPUR*

➤ **Service Tax on erection, commissioning and installation services**

Notice themselves did not get themselves registered in time, did not get themselves registered for all the taxable services rendered by them and even after getting registered, had not disclosed the actual facts to the department.—stay granted equal to 50%.

*2013 (8) TMI 568—CESTAT KOLKATA  
M/s. Empirical Engineering Enterprises Versus  
Commissioner of Central Excise and Service Tax, Bolpur*

➤ **CENVAT credit on telecommunication service**

Main issue involved is whether the tower on which the antenna is mounted by the applicants would constitute capital goods for the purpose of Rule 3 of the CENVAT Credit Rules, 2004—stay granted.

*2013 (8) TMI 564—CESTAT CHENNAI  
Bharti Airtel Ltd., Aircel Ltd. and Vodafone Essar Cellular  
Ltd. Versus Commissioner of Service Tax, Chennai &  
CCE Coimbatore*

➤ **Works Contract Services**

Prima facie the Applicant was required to intimate the Department stating that they would be paying service tax @4% instead of 12%/10% by exercising their option under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.

*2013 (8) TMI 642—CESTAT KOLKATA  
M/S. S. M. S. ENTERPRISE VERSUS  
COMMISSIONER OF SERVICE TAX, KOLKATA*

## Central Excise

### Highlights

- As per notification: 22/2013-CE, dated: July 07, 2013 Central excise duty on the scheduled formulations as defined under the Drugs Price Control Order (DPCO), 2013 and which are subjected to re-printing, re-labeling, re-packing or stickering, in pursuance of the provisions contained in the said Order, in a premises which is not registered under the Central Excise Act, 1944 or the rules made there under.
- Notification No.11/2013-CENT, dated: August 02, 2013 Provides exemption from registration of premises for affixing lower ceiling prices on pharmaceutical products to comply with the notifications issued by the National Pharmaceutical Pricing Authority under Drugs (Prices Control) Order, 2013.

## Case Laws

### ➤ *Recovery of demand from successor of Unit*

Priority of dues—The notice of the Excise Department calling upon the appellant to pay the dues of the erstwhile owner of the unit was stands quashed.

*2013 (8) TMI 540—SUPREME COURT—Central Excise  
M/s. Rana Girders Ltd. Versus Union of India & Others*

### ➤ *Assesses were not entitled for Cenvat credit on inputs used in manufacture of exempted goods—rebate claim rejected*

Rebate Claim — Revenue was of the view that the exported goods were fully exempted from duty, the assessee can neither pay any duty on the same nor avail Cenvat credit on inputs used in the manufacture of exempted products—Held that: Assessee was not eligible for grant of input rebate claim—Assessee had not followed the prescribed procedure at all and also availed the Cenvat credit on inputs—The original adjudicating authority had rejected the claim of the assessee on the ground that the goods were fully exempted from duty vide Notification No. 4/2006-C.E. (N.T.) and therefore by virtue of sub-rule (1) of Rule 6 of Cenvat Credit Rules, 2004 the assesses were not entitled for Cenvat credit on inputs used in manufacture of exempted goods—for availing rebate of duty paid on material used in exported goods, assessee had follow the procedure laid down in the Notification No. 21/2004-C.E. — the input rebate was admissible if the Cenvat credit was not availed on the inputs—revision application Rejected.— Decided against the assessee.

*2013(8)TMI 538—GOVERNMENT OF INDIA—Central Excise  
Nemlaxmi Book (India) Pvt. Ltd.*

### ➤ *Manufacture u/s 2(f)—manufacturing of stainless steel from metal scrap—*

Processing of raw material into 'blended metal scrap'—Sorting grade wise—Cutting/ Shredding/Crushing and sizing of oversize

material—Bundling and briquetting—Blending—proposed activity is directly usable for manufacture of stainless steel —A product emerges from the process, having distinct identity and use different from the raw material from which it is made.—Therefore proposed activity would amount to manufacture.

*2013 (8) TMI 537—AUTHORITY FOR ADVANCE RULINGS—Central Excise  
M/s ELG INDIA PRIVATE LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH*

### ➤ *Stay Application—Waiver of Pre-deposit— Appellant is purchaser in auction of items wherein winding up of a company is ordered by the Hon'ble High Court of Gujarat*

Cenvat credit of the excise duty paid on capital goods was allowed to an assessee from the year 1994 and hence there is an element of doubt as to whether they were eligible for cenvat credit of the capital goods purchased by them—Held that : This issue needs to be gone into detail as Department is unable to produce any documents in support of his claim that these were no duty paid inputs lying in factory —Issue needs deeper consideration—Appellant's bank guarantee of Rs.5 lakhs were encashed in some other proceedings by the Revenue Authorities—Revenue Authorities encashed the bank guarantee amount of Rs.5 lakhs, then the said amount if not returned to the appellant; keeping the same in mind, Appellant directed to deposit further an amount of Rs.5 lakhs - Subject to such compliance being reported to the Deputy Registrar, applications for the waiver of pre-deposit of the balance amounts involved are allowed and recovery thereof stayed till the disposal of appeals.

*2013(8)TMI 536—CESTATAHMEDABAD—Central Excise  
M/s JANAK RAJ GUPTA & CO LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, SURAT-II*

### ➤ *Modvat/Cenvat Credit*

Classification of Goods—credit would be applicable to all components, spares and accessories of the specified goods, irrespective of their classification under any chapter

heading— the assessee would also be eligible for relief

*2013 (8) TMI 576—MADRAS HIGH COURT—Central Excise M/s. The India Cements Ltd. Versus The Commissioner of Central Excise*

### ➤ **Penalty u/s 11AC**

Commissioner set aside penalty imposed by Department and imposed penalty under Rule 15(4)—Held that:- For imposing a penalty on any person under the above provision, the Department should clearly allege in the relevant show-cause notice that such person has wrongly taken or utilized CENVAT credit on input services by reason of fraud, collusion, wilful mis-statement, suppression of facts or contravention of any of the provisions of the Finance Act, 1994 or of the rules made there under with intention to evade payment of service tax. None of these ingredients was alleged in the subject show-cause notice for imposing penalty on the appellant under Rules 15(4)—Following decision of CCE, Pune-I vs. Thermax Ltd. [2010 (1) TMI 460—CESTAT MUMBAI] —Decided against assessee.

*2013 (8) TMI 572—CESTAT BANGALORE—Central Excise M/s. Inox Air Products Ltd. Versus CCE, Hyderabad*

### ➤ **Explosives as Inputs—Eligibility for MODVAT**

Whether the Explosives used in mines for blasting lime stone can be considered as inputs eligible for credit—MODVAT cannot be denied on the ground that they were not used as inputs within factory.

*2013(8) TMI 503—MADHYA PRADESH HIGH COURT C. C. E. Raipur Versus M/s Maihar Cement*

### ➤ **Levy of Textile Cess**

The textile manufactured out from hand-loom and power-loom industry had been exempted under section 5A, obviously no inspection in respect of textile manufactured by such industry was required and therefore, it was reasonable to conclude that the activity undertaken by

an extended hand of these manufacturers will also be not liable to pay the impost of cess.

*2013 (8) TMI 449—ALLAHABAD HIGH COURT M/s PREMIUM SUITING PVT LTD VERSUS UNION OF INDIA & OTHER*

### ➤ **No difference between the expression credit taken and the credit utilized for the purpose of recovery of wrongly availed cenvat credit**

There is no difference between the expression credit taken and the credit utilized for the purpose of recovery of wrongly availed credit Rule 14 of Cenvat Credit Rules, and if any credit has been taken wrongly, even though not availed, interest liability would accrue—Interest payable on the wrong availment of Cenvat Credit.

*2013 (8) TMI 428—CESTAT MUMBAI ANE INDUSTRIES PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI*



## Highlights

### ➤ **Utilization period for Government Debts Limits**

As per circular number CIR/IMD/FIIC/11/2013, dated: July 31, 2013 Foreign Institutional Investor (FIIs) / Qualified Foreign Investors (QFIs) have permitted to utilize the debt limits in each monthly auction till the 17th day of the succeeding month.

### ➤ **Operational, Prudential and Reporting Norms for Alternative Investment Funds (AIFs)**

As per circular number CIR/IMD/DF/10/2013, dated: July 29, 2013 All Alternative Investment Funds (AIFs) shall be required to comply reporting norms to SEBI on a quarterly basis (for Category I, II AIFs and for those Category III AIFs which do not employ leverage) or

on a monthly basis (for Category III AIFs which employ leverage). Category III AIFs shall have to additionally comply with norms pertaining to risk management, compliance, redemption and leverage as specified in the circular. The leverage for a Category III AIF shall not exceed 2 times i.e. the gross exposure after offsetting for hedging and portfolio rebalancing transactions shall not exceed 2 times of the NAV of the fund.

For details visit [www.sebi.gov.in](http://www.sebi.gov.in) under 'Info for à 'Alternative Investment Funds'.

### ➤ ***A trident of buy-back of securities—Companies Bill 2013, Old and New SEBI Regulations***

SEBI issued the amended regulations of the SEBI (Buy-back of Securities) Regulations, 1998 and recently Rajya Sabha approved of the Companies Bill, 2013. In view of these two recent important developments, the SEBI's earlier regulation for buy-back of securities has been compared with the new regulations and the provisions of the Companies Bill, 2013.

## Value Added Tax

### Highlights

- As per notification VAT—Delhi—DVAT—F. 3 (349) / Policy / VAT / 2013 / 645-657, dated: August 19, 2013 All Embassies, international organizations shall be required to file the refund claim online through departmental website-  
<http://www.dvat.gov.in>.
- As per notification VAT—Delhi—DVAT—F. 7(433)/Policy-II/VAT/2012/Part File/632-644, dated: August 16, 2013 Extended to 16.09.2013 for filing online stock statement in Form Stock - 1 for the stock available on 31.03.2013 for dealers having gross turnover upto Rs. 1 crore during the year 2012-13.

- Notification VAT—Delhi—DVAT F.7(433)/Policy-II/VAT/2012/Part File/565-576, dated: August 02, 2013  
Extends the date for filing of stock statement in Form Stock-1 online for the stock available on 31st March, 2013.

### Case Laws

- ***Whether sale of DEPB license constitute business and liable to VAT/Sales Tax***

Held yes—By use of the expression "any transaction in connection with the business", one can hold that the Act itself does not contemplate the frequency or regularity or continuity of the transactions, as has been done in the substantive part in sub clause (1) of sub section (d) of Section 2 of the Act.

*2013 (8) TMI 679—MADRAS HIGH COURT  
M/s. Prakash Impex Versus The State of Tamil Nadu  
represented by The Assistant Commissioner (CT)*

- ***Detention of Goods***

UPVAT—transport of the goods from Delhi to Orissa—Transit Declaration Form—The inference that the goods may likely to be unloaded inside the State of U.P. And may not be taken to other State, while the goods were in transit and vehicle was on declared route was merely based on presumption, suspicion and doubts, which was not sustainable in law.

*2013 (8) TMI 643—ALLAHABAD HIGH COURT  
M/s Seema Enterprises, Canal Avenue, Versus The  
Commissioner, Commercial Tax*

- ***Classification***

Ink jet cartridges and toner cartridges were parts and accessories of printer which is a peripheral to a computer system and would be covered under Entry Nos. 22 & 24 of serial No.68, Part B of First Schedule to the TNVAT Act (Tamilnadu Value Added Tax Act).

*2013 (8) TMI 569—MADRAS HIGH COURT  
Canon India Private Limited Versus State of Tamil  
Nadu Through Secretary, Ministry of Education and  
Commercial Taxes, Commercial Taxes Department.*

### ➤ **Tamilnadu Value Added Tax Act (TNVAT)**

Section 19(11) of TNVAT was a valid piece of legislation, cannot be struck down as being either unreasonable or discriminatory and violative of Article 265 and 360A of the Constitution of India—The Legislature consciously enacted Section 19(11) of TNVAT Act with avowed object of incorporating the time frame for availing Input Tax Credit before the end of financial year or ninety days from the date of purchase whichever is later.

*2013 (8) TMI 532—MADRAS HIGH COURT  
USA Agencies Versus The Commercial Tax Officer*

### ➤ **Constitutional Validity**

Legislative competence for enhancing transit fee and changing the basis of levy from cubic feet to advalorem between 5% to 15%, on variety of forest produce including timber, firewood, and other forest produce coming from mines e.g., coal, limestone, sand, bajari and other minerals—all the notifications quashed.

*2013 (8) TMI 420—ALLAHABAD HIGH COURT  
NTPC Limited & M/s Ajay Trading (Coal) Co. Versus State of UP and others*

### ➤ **Carry forward of excess tax—Petitioner paid amount in excess of tax liability**

Authority denied carrying forward of tax—There appears no rationale on the part of the respondents in claiming interest and penalty with regard to the payment to be effected by the petitioner in respect of the subsequent assessment years.

*2013 (8) TMI 340—KERALA HIGH COURT  
U. V. MARTIN, PROPRIETOR, UKKENS TIMBERS  
Versus COMMERCIAL TAX OFFICER, ANGAMALY,  
ERNAKULAM*

### ➤ **VAT and Sales Tax: Exemption from CST**

The higher rate of tax payable for non compliance of the amended provisions of Section 8 (5) namely non production of Form C/D, cannot be taken to be a ground to deny the set off of such higher rate of tax from

the limits prescribed in the eligibility certificate under Section 4-A of the Trade Tax Act.

*2013 (8) TMI 120—ALLAHABAD HIGH COURT  
M/s Holostik India Limited Versus State of U. P. Thru'  
Principal Secretary, Inst. Finance & Ors*

### ➤ **VAT and Sales Tax: Levy of CST or LST**

local sales or interstate sale—it is not enough that the buyer takes delivery of the goods from the seller for the purposes of dispatching them to another State, nor it is enough that the seller pursuant to the instructions of the buyer dispatches the goods across the border to another State.

*2013 (8) TMI 53—ALLAHABAD HIGH COURT  
M/s J. K. Paper Ltd. Thr. Krishna Kant Rustagi  
Senior Manager Versus Commissioner Commercial Tax  
& others*

## Companies Bill 2013

### Highlights

- As per the **Definition of "expert"** includes an Engineer, a Valuer, a Chartered Accountant, a Company Secretary, a *Cost Accountant* and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.
- **Clause 7– Incorporation of Company:** A declaration in the prescribed form by an Advocate, a Chartered Accountant, *Cost Accountant* or Company Secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made there under in respect of registration and matters precedent or incidental thereto have been complied with;
- **Clause 138–Internal Audit:** Such class or classes of companies as may be prescribed shall be required to appoint an internal



auditor, who shall either be a Chartered Accountant or a *Cost Accountant*, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

➤ **Clause 148-Cost Audit for Manufacturing and Service Sector:**

- Scope for maintenance of cost accounts enlarged to include companies engaged in provision of such services as may be prescribed.
- Central Government empowered to direct cost audit for such class of companies as it considers necessary.
- Central Government while issuing directions for cost audit shall prescribe the criteria of "Turnover" or "Net Worth"
- Central Government approval for appointment of cost auditors not required.
- 148.(1) Notwithstanding anything contained in this Chapter, the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies: Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.
- 148. (2) If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

- 148. (3) The audit under sub-section (2) shall be conducted by a *Cost Accountant* in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed: Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records
- Cost auditing standards have been mandated.

➤ **Clause 275—Company Liquidators and their appointments:** The Tribunal may appoint Provisional Liquidator or the Company Liquidator from a panel maintained by the Central Government consisting of Company Secretaries, Chartered Accountants, Advocates and Cost Accountants.

➤ **Clause 232 Merger and amalgamation of companies:** Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

➤ **Clause 259—Appointment of administrator:** The interim administrator or the company administrator, as the case may be, shall be appointed by the Tribunal from a databank maintained by the Central Government or any institute or agency authorised by the Central Government in a manner as may be prescribed consisting of the names of Company Secretaries, Chartered Accountants, *Cost Accountants* and such other professionals as may, by notification, be specified by the Central Government.

➤ **Clause 291—Provision for professional assistance to Company Liquidator:** The Company Liquidator may, with the

sanction of the Tribunal, appoint one or more Chartered Accountants or company secretaries or *Cost Accountants* or legal practitioners or such other professionals on such terms and conditions, as may be necessary, to assist him in the performance of his duties and functions under this Act.

- **Clause 300—Power to order examination of promoters, directors:** A person ordered to be examined under this section may at his own cost employ Chartered Accountants or Company Secretaries or *Cost Accountants* or legal practitioners entitled to appear before the Tribunal under section 432, who shall be at liberty to put to him such questions as the Tribunal may consider just for the purpose of enabling him to explain or qualify any answers given by him.
- **Clause 409—Qualification of President and Members of Tribunal:** under this section A person shall not be qualified for appointment as a Technical Member unless he has been, in practice as a *Cost Accountant* for at least fifteen years.
- **Clause 432—Right to legal representation:** A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more Chartered Accountants or company secretaries or *Cost Accountants* or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

Source: [http://www.mca.gov.in/Ministry/pdf/The\\_Companies\\_Bill\\_2012.pdf](http://www.mca.gov.in/Ministry/pdf/The_Companies_Bill_2012.pdf) & <http://taxindia.pz10.com/2013/08/companies-bill-2013-and-role-of-cmas.html>

## Provident Fund

- **Online transfer of Provident fund accounts service in last week of August**  
Dated: August 18, 2013  
Retirement fund body is all set to launch online

transfer of PF accounts on changing jobs by the end of this month, benefiting over 13 lakhs subscribers every year who go through a time-consuming process.

Employees' Provident Fund Organization (EPFO) has got very encouraging results from the online testing of the service and will be able to launch the service during the last week of this month, a source privy to the development said. According to the source, the EPFO will conduct a live testing of service from Monday onwards whereby workers of some selected establishments would be allowed to file their transfer claims online.

## Wealth Tax

### Case Laws

- **Penalty u/s 18(1) (c)—wealth tax**

For claiming an exemption assessee had to include the asset in the return—Without including the same in the return filed it cannot claim exemption— Claims of exemption/deduction/rebate were not to be decided by the assesses—it was the job of the AO to entertain or rejects such claim as per the provisions of the Act—penalty confirmed.

2013 (8) TMI 644—ITAT MUMBAI

*Housing Development Finance Corporation Ltd. Versus ACIT, Wealth Tax, Range, 1(1) Mumbai*

- **Nature of the asset**

If the construction was partly completed or the building is under construction, in that case the exception engrafted in the definition of the words "urban land" does not get attracted — In that event the urban land or undivided interest of the assessee continues to be open for taxation within the category of urban land.

2013 (8) TMI 221—CALCUTTA HIGH COURT  
COMMISSIONER OF WEALTH TAX, KOLKATA-XIX  
*Versus SANJAY KRISHNA HEDGE*

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