



CMA E-BULLETIN

The Institute of Cost Accountants of India
(Statutory Body under an Act of Parliament)

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Editorial Preface

Greetings!

We are pleased to release the second issue of "CMA E-Bulletin" before our esteemed readers.

We have inserted two important segments in this issue viz. Service Tax and SEBI for the benefit of the readers. Moreover, we have also introduced a "Guest Column" in this issue where an eminent expert will disseminate his opinion on a particular segment of economy.

Hope you will enjoy reading the e-bulletin. We look forward to your valuable suggestions and comments.

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Chairman's Message



World Bank very recently scaled down India's growth forecast to 6.1% for the current fiscal from 7% projected six months ago. The decline in the growth forecast is largely due to the decline in agriculture sector which is expected to grow at 2% during 2013-14 against the previous estimate of 2.7% despite normal monsoon projection. However, the multi-lateral funding agency said that India is regaining economic momentum and growth is expected to recover gradually to its high long-term potential.

This is my pleasure to present this volume of "CMA E-Bulletin" in time. I hope the relevant updates on different sectors of our economy incorporated here will definitely enrich our professional knowledge base largely.

CMA Manas Kr. Thakur
Chairman
Research & Publications Committee

Guest Column

India's Trade Performance 2012 - 13



Due to the global financial crisis India's exports suffered during 2012-13. During Q1 of 2012-13, exports stood at US\$ 75.2 billion and showed a decline of 1.7 per cent as against an increase of 36.4 per cent during Q1 of 2011-12.

Interestingly however imports also declined and the rate of its decline was greater than exports so that there was a marginal improvement in trade balance. During Q1 of 2012-13, imports declined by 6.1 per cent over the corresponding quarter of 2011-12 and stood at US\$ 115.3 billion. Lower imports during Q1 of 2011-12 mainly reflected the contraction in import of gold and silver and a moderate growth in imports of petroleum, oil and lubricants (POL). Thus trade deficit during Q1 of 2012-13 stood lower at US\$ 40.1 billion as compared with US\$ 46.2 billion during Q1 of 2011-12. It is clear therefore that 2012 - 13 has been a little unusual as far as India's trade is concerned. Commodity-wise exports data

available up to March 2012 show that the share of manufacturing sector in total merchandise exports declined marginally from 62.9 per cent in 2010-11 to 61.3 per cent in 2011-12. However, the respective share of petroleum products and primary products increased during the period. Among the major sectors, growth in exports of manufacturing sector seems to have been affected significantly during 2011-12.

Within manufacturing sector, growth in exports of engineering goods and textile products was lower as demand conditions in key markets like the US and Europe were sluggish. These two markets account for nearly 60 per cent and 50 per cent of total exports from engineering and textile sector. Within engineering sector, growth in exports of transport equipment, iron & steel, electronic goods and manufactures of metals was significantly hit while that of machinery and instruments moderated marginally. However, growth in exports of leather & manufactures and chemicals & related products witnessed higher growth during 2011-12 as compared with 2010-11.

As per the available data on commodity-wise imports for 2011-12, petroleum and petroleum products continued to be a major item of India's imports, followed by capital goods and gold & silver. Petroleum, petroleum products and related material, accounting for nearly 31.7 per cent of India's total merchandise imports, grew by 46.2 per cent during 2011-12 as compared with 21.6 per cent during 2010-11. Import of gold & silver showed a marginally higher growth of 44.4 per cent as compared with 43.5 per cent in 2010-11, reflecting the higher demand for gold despite the rise in international gold prices in 2011-12. Higher growth in imports of gold in value terms (44.4 per cent) than those in international prices (27.2 per cent) during 2011- 12 reflects the contribution of price as well quantum factors in increasing the imports of gold.

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BANKING



■ Foreign investment in India by SEBI registered FIIs in Government Securities and Corporate Debt

[67 RBI/201 2-13/465 A.P. (DIR Series) Circular No.94]

Dated: April 01, 2013

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified **vide Notification No. FEMA.20/2000-RB dated May 3, 2000**, as amended from time to time, in terms of which SEBI registered Foreign Institutional Investors (FIIs) and long term investors may purchase, on repatriation basis Government securities and non-convertible debentures (NCDs)/ bonds issued by an Indian company subject to such terms and conditions as mentioned therein and limits as prescribed for the same by RBI and SEBI from time to time. Attention of AD Category-I banks is also invited to **A.P.(DIR Series) Circular No. 80 dated January 24, 2013** in terms of which the present limit for investments by FIIs and long term investors in Government securities is USD 25 billion and for corporate debt is USD 51 billion

(including sub-limit of USD 25 billion each for bonds of infrastructure sector and non-infrastructure sector and USD 1 billion for QFIs in non-infrastructure sector). On a review, to simplify the existing limits, it has now been decided to merge the existing debt limits into two broad categories as under:

- **Government Debt limit:** Government securities of USD 25 billion by merging the existing sub-limits under Government securities [(a) USD 10 billion for investment by FIIs in Government securities including Treasury Bills and (b) USD 15 billion for investment In Government dated securities by FIIs and long term investors]; and
- **Corporate Debt Limit:** Corporate debt of USD 51 billion by merging the existing sub-limits of Corporate debt [(a) USD 1 billion for Qualified Foreign Investors (QFIs), (b) USD 25 billion for investment by FIIs and long term investors in non-infrastructure sector and (c) USD 25 billion for investment by FIIs/QFIs/long term investors in infrastructure sector].
- **Trade Credits for Imports into India – Review of all-in-cost ceiling**
[A.P. (DIR Series) Circular No. 98]
Dated: April 09, 2013
Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to A.P. (DIR Series) Circular No.28 dated September 11, 2012 and A.P. (DIR Series), Circular No. 58 dated December 14, 2012 relating to all-in-cost ceiling of Trade Credits for imports into India. On a review, it has been decided that the all-in-cost ceiling as specified under paragraph 4 of A.P. (DIR Series) Circular No.28 dated September 11, 2012 'will

continue to be applicable till June 30, 2013 and subject to review thereafter. All other aspects of Trade Credit policy remain unchanged.

- **Memorandum of Instructions governing money changing activities**
[RBI/2012-13/473 A.P. (DIR Series) Circular No. 96]
Dated: April 05, 2013

Please refer to Para E 2(ii) of Annex I of {A.P.(DIR Series) Circular No. 57 [A.P.(FL/RL Series) Circular No.04]} dated March 09, 2009 on the captioned subject. On a review, it has been decided that Authorized Money Changers (AMCs) may sell Indian rupees to foreign tourists/visitors against International Credit Cards /International Debit Cards and should take prompt steps to obtain reimbursement through normal banking channels. All the other instructions contained in A.P.(DIR Series) Circular No. 57 [A.P.(FL/RL Series) Circular No.04] dated March 09, 2009 as amended from time to time shall remain unchanged.

- **Advances guaranteed by Credit Risk Guarantee Fund Trust for Low Income Housing (CRGFTLIH) – Risk Weights and Provisioning**
(DBOD.No.BP.BC-90/21.04.048/2012-13)
Dated: April 16, 2013

The Ministry of Housing & Urban Poverty Alleviation, Government of India has set up the CRGFTLIH vide their Notification No.O-17034/122/2009-H dated June 21, 2012. On the issue of assignment of appropriate risk weight for loans guaranteed by CRGFTLIH and prescription of requisite provisioning norms for such loans on the lines of credit facilities guaranteed by Credit Guarantee Fund Trust for Micro and Small Enterprises, it has been decided as under:

- **Risk weight:** Banks may assign zero risk weight for the guaranteed portion. The balance outstanding in excess of the guaranteed portion would attract a risk-weight as appropriate to the counter-party.
- **Provisioning:** In case the advance covered by CRGFTLIH guarantee becomes non performing, no provision need be made towards the guaranteed portion. The amount outstanding in excess of the guaranteed portion should be provided for as per the extant guidelines on provisioning for non-performing advances.

■ **Core Investment Companies – Guidelines on Investment in Insurance**

[RBI/201 2-13/466 DNBS (PD)

CC.No.322/03.10.001/2012-13]

Dated: April 01, 2013

At present NBFCs venturing into insurance are guided by the **circular DNBS(PD).CC.No.13/02.01/99-2000 dated June 30, 2000** on amendment to NBFC Regulations which contains the 'Guidelines for entry of NBFCs into Insurance'. In view of the unique business model of Core Investment Companies (CICs), it has been decided to issue a separate set of guidelines for their entry into insurance business. While the eligibility criteria, in general, are similar to that for other NBFCs, no ceiling is being stipulated for CICs in their investment in an insurance joint venture. Further it is clarified that CICs cannot undertake insurance agency business. CICs exempted from registration with RBI do not require prior approval provided they fulfil all the necessary conditions of exemption as provided under/ in CC No.206 dated January 05, 2011. Their investment in insurance joint venture would be guided by IRDA norms.

FOREIGN TRADE



■ **Notification No. 07(RE-2013)/ 2009-2014**

Dated: April 18, 2013

In exercise of powers conferred by Sec. 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992) read with paragraph 1.2 of the Foreign Trade Policy 2009-2014, the Central Government hereby amends, with immediate effect, Para 5.1 of the Foreign Trade Policy (RE-2013)/2009-14.

A new sub-para (g) is being inserted after para 5.1(f) of FTP as under:

“5.1(g) Authorization under EPCG Scheme shall not be issued for import of any Capital Goods (including Captive plants and Power Generator Sets of any kind) for

- Export of electrical energy (power)
- Supply of electrical energy (power) under deemed exports
- Use of power (energy) in their own unit, and
- Supply/export of electricity transmission services.”

Effect of Notification: Import of Capital Goods for production/transmission of energy (power) will no longer be available.

■ **Addition of two new ports for import of new vehicles.**

[Notification No 6 (RE-2013)/2009-2014]

Dated: April 18, 2013

S.O.(E) In exercise of powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), read with paragraph 2.1 of the Foreign Trade Policy, 2009-2014, as amended from time to time, the Central Government hereby amends Policy Condition 2 to Chapter 87 of ITC (HS) 2012, Schedule 1 (Import Policy) as under:

ICD, Faridabad and Ennore Port are added to the existing list of 10 Ports / ICDs through which import of new vehicles is permitted under Policy Condition 2(II)(d) of Chapter 87 to ITC (HS) 2012, Schedule 1 (Import Policy).

Accordingly, Policy Condition 2(II) (d) of Chapter 87 is revised to read as under:

“The import of new vehicles shall be permitted only through the Customs port at Nhava Sheva, Kolkata, Chennai, Chennai Airport, Cochin, ICD Tughlakabad and Delhi Air Cargo, Mumbai Port and Mumbai Air Cargo Complex, ICD Talegaon Pune, **ICD Faridabad and Ennore Port.**”

Two new Customs Ports, ICD, Faridabad and Ennore Port are added to the list of 10 existing ports for importing new vehicles.

INCOME TAX



■ **Profit on sale of DEPB an independent source of income, not eligible for deduction u/s 80IB**

Bloom Decor Ltd. vs. DCIT [TS-196-HC-2013(GU)]

Dated: May 15, 2013

The Supreme Court held that profit from Duty Entitlement Passbook Scheme (DEPB) and Duty Drawback Scheme could not be said to be profit derived from the business of an industrial undertaking eligible for deduction under Section 80-IB of the Income Tax Act. The court thus dismissed a large number of appeals in its common judgment, M/s Liberty India vs. Commissioner of Income Tax. In the Liberty case, the company which manufactures fabrics and finished items, claimed deduction on the profits on account of DEPB and Duty Drawback Scheme. The authorities rejected the claim on the ground that the two benefits constituted export incentives and they did not represent profits derived from

industrial undertaking. Upholding this view, the Supreme Court stated that these incentives could not be credited against the cost of manufacture of goods debited in the profit and loss account for purposes of Section 80-IA/80-IB as such remissions (credits) would constitute independent source of income.

Hence, Supreme Court held not the entire sale proceeds but the profit margin, which would be a part of the sale proceeds, should be ignored while computing the deduction.

■ **Conversion of BSE membership card into shares is capital loss, not business loss**

Bakliwal Financial Services (I) P. Ltd. vs. DCIT [TS-197-ITAT-2013(Mum)]

Dated: May 15, 2013

WDV of Bombay Stock Exchange (BSE) membership card after converting it into shares not a business loss; once converted into shares, loss can be set-off in year of conversion, not in year of sale of shares; sale of shares separately treated as capital loss.

■ **Confirms levy of penalty absent bonafides of transaction, “reasonableness” of expenditure**

Salim Akhtar vs. ACIT

Dated: May 14, 2013

Confirms levy of penalty on Sec 40A (2) disallowance sustained by ITAT for purchase of movie distribution rights from a sister concern; Bonafides of conduct/ transaction and reasonableness of expenditure are two touchstones based on which levy of penalty could be sustained or deleted; Assessee failed to establish both, leading to confirmation of penalty; Assessee's argument that no penalty be levied as ITAT upheld quantum disallowance on estimate basis, rejected: Mumbai ITAT.

■ **Rejects taxing benefits u/s 56 from ‘capital’ transaction like share forfeiture, leasehold land**

Morarjee Textiles Ltd. vs. ACIT [TS-193-ITAT-2013(Mum)]

Dated: May 13, 2013

Forfeiture of share application money capital in nature; Not taxable as income from other source u/s 56 or as business perquisite u/s 28(iv); Leasehold land received from Group company 'free of cost' also cannot be taxed as income u/s 56, being on capital account; Revenue does not have power to substitute 'full value of consideration' with 'fair value' in computing capital gains; Rejects AO's enhancement of capital gains on share transfer with group entity by applying enhanced fair value.

■ **No penalty for reduction in returned loss given no intention of evasion**

Amruta Organics Pvt. Ltd. vs. DCIT

[TS-130-ITAT-2013(PUN)]

Dated: April 10, 2013

Levy of penalty deleted as wrong claim of depreciation not made with intention to evade tax; Tax loss situation continued even after disallowance of depreciation resulting in levy of penalty; ITAT held that "mere mistake in making of a claim in the return of income would not ipso facto reflect concealment or furnishing of inaccurate particulars of income in terms of Sec. 271(1) (c) of the Act : Pune ITAT.

■ **Deletes Sec 14A disallowance on ECB interest, Borrowings not used for shares**

[TML Drive Lines Ltd. vs. ACIT]

Dated: May 13, 2013

Deletes disallowance u/s 14A read with Rule 8D for interest paid on External Commercial Borrowings [ECB]; ECBs obtained for import of machinery and not used for making investments yielding dividend income; Application of Sec 14A

precluded where assessee proves borrowings made and utilized for specific purpose; Bombay HC ruling in Godrej and Boyce and Mumbai ITAT ruling in Hercules Hoists Limited followed: Mumbai ITAT.

■ **Holds debt restructuring expenses as revenue, Rejects 'deferred revenue' principles**

Narmada Chematur Petrochemicals Ltd vs. ACIT, Dated: May 06, 2013

Allows full deduction for premium paid on pre-payment of Non-Convertible Debentures (NCDs) for tax computation, though amortised over 5 years in books; Debt restructuring resulted in commercial benefit by reduction of interest & is allowable as revenue expenditure; No concept of deferred revenue expenditure in IT Act (except as allowed in specified sections).

■ **Capital gain invested within extended period for filing of return is also eligible for Sec. 54F deduction**

[2013] 33 taxmann.com 38 (Punjab & Haryana)

Where assessee paid substantial amount of sale consideration of a residential house for purchase of another residential property within extended period of limitation of filing of return under section 139, his claim for deduction under section 54F was to be allowed.

■ **Contractor carrying airport runway extension eligible for Sec 80IA deduction**

TRG Industries Pvt. Limited vs. DCIT Dated: April 15, 2013

Requirements for claiming deduction u/s 80-IA of developing, operating and maintaining specified infrastructure facilities to be read separately, satisfaction of any one of the conditions was required

to claim the deduction. ITAT held that an assessee was not required to undertake all the activities to qualify as a developer. ITAT held that 'The assessee does not have to develop the entire infrastructure facilities in order to qualify for deduction u/s 80IA of the Act and the assessee has to fulfil either one of the conditions mentioned herein above'. ITAT relied on the Bombay HC ruling in ABG Heavy Industries Ltd [TS-192-HC-2010(BOM)] wherein it was held that an assessee did not have to develop the entire port in order to qualify for a deduction under s. 80-IA-..'. ITAT also relied on Mumbai ITAT ruling in the case of Patel Engineering Ltd. vs. DCIT [TS-27-ITAT-2004(Mum)] and Delhi ITAT decision in Intercontinental Consultants & Technocrats (P) Ltd.

Assessee-contractor carrying airport runway extension under contract with Airport Authority of India qualifies as developer and eligible for deduction u/s 80-IA; Developing part of facility also eligible for deduction.

■ **Gift from Karta's relative also eligible for exemption like individuals**

Harshadbhai Dahyalal Vaidhya (HUF) [TS-167-ITAT-2013(Ahd)] Dated: May 01, 2013

Gift received by Karta of HUF from his relative, not taxable in the hands of HUF as income from other sources u/s 56(2); Exemption for gift from relatives applies to HUF as well; Charging section applicable to individual as well as HUF, hence proviso allowing exemption also applicable to both; Relies on subsequent clarificatory amendment to another provision in Sec 56 extending relief to HUF specifically; Rajkot ITAT ruling in Vineetkumar Bhalodia relied upon.

■ **Disallows depreciation on cars purchased in director's name, distinguishes Mysore Minerals ruling**

Edwise Consultants Pvt. Ltd.

[TS-166-ITAT-2013(Mum)]

Dated: April 29, 2013

No depreciation on cars purchased by company in directors' names; Assessee company not owner by mere disclosure of cars as asset in balance sheet; No compulsion or explanation for purchasing car in directors' names; SC ruling in Mysore Minerals case not applicable to assessee's facts; Partially confirms disallowance u/s 40A(2) for incentives paid to directors;

Directors not whole-time & remuneration was paid due to high profitability; Mumbai ITAT.

■ **Holds loan foreclosure charges as 'interest'; Deduction against house property income allowed**

Windermere Properties Pvt. Ltd. vs. DCIT

Dated: May 02, 2013

Prepayment charges payable on foreclosure of housing loan qualify as 'interest'; Charges deductible u/s 24(b) against house property income; 'Interest' definition u/s 2(28A) states 'any amount' which includes charges paid for not utilizing credit facility; Prepayment charges have direct and live link with obtaining loan.

■ **Cultivation by "self" not precondition for capital gains exemption on Agri land**

CIT vs. Amrutbhai S Patel

Dated: April 23, 2013

Capital gains arising to individual assessee on compulsory acquisition of agricultural land situated within municipal limits, exempt from capital gains tax u/s 10(37); Pre-condition that land should be used by assessee for agricultural purposes for 2 preceding

years, fulfilled; No requirement that land should be cultivated by assessee himself; Cultivation of land through hired laborer's or family members also sufficient; Exemption can't be denied only because assessee's residence not close to agricultural land and assessee engaged in other business : Gujarat HC.

■ **CBDT introduces mandatory verification of salary TDS certificate generated online**

CIRCULAR NO. 04/2013

Dated: April 17, 2013

CBDT introduces mandatory verification of Part A of Form No. 16 (Salary TDS) generated from TRACES Portal; Verification of form can be made manually or by using digital signature; Part B of Form 16 to continue to be generated manually by employer; System generated Part A of Form no 16 containing Unique Identification Number mandatory.

■ **Advance booking of a hotel suite is capital asset; its transfer is chargeable to tax**

ACIT V. SHABNAM SACHDEV [2013] 32 taxmann.com 22 (Delhi - Trib.)

Dated: April 11, 2013

Long-term advance booking of hotel suite, which gives assessee perpetual right of possession and right to transfer same, is capital asset under section 2(14) and profit on its transfer is taxable as capital gain. However assessee is not entitled to benefit of indexation on amount paid as maintenance charges to hotel.

■ **Rules on business "set-up" in real-estate; Allows loss on interest expense**

CIT v Dhoomketu Builders & Developers P Ltd

Dated: May 13, 2013

Applying for land acquisition tender,

obtaining loan for deposit of earnest money indicates that real estate business is 'set-up'; Auditor's observation on non-commencement of business irrelevant, 'set-up' & 'commencement' of business are distinct; Actual acquisition of land not necessary for set-up of business; Upholds business loss claimed by DLF's subsidiary on account of interest paid on loan obtained for keeping earnest money deposit: Delhi HC.

■ **No exemption for 'LTC' spent on overseas journey even if part of journey is performed in India**

OM PARKASH GUPTA V. ITO [2013] 33 taxmann.com 169 (Chandigarh - Trib.)

Dated: May 13, 2013

LTC is exempt from tax only when employee has utilized LTC for travel within India. Nothing in Rule 2B provides assessee with a liberty to claim exemption where part of his package is spent on his overseas travel and part of his journey has been performed within India.

■ **Urban agricultural land liable to Wealth Tax**

Shri Jaswinder Singh vs. WTO

Dated: May 10, 2013

Agricultural land situated within 8 kms of municipal limit subject to wealth tax; Portion covered by pond excluded from WT since it's not 'land'; Relies on P&H HC ruling in Charanpal Singh Mann and Yograj Singh & co-ordinate bench ruling in Tara Singh: Amritsar ITAT.

■ **Sec. 10A benefit allowed on exports net-off imports; 'Two-way traffic' unnecessary says ITAT**

Hazel Mercantile Limited [TS-184-ITAT-2013(Mum)]

Dated: May 09, 2013

Sec. 10A benefit available on export

proceeds, directly adjusted against import payable and not actually brought in India; Adjustment of receivable & payable was approved by RBI; "Two-way traffic" unnecessary, by way of receiving and subsequently paying money; Reliance placed on SC ruling in J. B. Boda & Co; Assessee, a star export house, entitled to claim Sec 10A benefit on export proceeds received within extended period of 360 days from shipment: Mumbai ITAT.

■ **Offshore services not taxable under DTAA, despite being covered in Sec. 9(1) (vii) post-amendment**

IHI Corporation v. ADIT [2013] 32 taxmann.com 132 (Mumbai - Trib.)

Income from the offshore supplies, even though chargeable to tax under Section 9(1)(vii), yet was exempt under the DTAA and could not be charged to tax in India in view of Section 90(2) if it is not effectively connected with its permanent establishment in India.

■ **Assigning leasehold rights, allotted for business, not "Adventure in nature of trade"**

Ruby Mills Limited [TS-165-ITAT-2013(Mum)]

Dated: April 26, 2013

Consideration received for assignment of leasehold rights in land to third party taxable as capital gains, not business income; Transaction not "adventure in the nature of trade"; Though land allotted by CIDCO for construction of administrative office, assessee's main business was textile manufacturing, not land development; Property rights not assigned to third party for earning profit, but because assessee was unable to utilize them due to unfavorable circumstances; SC ruling in G. Venkataswamy Naidu relied on : Mumbai ITAT.

■ **Assessee can claim both sections 54 and 54f deductions for investment in one house, ITAT rules**

VENKATA RAMANA UMAREDDY V. DY. CIT [2013] 32 taxmann.com 157 (Hyderabad - Trib.)

Section 54 and section 54F are independent provisions and assessee can claim exemption under both sections for investment in same house

In the instant case, during the relevant financial year, the assessee had earned long-term capital gain ('LTCG') out of transfer of two distinct and separate assets - one being a plot of land and the other a house property. He claimed that the entire LTCG arising from the sale of the two assets was invested in purchase of the new residential house and, hence, he was entitled to avail of exemption under sections 54 and 54F. The AO rejected such claim by holding that for claiming exemption under sections 54 and 54F the assessee had to invest in two houses.

Further, the CIT (A) upheld the order of AO. Aggrieved assessee filed the instant appeal.

The Tribunal held in favour of assessee as under:

- (1) Sections 54 and 54F are independent of each other and operate in respect of LTCG arising out of transfer of distinct and separate long-term capital assets. However, both the sections allow exemption only on purchase or construction of a new residential house;
- (2) The only reasoning on which the lower authorities had rejected assessee's claim of exemption under section 54 was that the assessee couldn't claim exemption under both the sections towards investment in a single house. According to the lower authorities, for claiming exemption

under sections 54 and 54F the assessee had to invest in two houses. Such an interpretation of the provisions was totally misconceived and misplaced;

- (3) There was also no specific bar either under section 54 or 54F of the Act prohibiting allowance of exemption under both the sections in case the conditions of the provisions were fulfilled;
- (4) Since long-term capital gain arose from sale of two distinct and separate assets, viz., residential house and plot of land and the assessee had invested the entire capital gain in purchase of a new residential house, he was entitled to claim exemption both under sections 54 and 54F

■ **Deletes Sec 14A disallowance on ECB interest, Borrowings not used for shares**

[TML Drive Lines Ltd. vs. ACIT]

Dated: May 13, 2013

Deletes disallowance u/s 14A read with Rule 8D for interest paid on External Commercial Borrowings [ECB]; ECBs obtained for import of machinery and not used for making investments yielding dividend income; Application of Sec 14A precluded where assessee proves borrowings made and utilized for specific purpose; Bombay HC ruling in Godrej and Boyce and Mumbai ITAT ruling in Hercules Hoists Limited followed: Mumbai ITAT.

■ **Holds debt restructuring expenses as revenue, Rejects 'deferred revenue' principles**

Narmada Chematur Petrochemicals Ltd vs. ACIT,

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Allows full deduction for premium paid on pre-payment of Non-Convertible Debentures (NCDs) for tax computation,

though amortised over 5 years in books; Debt restructuring resulted in commercial benefit by reduction of interest & is allowable as revenue expenditure; No concept of deferred revenue expenditure in IT Act (except as allowed in specified sections).

■ **Share conversion to investment not sham; Is Capital gains, not business income**

ACIT vs. Superior Financial Consultancy Services Pvt. Ltd. [TS-135-ITAT-2013(Mum)]
Dated: April 12, 2013

Upholds income as capital gains & not business;. Assessee converted its shares held as stock in-trade into investment on change of business model; No specific ban on such conversion or vice versa; Such conversion known to commercial world; Relied on SC ruling in Kikabhai Premchand; Conversion not to be termed as sham transaction or motivated by tax avoidance as such conversion visible from audited accounts accompanied by clarificatory notes; Assessee can be termed as an investor and a speculator in shares simultaneously.

■ **Expenses for inter-bank connectivity of ATMs “capital” in nature, Depreciation allowable**

Development Credit Bank Ltd. vs. DCIT
Dated: April 24, 2013

Expenditure by banks on Shared Payment Network Systems (SPNS) enduring in nature, as facility provides connectivity of ATM of one bank to another bank; Expenditure not deductible as revenue, but depreciation allowable; Depreciation also allowable on sale and lease back transactions; Signing of return of income by person other than Managing Director does not render such return invalid, but merely defective: Interest u/s 234A deleted.

■ **Rules on business “set-up” in real-estate; Allows loss on interest expense**
CIT v Dhoomketu Builders & Developers P Ltd
Dated: May 13, 2013

Applying for land acquisition tender, obtaining loan for deposit of earnest money indicates that real estate business is 'set-up'; Auditor's observation on non-commencement of business irrelevant, 'set-up' & 'commencement' of business are distinct; Actual acquisition of land not necessary for set-up of business; Upholds business loss claimed by DLF's subsidiary on account of interest paid on loan obtained for keeping earnest money deposit: Delhi HC.

■ **Holds loss from forex forward contract as “speculative”; rejects hedging argument**

S. Vinodkumar Diamonds Pvt. Ltd. v ACIT [TS-179-ITAT-2013(Mum)]
Dated: May 08, 2013

Disallows loss on foreign exchange forward contract entered to safeguard forex risk; Forward contract not hedging contract, but a speculative transaction; For assessee dealing in diamond exports, forward contract in diamonds could qualify as 'hedging' contract, not foreign exchange forward contract; ITAT lays down 7 tests to determine hedging contract as per the definition of speculative transactions u/s 43(5): Mumbai ITA

■ **Consideration for transfer of merchant banking business non-taxable capital receipt**

IGFT Ltd. vs. ITO [TS-198-ITAT-2013(Mum)]
Dated: May 16, 2013

In an instant case, an assessee had received a certain sum of money as consideration for transfer of merchant banking business which was discontinued. Therefore, the receipt was capital in nature and it could not be held as compensation received during the course

of business. ITAT further held that the Revenue did not have any authority to decide the adequacy of the consideration.

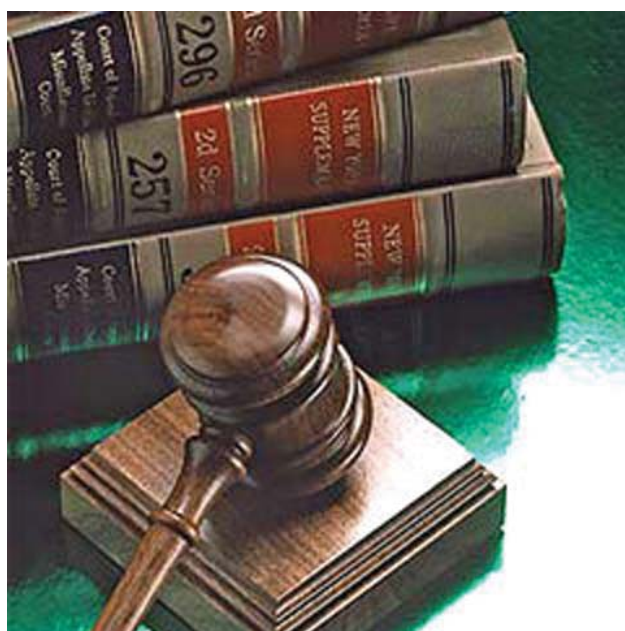
ITAT also distinguished the Karnataka HC ruling in CIT vs. Tata Coffee Ltd (2009) 29 DTR 336 (Kar) relied upon by CIT (A). ITAT stated that in the said case, the receipts were considered as revenue as discontinuance of the unit had not resulted in the loss of enduring trading asset. Contrary to this, in the assessee's case, it did not have any active source of income. The assessee's income post transfer consisted only of dividend from shares and mutual funds, profit on sale of shares, interest income and nominal consultancy charges. Hence, it was observed that, there was a substantial loss in profit earning capacity of the assessee after entering into the agreement. Finally, regarding taxation of capital receipt, ITAT held that, as there was no cost of acquisition for the assets, it could not be taxed as capital gains. ITAT further ruled that the nature of transfer did not attract the provision of Sec. 50B [slump sale] as there was no transfer of an undertaking by the assessee. Separately, ITAT also considered the non-compete fee as capital receipt. Reliance was placed on SC ruling in Guffic Chem. (P.) Ltd. V. CIT [332 ITR 602 (SC)]. ITAT noted that the amendment to the IT Act for taxing non-compete receipts was not applicable to the relevant AY.

- **Arm's Length Pricing**
NOTIFICATION NO. 30/2013
[F.NO. 500/185/2011-FTD I]
Dated: April 15, 2013

In exercise of the powers conferred by the second provision to sub-section (2) of section 92C of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby notifies that where the variation between the arm's length price determined under section 92C and the price at which the international transaction or

specified domestic transaction has actually been undertaken does not exceed one per cent of the latter for wholesale traders and three per cent of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2013-2014.

CENTRAL EXCISE



- **Change in Appeal Forms**
Notification No. 06/2013-Central Excise (N.T.),
Dated: April 10, 2013
Forms EA-4, EA-5 and EA-6 appeal Forms to CESTAT have been amended and they shall come into effect from 1st June, 2013 vide CBEC.
- **Procedure for Registration in ACES**
Notifications dated 12th April, 2013.
Procedure for Registration in ACES: CBEC has notified the Procedure for Registration in ACES for Existing Assesses and also for New Assesses vide CBEC Notifications dated 12th April, 2013.
For details refer to www.cbec.gov.in

CUSTOMS



■ Change in Appeal Forms

Notification No. No.37/2013 – Customs (N.T.)

Dated- 10th April, 2013

Forms CA-3, CA-4 and CA-5 appeal Forms to CESTAT have been amended and they shall come into effect from 1st June, 2013.

■ Exemption of goods when imported into India against Post Export EPCG Duty Credit Scrip issued by Regional Authority

[Notification No. 23/2013-Cus]

Dated: April 18, 2013

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods when imported into India against a Post Export EPCG duty credit scrip issued by the Regional Authority in accordance with paragraph 5.11 under Chapter 5 (Export Promotion Capital Goods (EPCG) Scheme) of the Foreign Trade Policy which provides for duty remission in proportion to export obligation fulfilled (hereinafter referred to as the said scrip) from –

- (a) the whole of the duty of customs leviable

thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and

(b) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act.

■ Refund of 4% Counter Vailing Duty (CVD) Special Additional Duty (SAD) Extension of time upto 30th September 2013, for using re-credited 4% CVD (SAD) amount in DEPB.

Circular No. 18 /2013-Customs

[F.No.401/16/2012-Cus.III]

Dated: April 29, 2013

Circular No. 27/2010-Customs, dated 13.08.2010, regarding procedure on refund of 4% Special Additional Duty (SAD). The above Circular provides the facility of manual filing of Bill of Entry for utilizing the amount of re-credited 4% SAD refunds for payment of duty in case of re-credited DEPB/ Reward Scheme scrips upto 31-03-2012. Circular No. 10/2012-Customs dated 29.03.2012 further extended the time upto 30.06.2012 utilizing the amount of re-credited 4% SAD refunds for payment of duty in case of re-credited DEPB/ Reward Scheme scrips.

Notification No.: 04/2013-Cus (ADD),

Dated: 10-04-2013

Seeks to extend the levy of anti-dumping duty imposed vide notification No. 49/2008-Customs, dated the 10th April, 2008 on imports of 'Sodium Nitrite', originating in, or exported from, European Union for a further period of one year i.e. upto and inclusive of 10th April, 2014.

<http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2013/cs-add2013/csadd-04-2013.htm>

Notification No.: 05/2013-Cus (ADD),

Dated: 10-04-2013

Seeks to extend the levy of anti-dumping duty imposed vide notification No. 127/2008-Customs, dated the 3rd December, 2008 on imports of 'Sulphur Black',

originating in, or exported from, People's Republic of China for a further period of one year i.e. upto and inclusive of 10th April, 2014.

<http://www.cbec.gov.in/customs/cs-act/notifications/notfnis-2013/cs-add2013/csadd-05-2013.htm>

**Notification No.: 06/2013 - Cus (ADD),
Dated: 12-04-2013**

Seeks to impose definitive anti-dumping duty on Plain Gypsum Plaster Board originating in or exported from China PR, Indonesia, Thailand and UAE.

<http://www.cbec.gov.in/customs/cs-act/notifications/notfnis-2013/cs-add2013/csadd-06-2013.htm>

**Notification No.: 09/2013 - Cus (ADD),
dt 26-04-2013**

Seeks to modify anti-dumping duty on Carbon black used in rubber applications, originating in, or exported from the People's Republic of China, Thailand, Russia and Australia.

<http://www.cbec.gov.in/customs/cs-act/notifications/notfnis-2013/cs-add2013/csadd-09-2013.pdf>

**Notification No.: 10/2013-Cus (ADD),
Dated: 03-05-2013**

Supersedes notification No. 114/2008, dated the 31st October, 2008 so as to withdraw levy of anti-dumping duty on imports of Phenol, originating in or exported from Singapore and European Union and to continue levy of anti-dumping duty on imports of Phenol, originating in or exported from South Africa up to the 30th October, 2013.

<http://www.cbec.gov.in/customs/cs-act/notifications/notfnis-2013/cs-add2013/csadd-10-2013.htm>

**Notification No.: 28/2013-Cus,
Dated: 10-05-2013**

Seeks to amend notification No. 12/2012, dated the 17th March, 2012 so as to allow transfer of goods imported for oil exploration from one eligible project to another.

<http://www.cbec.gov.in/customs/cs-act/notifications/notfnis-2013/cs-tarr2013/cs28-2013.pdf>

**Notification No.: 27/2013-Cus,
Dated: 10-05-2013**

Amends Notification No. 12/2012-Customs dated 17.03.2012 to reduce Customs Duty on Cashew nuts.

http://www.cbec.gov.in/customs/cs-act/notifications/notfnis-2013/cs-tarr2013/cs_28-2013.pdf

**Notification No.: 11/2013-Cus (ADD),
Dated: 16-05-2013**

Seeks to impose anti-dumping duty on imports of Peroxosulphate, originating in or exported from People's Republic of China and Japan for a further period of 5 years pursuant to final findings of SSR.

<http://www.cbec.gov.in/customs/cs-act/notifications/notfnis-2013/cs-add2013/csadd-11-2013.pdf>

SERVICE TAX



■ **New format for filing Service tax appeal and cross objections**

[Notification No. 5/2013-ST]

Dated: April 10, 2013

The CBEC has notified of a new format for filing appeals and cross-objections in Service tax matters before the Appellate Tribunal. The new format prescribed would be applicable for all Service tax appeals and cross-objections filed with effect from 1 June, 2013.



■ Change in Appeal Forms

[Notification No. 5/2013-ST]

Dated: April 10, 2013

Forms ST-5, ST-6 and ST-7 the appeal Forms to CESTAT have been amended and they shall come into effect from 1st June, 2013.

■ ST 3 Filing date extended

Central Board of Excise and Custom, vide Order No. 03/2013-Service Tax dated 23rd April, 2013, has extended the date of submission of the Form ST-3, for the period from 1st October 2012 to 31st March 2013, from 25th April, 2013 to 31st August, 2013.

The Form ST-3, for the period from 1st October 2012 to 31st March 2013, is expected to be available on ACES around 31st of July, 2013.

■ No service tax on Chit fund business

Delhi HC held that no service tax is attracted on the Chit Fund business vide decision given in the case of Delhi Chit Fund Association Vs UOI W.P. (C) 4512/2012 decided on 23rd April, 2013.

■ Security and insurance services are eligible as input services

[2013] 33 taxmann.com 19 (Mumbai - CESTAT)

Rule 2(l) of the Cenvat Credit Rules, 2004 – CENVAT Credit–Input service– Security Services – Any service which has nexus with business activity of assessee, whether it is manufacturing or rendering service, has to be treated as ‘input service’. Hence, security services and insurance services were eligible as input services.

■ Services provided by way of erection of pandal or shamiana are liable to Service tax

[Circular No. 168/3/2013]

Dated: April 15, 2013

The CBEC has clarified that the activity of providing Pandal or Shamiana, along

with erection thereof and other incidental activities, does not amount to transfer of right to use goods (since effective possession and control over Pandal or Shamiana remains with the service provider) and hence is not a 'deemed sale'. Accordingly, the same would attract Service tax.

■ Construction of hostels for educational institutes is non-commercial purpose – ST not leviable

[2013] 33 taxmann.com 59 (Mumbai - CESTAT) Anand Construction Co. v. Commissioner of Central Excise, Kolhapur

Building constructed as hostel for residence of students studying in an educational institution is a non-commercial/non-industrial building and, therefore, such construction is not liable to service tax under Works Contract Services.

■ Filling of ash into tankers for transport thereof isn't covered under 'Cargo Handling' service

[2013] 33 taxmann.com 18 (New Delhi – CESTAT) Commissioner of Customs, Central Excise & Service Tax, Bhopal v. Maa Sharda Transport

Filling of ash into bulkers/tankers for transport thereof is ancillary to transportation of goods and is not covered by Cargo Handling Services.

■ Service provided as an employee isn't chargeable to service tax

[2013] 32 taxmann.com 152 (ECJ) EUROPEAN COURT OF JUSTICE, Elliniko Dimosio v. Maria Karageorgo

- I. Section 65B (44) of the Finance Act, 1994 - Service – Exclusion of services provided by an employee to employer – Where assessee was working as translator for Ministry of Foreign Affairs and Ministry of Foreign Affairs was liable to third parties for any acts or omissions on her part as a translator, there was an

employer-employee relationship between assessee and Ministry - Services provided by assessee as an employee were not chargeable to service tax.

[Paras 36 to 42]

II. Section 73A of the Finance Act, 1994, read with section 11B of the Central Excise Act, 1944 - Service tax collected from any person to be deposited with Central Government— Assessee, who was an employee, had wrongly paid service tax on her receipts regarding herself as a self-employed person— She had mentioned such tax on receipts issued to Ministry - HELD : An amount mentioned in error by way of service tax on an invoice or other document serving as invoice can be refunded where services themselves are not subject to service tax - However, such refund shall be subject to doctrine of unjust enrichment [Para 53].

■ **Support services provided by local authorities to business entity are liable to ST**

[2013] 30 taxmann.com 234 (ECJ), EUROPEAN COURT OF JUSTICE, *Commission of the European Communities v. Ireland*

Support services by way of off-street parking or other facilities provided by local authorities to any business entity would be liable to service tax.

■ **Erection of sluice gates in agricultural dams isn't 'Erection, Commissioning and Installation' service**

[2013] 33 taxmann.com 17 (Mumbai - CESTAT)

Erection of sluice gates in agricultural dams constructed by various corporations cannot, prima facie, be regarded as "Erection, Commissioning and Installation Services", as agricultural dams or sluice gates thereto cannot be considered as a plant and machinery or equipment or structures thereof because they are in nature of infrastructural construction catering to

needs of agriculture and are excluded from charge of service tax under commercial and industrial construction service and Works Contract services specifically – Hence, prima facie, said activity is not liable to service tax.

■ **Canteen facilities provided to employees for private use is provision of service**

[2013] 30 taxmann.com 416 (ECJ) EUROPEAN COURT OF JUSTICE

Section 65B(44) of the Finance Act, 1994 - Service— Provision, free of charge, of meals in company canteens to business contacts in course of meetings held on company premises cannot be regarded as a 'provision of service' where objective evidence indicates that those meals were provided for strictly business-related purposes. However, provision, free of charge, of meals by a company to its staff on its premises for private use of such employees is to be regarded as provision of service to employees, except where business needs of company require employer to ensure that meals are provided.

■ **Distributors aren't liable to pay ST on commission earned when ST on total SIM value is paid by service provider**

[2013] 33 taxmann.com 71 (New Delhi – CESTAT)

Commission earned by distributors of SIM cards is not liable to service tax when service tax on full value has been paid by telecom service provider.

■ **No tax to be deducted from gain accrued to FII on cancellation of forward contract if it isn't taxable in India**

[2013] 33 taxmann.com 91 (Mumbai - Trib.)

Where gain on account of rollover/cancellation of forward cover contract was not taxable in hands of Foreign Institutional Investor as per relevant DTAA, there was no obligation on part of assessee to deduct tax at source.

■ **ST paid on service of commission agent facilitating sales and marketing of goods is input service**

[2013] 33 taxmann.com 122 (Ahmedabad – CESTAT)

Service tax paid on services of a Commission Agent who facilitated sales and marketing of manufactured goods is admissible as input service credit.

■ **Service Tax Voluntary Compliance Encouragement (STVCE) Rules, 2013**

Notification No.10/2013 -Service Tax

Dated: May 13, 2013

Service Tax Voluntary Compliance Encouragement (STVCE) Rules, 2013 had been implemented to bring into effect STVCE Scheme to encourage voluntary compliance and broaden the tax base.

■ **Notification: No.09/2013 – Service Tax**

Dated: May 08, 2013

[F.No. 334 /3/ 2013 -TRU]

G.S.R (E). – In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 468 (E), dated the 20th June, 2012, namely:-

Sl. No.	Description of taxable service	Percentage	Conditions
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly, except where entire consideration is received after issuance of completion certificate by the competent authority,-		(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004;
	(a) for a residential unit satisfying both the following conditions, namely:-	25	(ii) The value of land is included in the amount charged from the service receiver."
	(i) the carpet area of the unit is less than 2000 square feet; and		
	(ii) the amount charged for the unit is less than rupees one crore;		
	(b) for other than the (a) above.	30	

Note: The principal notification was published in the Gazette of India, Extraordinary vide Notification No. 26/2012 -Service Tax, dated the 20th June, 2012, vide number G.S.R. 468 (E), dated the 20th June, 2012 and was last amended vide Notification No.2/2013 - Service Tax, dated the 1st March, 2013, vide number G.S.R.152(E), dated the 1st March, 2013.



SEBI



■ SEBI: Master Circular relating to Depositories (CIR/MRD/DP/13/2013)

Dated April 15, 2013

Securities and Exchange Board of India (SEBI) has been issuing various circulars/directions from time to time. In order to enable the users to have an access to all the applicable circulars/directions at one place, Master Circular for Depositories has been prepared.

This Master Circular is a compilation of the circulars/communications issued by SEBI up to March 31, 2013 and shall come into force from the date of its issue.

This Master Circular shall supersede previous Master Circular CIR/MRD/DP/10/2012 dated: April 13, 2012.

■ SEBI: REDRESS OF INVESTOR GRIEVANCES THROUGH SEBI COMPLAINTS REDRESS SYSTEM (SCORES)

SEBI, vide Circular dated 17th April, 2013, has, pursuant to the provisions of Section 15C of the SEBI Act, 1992, called upon all listed companies to redress the grievances of investors and inform them within 30 days of the receipt of the complaints.

The details of investor grievances relating to the respective companies are available at the webpage <http://scores.gov.in/admin>, accessed through the respective SCORES user ID and password of each company.

The companies which are yet to obtain SCORES user ID and password are required to send their details as per the Form-A to SEBI (hard copy) and by email to scores@sebi.gov.in and obtain the SCORES user ID and password.

Failure to obtain the SCORES user ID and password within 30 days of issue of this circular would not only be deemed as non-redressal of investor grievances but also indicate willful avoidance of the same.

Failure by companies to file Action Taken Reports under SCORES within 30 days of date of receipt of the grievance may also attract the provisions of section 15A(a) of the SEBI Act, 1992.



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