“We are what our thoughts have made us; so take care about what you think.

Words are secondary. Thoughts live; they travel far”

Swami Vivekananda

For Departmental Use Only

LET US SHARE

A Compilation of Best Practices & Orders
of Income Tax Department

Vol. VII 2014

Published by
DIRECTORATE OF INCOME TAX (PR, PP & OL)
NEW DELHI

अरूण जेटली
वित्त, कार्पोरेट कार्य
एवं सूचना व प्रसारण मंत्री
भारत

Arun Jaitley
Minister of Finance, Corporate Affairs
and Information & Broadcasting
India

MESSAGE

I am delighted to note that the Income-tax Department is bringing out the 7th Volume of its compendium 'Let us Share - A Compilation of Best Practices and Orders'. I see this publication as being in sync with the government's commitment to a knowledge driven public service, and to this end, I laud its continuing efforts in chronicling the same.

The India of today is an aspirational India, determined to be counted amongst the foremost economies of the world. In my Budget Speech of February 2015, I have laid out a roadmap for accelerating growth, enhancing investment, attracting capital, and creating new jobs through promotion of domestic manufacturing and 'Make in India'. My proposals include several steps for simplification of tax procedures without compromising tax revenues, extension of benefits to the middle class tax payers, and also a decision to introduce legislation for combating black money stashed abroad. I am confident that these policy initiatives will be effectively implemented by the Income-tax Department.

I do believe that a robust knowledge and technology driven tax administration would be essential for providing the required impetus to these initiatives. Learning and improvement through wide dissemination of quality output of officers and staff of the Income-tax Department will play an important role. I am sure that this publication will not only showcase their good work, but also contribute towards improving the overall tax governance in the country and the confidence of taxpayers in the tax system.

I congratulate the Department for continuing with this praise-worthy effort.

(Arun Jaitley)

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जयंत सिन्हा
Jayant Sinha

वित्त राज्य मंत्री
भारत सरकार
नई दिल्ली–110001
MINISTER OF STATE FOR FINANCE
GOVERNMENT OF INDIA
NEW DELHI-110001

MESSAGE

I am pleased with the publication of this Seventh Edition of 'Let us Share - A compilation of Best Practices and Orders'. Over the years, the Income Tax Department has instituted numerous innovative schemes for augmenting the expertise of its personnel and for the benefit of tax payees. This series of publications has proved to be a remarkable mechanism to showcase the skills, technical abilities and commitment to duty of the Department's personnel.

Tax governance is one of the most important areas of public policy all over the world. Since taxes are the backbone of any economy, their administration needs to be sensitive and responsive, yet watchful of tax evaders. I am confident that this compilation will help in knowledge sharing within and outside the Income Tax Department. Such collaborative efforts will contribute towards better governance of tax laws.

I wish this publication all success, and trust that it will achieve the desired goals.

New Delhi
16.03.2015

(Jayant Sinha)

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शक्तिकान्त दास, आईएएस
Shaktikanta Das, IAS

वित्त मंत्रालय
भारत सरकार
नॉर्थ ब्लाक, नई दिल्ली–११०००१
Secretary (Revenue)
Ministry of Finance
Government of India
North Block, New Delhi-110001

Date : 9th March, 2015

MESSAGE

It gives me immense pride and pleasure to be associated with 'Let Us Share – A Compilation of Best Orders and Practices', which is now into its seventh volume of publication. Benjamin Franklin once said that an investment in knowledge pays the best interest. 'Let Us Share' is an investment by the Income-tax Department in knowledge management which promises high yield in terms of dissemination of best practices, inculcating certain management principles and encouraging professionalism. With this publication in hand, I am sure every official of the Department will be inspired to emulate the example set by their colleagues, so as to make this knowledge sharing mechanism truly meaningful.

The Income-tax Department has kept itself abreast of the global trends in fiscal policy and public administration. It has made great strides in new areas of taxation, information sharing between nations, double taxation avoidance, as also providing improved services to the taxpayers. There has been a conscious attempt to move away from intrusive measures to a more customer-friendly, non-invasive and technology driven department by putting in place the e-filing portal, CPC, TRACES, ASK etc. I am sure this excellence of yore will help the Department in devising further strategies for expansion of tax base, curbing of tax evasion and simultaneously ensuring better services for taxpayers.

I offer my heartiest congratulations to the officers whose work has been recognized in this volume. I also wish to convey my appreciations and best wishes to the Department for this constructive exercise.

(Shaktikanta Das)

अनीता कपूर, आई आर एस
सी बी डी टी
Anita Kapur, IRS
Chairperson, CBDT

केन्द्रीय प्रत्यक्ष कर बोर्ड
राजस्व विभाग
वित्त मंत्रालय
नार्थ ब्लॉक, नई दिल्ली - 110001
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
North Block, New Delhi
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Tel : 23092648

MESSAGE

l am happy to write this message for the Seventh Volume of 'Let Us Share - A Compilation of Best Practices and Orders'. Publications like this, which record success stories of individual or team initiatives in investigation, approaches to legal and accounting issues and management practices not only acknowledge the excellent work, but also inspire.

Our department has the onerous task of raising resources efficiently and in a fair manner. Tax evasion creates inequity and if not countered effectively, impacts the compliance culture. So while making it easy for taxpayers who are willing to pay the right taxes at the right time, we must address evasion sternly. This requires a delicate balancing and maturity in approach. Proper investigation of a case, with due adherence to principles of natural justice, and a well reasoned assessment order are a must, so that tax evaders cannot seek the shield of tax terrorism accusations, to intimidate our officers and spoil our organizational image. We have to make increased use of technology to identify cases with higher risk of noncompliance and allocate sufficient human resources to make legally sustainable assessment orders. Restructuring has given us more manpower and we have to equip them with technical, legal and soft skills. Knowledge sharing is a good way to improve efficiency and keep an organization vibrant and the people connected. That's why Let Us Share is important.

l compliment the contributors to this volume and sincerely hope that all officers and officials of the Department will read this volume, which documents the good work of their colleagues, and learn from this shared experience.

(Anita Kapur)

CONTENTS

अतुलेश जिन्दल
Atulesh Jindal
Member, CBDT &
विशेष सचिव, भारत सरकार
Special Secretary to
the Govt. of India

भारत सरकार
GOVERNMENT OF INDIA
(वित मंत्रालय / राजस्व विभाग)
Ministry of Finance /
Department of Revenue
केन्द्रीय प्रत्यक्ष कर बोर्ड
Central Board of Direct Taxes
नार्थ ब्लॉक, नई दिल्ली – 110001
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FOREWORD

I appreciate that the Seventh Volume of 'Let Us Share' is ready for release. This Volume is a compendium which gives the officers an opportunity to benefit from the work of Departmental personnel and learn from what others have Iaboured hard for. Knowledge is light which glows brighter with sharing.

ln a rapidly changing scenario, the officers need to be trained for being fully equipped to effectively handle various methods of tax evasion. Many innovations are being devised to bolster organizational setup and working of the Income-tax Department. This Volume is an endeavor of the Department to strengthen the foundation of knowledge. I am sure that this Volume too, like the earlier ones, would be of tremendous help to all.

I take this occasion to congratulate all those whose work is included in this Volume, and appreciate the enthusiasm of all others who have referred their orders and initiatives for the evaluation process. I also congratulate the team of officers who have worked at various levels of the compilation process and have successfully brought out this edition. The Editorial Board of this Volume deserves a special mention for its efforts in facilitating the process from inception to publication.

I hope that this publication will be enthusiastically received and act as a guide for all.

Atulesh Jindal
Member (R), CBDT

एस.के. श्रीवास्तवा
S. K. Srivastava

सत्यमेव जयते

प्रधान आयकर
महानिदेशक (प्रशासन)
Pr. DGIT (Administration)

ACKNOWLEDGEMENTS

On the occasion of publication of the seventh volume of 'Let us Share', I would like to express my recognition to the committed hardwork of all the officers whose contribution is manifest in this edition. I would also like to record my appreciation to the endeavors of those who sent their work to the committee, but the same could not be incorporated in this publication.

2. Innovation is an engine of progress. At this juncture, when the Department is in a phase of transition after restructuring, showcasing of the exemplary work of our officers by way of publication of this compilation will definitely result in framing of good assessment orders. I believe that work of such caliber would continue in future also.

3. The efforts of the Regional Evaluation Committee (REC) & National Evaluation Committee (NEC) are laudable and I appreciate the zeal with which these Committees has dispassionately evaluated the entries for compilation of this edition of "Let us Share' and my sincere thanks is due to them.

4. The Editorial Board team of Sh. P. R. Sethi, Chief Commissioner of Income Tax, Chennai has done commendable work of editing and compiling this volume, by maintaining high degree of efficiency and quality and this effort is praiseworthy. Meticulous designing of cover page, logo, separators, presentation and final selection of entries is noteworthy.

5. Sh. R. M. Garg, Pr. CIT-2, New Delhi (former DIT (PR PP & OL), Smt. Surabhi Ahluwalia, DIT (PR, PP & OL) and her team have done an excellent job in bringing out this volume, in such a short span of time.

6. Finally, I would like to place on record my special gratitude to Smt. Anita Kapur, Chairperson, Central Board of Direct Taxes, who not only guided us, but has also been a constant source of inspiration and motivation for the entire team.

16/3/15

Dated 16th March, 2015

S. K. Srivastava

पी. आर. सेठी
आई आर एस
P R Sethi
IRS

Director General of Income Tax
Chandigarh, and
Chairman, Editorial Board

Dated : 19-03-2015

From The Editorial Board

With a great sense of satisfaction I place in your hands the seventh Volume of “Let us Share - A Compilation of Best Orders and Practices", and take pride in playing a role in the continuation of this innovative practice initiated in 2008. Due to ever increasing complexities in the legal, economic and financial arenas all over the globe, the need for efficient ways of learning and sharing cannot be over emphasised. “Let us Share” has positioned itself as an important enabler to constantly update personnel of the Income tax Department and keep them abreast of these challenges. While continuing with the basic layout and concept as initially conceived, we have attempted to take this compilation to a still higher level by introducing a logo that the readers will notice on the cover. It was felt that with “Let us Share" firmly taking its due place in our functioning, as a brand that can hold its own, it was time to add value to the same by introducing this logo.

2. Over the years, “Let us Share" has portrayed the outstanding work done by officers and staff, as individuals or groups, in almost all activities that encompass the working of our Department, such as assessments, searches and seizures, surveys, appellate functions, representation before the appellate authorities, in areas of international taxation and transfer pricing, best practices adopted in our day to day working, judicial and administrative work, and so on. I am pleased to report that this trend has continued this year as well. The fact that we have received and included in this volume, contributions in all these areas, bears testimony to the fact that our officers and staff have been putting in their best effort in discharging their responsibilities in all areas. Application of personal ingenuity, penetrative use of legal provisions, deft utilization of available web-based information and data bases, using market information and plain diligence are some the features that add to the richness of the efforts covered in this volume. This is very encouraging and bodes well for the department.

3. I would like to take this opportunity to thank all those who have sent in their contributions to this volume, irrespective of whether they find mention or not. They have not only enriched the department by their hard work resulting

Editorial Board Members from L to R : Mr. B. R. Balakrishnan Pr. DIT (Inv.) - 1, Mumbai, Ms. Rashmi Saxena Sahni Pr. CIT - 10, Delhi, Mr. Pradeep R. Sethi DGIT (Inv.), Chandigarh, Ms. Kavita Pandey CIT (TP) - 3, New Delhi, Mr. Ashutosh Chandra Pr. CIT - 2, Bengaluru.

in improved overall output, but have also displayed their urge to assist others in improving their performance. I would like to believe that there would surely be many others who would have done work which is worthy of emulation, but could not send in their contribution for some reason. I would urge all officers and staff to participate with greater zeal in future, as it helps in improving our functioning as a department and portrays us in good light. I am also grateful to all the members of the Regional and National Evaluation Committees for their effort in evaluating and sending the entries.

4. While the exercise of editing and compiling this volume has been a pleasurable experience, it has had its share of challenges. The Editorial Board has also come across divergent views and interpretation of law. However, the underlying idea in finalising this volume has been to share the efforts from which something can be learnt and which throw up food for thought. I hope that the officers and officials would further develop and fine tune their efforts so as to evolve better strategies and improve their quality of work. Yet, I can say on behalf of the entire Editorial Board, that giving shape to this volume has been an exciting and a learning experience in itself.

5. I would like to place on record my sincere gratitude to the Central Board of Direct Taxes and the Directorate of PR, PP and OL for the faith reposed in me, and my team in the Editorial Board. The assistance provided by the Director General of Income Tax (Administration), the Director, and Officers and staff of the Directorate of PR, PP&OL is highly appreciated and has been of great help in putting this compilation together. The services of M/s Kamal Printers have also been of immense help in zeroing in on innovative and artistic ideas comprised in this compilation.

(PRADEEP R SETHI)
Chairman, Editorial Board

Dated: 19.03.2015

C. R. BUILDING - DELHI

CITIZEN'S CHARTER

A DECLARATION OF OUR COMMITMENT TO THE TAXPAYERS

INCOME TAX DEPARTMENT
GOVERNMENT OF INDIA
2014

The Citizen's Charter of the Income Tax Department is a declaration of its Vision, Mission and Standards of Service Delivery

VISION

"To partner in the nation building process through progressive tax policy, efficient and effective administration and improved voluntary compliance"

Mission

- To formulate progressive tax policies
- To make compliance easy
- To be accountable and transparent and act with honesty, in a fair & judicious manner
- To deliver quality services
- To continuously upgrade skills and build a professional and motivated workforce

We Believe in

- Equity and transparency;
- Promoting taxpayer awareness and encouraging and assisting them towards voluntary compliance;
- Effective deterrence against tax evasion;
- Continuous research as the foundation of tax policy and administration; and
- Adopting technology as an enabler for improved service delivery.

This Charter is issued on 29.04.2014, revisiting the earlier Charter issued in July 2010. In the preparation of this Charter, feedback has been taken from stakeholders. This Charter reflects the best endeavour of the Department. The Department intends to review the Charter within a period of three years.

Service Delivery Standards

We aspire to provide the following key services within specified timelines:

Sl. No.	Key Services	Timelines (From the end of the month in which return/ application is received/ cause of action arises)
1.	Issue of refund alongwith interest under section 143(1) of the I.T. Act	
	(a) in case of electronically filed returns	6 months
	(b) other returns	9 months
2.	Issue of refund including interest from proceedings other than section 143(1) of the I.T. Act	1 month
3.	Decision on application for rectification	2 months
4.	Giving effect to appellate/revision order	1 month
5.	Acknowledgement of communication received through electronic media or by hand	Immediate
6.	Decision on application seeking extension of time for tax payment or for grant of installment	1 month
7.	Issue of Tax Clearance Certificate under section 230 of the I.T. Act	Within 3 working days from the date of receipt of application
8.	Decision on application for recognition/ approval to provident fund/superannuation fund/gratuity fund	3 months
9.	Decision on application for grant of exemption to institutions (University, School, Hospital etc.) under section 10(23C) of the I.T. Act	12 months
10.	Decision on application for approval to a fund under section 10(23AAA) of the I.T. Act	3 months
11.	Decision on application for registration of charitable or religious trust or institution	4 months

Sl. No.	Key Services	Timelines (From the end of the month in which return/ application is received/ cause of action arises)
12.	Decision on application for approval of hospitals in respect of medical treatment of prescribed diseases	3 months
13.	Decision on application for grant of approval to institution or fund under section 80G(5)(vi) of the I.T. Act	4 months
14.	Decision on application for no deduction of tax or deduction of tax at lower rate	1 month
15.	Redressal of grievance	2 months
16.	Decision on application for transfer of case from one charge to another	2 months

The above timelines will apply to cases where return/application is complete in all respects.

Expectations from Taxpayers

We expect our taxpayers:

- To be truthful and prompt in meeting all legal obligations;
- To pay taxes in time;
- To obtain PAN and quote it in all documents and correspondence;
- To obtain TAN and quote it in all documents and correspondence;
- To quote correct tax payment/deduction particulars in tax returns;
- To verify credits in tax credit statements;
- To file complete & correct returns, within the due dates and in appropriate tax jurisdictions;
- To quote correctly Bank Account Number, MICR/IFSC Code and other Bank details in the returns of income;
- To intimate change of address to the tax authorities concerned;
- To intimate any change in PAN particulars to designated agency;
- To quote PAN of all deductees in the TDS statements; and
- To respond promptly to the communication from the Department.

We Endeavour

- To promote voluntary compliance;
- To educate taxpayers and citizens about tax laws;
- to provide information, forms and other assistance at the facilitation counters and also on website **www.incometaxindia.gov.in;**
- To continuously improve service delivery;
- To induct state-of-the-art and green technology with a user friendly interface;
- To inculcate a healthy tax culture where the taxpayers and the tax collectors discharge their obligations with a sense of responsibility towards nation building;
- To promptly deal with taxpayers' grievances arising on account of technological issues; and
- To adhere to the schedule of appointments with taxpayers.

Grievance Redressal

- All grievances received will be redressed within two months from the end of the month of their receipt;
- Petitions on un-redressed grievances filed before next higher authority will be decided within 15 working days of receipt;
- The taxpayers can approach the Income-tax Ombudsman in case of un-redressed grievances;
- The grievance redressal mechanism including contact details of public grievance officers are available on the website **www.incometaxindia.gov.in.**

AAYAKAR BHAWAN - MUMBAI

BEST PRACTICES / INITIATIVES

BEST PRACTICES / INITIATIVES

NOTE ON SMS AND EMAIL ALERT SYSTEM FOR HIGH COURT CASE

System developed to send SMS and email to jurisdictional Commissioners to alert them regarding cases coming up for hearing before the Bombay High Court.

The problem of effective follow up of cases pending before the various High Courts has been troubling the Department for a long time. The problem is especially acute in Mumbai. Bombay High Court has an exclusive tax bench dealing with tax cases apart from a common writ bench which deals with direct tax cases along with other writs.

2. It had been frequently observed that the field Commissioners had no knowledge as to when the cases relating to their charges were coming up for hearing. As a result they could not depute officers for the hearing or brief the Standing Counsel. Monitoring the actual conduct of the hearing, grant of adjournments, special directions issued by the Court or even conduct of the counsel in the Court were all extremely difficult. Often the field Commissioner came to know that there was a hearing in any particular matter only when he received a copy of the order. This problem is common everywhere but was particularly acute in Mumbai. Cases are heard by the tax bench on all five days of the week, daily posting of such cases is between 30 and 40, while the number of Standing Counsels is twenty. The number of administrative Commissioners in Mumbai charge was thirty six when the system was put in place.

3. A system has now been introduced in Mumbai charge whereby alerts are being sent to all the field Commissioners by both SMS and email. These alerts are sent within an hour of uploading of the weekly board on the High Court website. Also, similar alerts are being sent daily in case of changes in the next day's board. These alerts are sent to the field Commissioners, Range Heads and Assessing Officers. Towards this end, a special software has been developed through a vendor which ensures that updates on the High Court website are made available to all the above officers immediately. While Project Tarang numbers of the officers are used for SMS, the email IDs are personal.

4. The alerts are sent to the concerned CIT, Range Heads and the Assessing Officers. A typical alert contains the following:
   (a) Day of the week (e.g. Monday)
   (b) Serial number on the Board (e.g. no. 20)
   (c) Appeal number given by the Court registry (e.g. MUM/ITXA/25/2012)
   (d) Formal title of the appeal (e.g. CIT-4, Mumbai v. ABC)
   (e) Court room number (e.g. CR no. 32)
   (f) Names of the judges on the bench (e.g. Shah, J.& Saklecha, J.)
5. Alerts are being sent both by SMS and email. SMSs are seen to be usually read immediately but are rarely saved. Emails, on the other hand, are seen to be routinely stored, though they may not be immediately read in all the cases. SMSs have space only for details of the original or the supplementary board, as the case may be. Emails, however, summarize and also give progressive details of both the original and the supplementary boards along with changes in them, if any.
6. The sending of the alert is the last step of a long process. First the software detects an update on the High Court website. Next, the software downloads the updates. Then the software processes the updates (by mapping them to its own existing database and then to the particular CIT charge). Third, it creates items (SMS & email alerts) for dispatch. Finally it actually sends both the SMS and email alert.
7. The system had initially been introduced on a pilot basis in the four heaviest CIT charges in Mumbai (in terms of appeals pending before the High Court). The software was substantially modified on the basis of the feedback received and the system was then allowed to stabilize. It has now been introduced throughout Mumbai in all other CIT charges and is running successfully for over a year.

Name of the Officer :

Mr. Yeshwant U Chavan, CIT Judicial, Mumbai

NEW INITIATIVES IN TRAINING DELIVERY : DOOR STEP TRAINING

An initiative by DTRTI Chennai to devise short training programs which were topical and relevant-many such training programs organized in other towns and cities under the DTRTI's jurisdiction-trainees found this extremely useful and the initiative was universally lauded.

Impediments to Training Delivery

The greatest area of concern in the training sector is the widening gap between the real time training needs of individual employees and the real time delivery of training. This is occurring against the backdrop of a fast changing organizational and economic scenario. For training to remain relevant, it should be trainee-centric, addressing the appropriate issues, reaching the appropriate person at the appropriate time. This, however, does not happen many a time, leading to the common perception that training is at best a ritual, a break from work, at worst a total waste of time. DTRTI Chennai found this situation unacceptable and worked on a solution.

2. Through a continuous interaction with field functionaries ranging from Inspectors to Chief Commissioners, it managed to identify certain major road blocks to successful training delivery. These were:

a. Training modules which often follow standardized contents and practices failed to address current issues in the field, be it the irritants in the ITD functioning or the contemporary business and tax-planning models.

b. Consequent to acute manpower shortages upervisory authorities are often reluctant to spare people for training. Non-availability of adequate TA funds often adds to the problem.

c. Trainees find long-duration programs which take them away from families highly inconvenient. Also long lecture sessions failed to catch and hold the attention of adult (often middle-aged and above) trainees.

Training Need Analysis

3. Based on these findings the DTRTI embarked upon a continuous and comprehensive Training Need Analysis. It got in touch with as many individual members of the trainee population as possible

personally, telephonically or by email to listen to them and understand their needs. Inputs were also taken from the senior officers as well as Departmental Representatives and standing counsels on training needs. The response was tabulated and evaluated. The topic, structure and content of the training programmes were devised based on this. It was realized that while long duration training programmes are essential at the time of induction or assumption of a new role on promotion, shorter, to the point versions of training preferably conducted at trainee locations are the need of the hour. There fore the DTRTI decided to hold half-day to full-day programmeson contemporary issues for assessing officers and their inspectors at Chennai as well as at various other locations in Tamil Nadu and Kerala.

Seminars for Assessing Officers at Chennai

4. Multiple half-day seminars were held at Chennai which covered every single assessing officer posted at Chennai. These seminars aimed at providing an open forum to assessing officers where they can thrash out and receive guidance on all issues facing them while finalizing current assessments. While the queries raised by the participants were answered by an eminent panel comprising senior Commissioners, authorized representatives at ITAT and RTI faculty, they also learnt from one another's experience. Participants as well as panelists complimented the DTRTI on conceptualizing and executing a training programme where so much learning was compressed in to so short a span of time with little disturbance to the regular field work.

Door Step trainings at other Locations

5. Based on the successful Chennai model, seminars were conducted at other major locations such as Trichi and Madurai in Tamil Nadu and Kozhikode and Kochi in Kerala, with the co-operation of the local administration. The entire local trainee population could attend the programme without much hassle. The seminars followed the same pattern as the Chennai workshops. Though the questions were collected in advance, many new issues was raised and answered during the course of the programmes. The focus was obviously on local issues raised by the participants. The local authorities and participants were highly appreciative of this initiative.

Follow-up

6. The real measure of the success of the programme was the interest generated by it among officers in far-flung areas, many of whom had never been nominated or attended any training program in the past. Continuous feed-back was received from the participants on how the inputs received helped in completing and defending their assessments and raising and collecting revenue. The participants and their colleagues still continue to send queries and suggestions to the DTRTI. These queries are invariably answered and suggestions taken into account while devising training programmes.

Names of the Officers :

Mr. Balaji Chandrasekhar AAD DTRTI Chennai

Ms. K. Dharni AAD DTRTI Chennai

Mr. V. Viraraghavan AAD DTRTI Chennai

Mr. K. Subhash ADIT DTRTI Chennai

Mr. S. Swaminathan JCIT DTRTI Chennai

Ms. Chandana Ramachandran, DIT DTRTI Chennai

NATIONAL JUDICIAL REFERENCE SYSTEM (NJRS)

Background :

An important aspect of every tax administration is the management of the tax litigation. Over 1.5 lakh direct tax appeals are estimated to be pending in various courts / tribunals in the country. The high volume of appeals is a cause of concern as it increases the disputed demand as well as the compliance cost for the taxpayers. Effective administration of tax litigation requires the ability to adhere to appeal time lines; develop expertise in defending cases on complex issues; maintain consistency in approach; avoid repetitive appeals on decided issues; consolidate appeals by bunching of similar cases; and prioritize important cases.

2. Challenges:

Key constraints in litigation management are the absence of a consolidated database of appeals and judgments and the manual system of appeal monitoring which make it difficult to take a consistent stand on issues, bunch cases or prioritize important cases or avoid delays. Moreover, an accurate and complete national picture of the performance of the department in litigation matters is not readily available. Yet another challenge is the reliable storage and ready retrieval of documents over the long litigation phase.

3. The proposed solution – National Judicial Reference System (NJRS) :

In order to improve litigation management, the Department has taken up a project titled the "National Judicial Reference System" (NJRS) under the Directorate General of Income Tax (Legal & Research). The NJRS will comprise two components:

4. A. Appeals Repository and Management System :

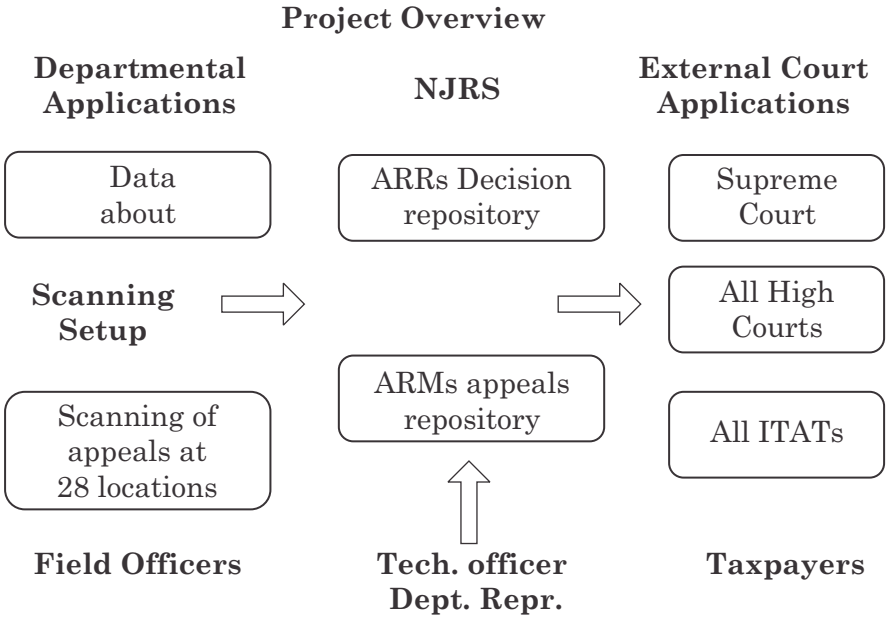
4.1 This will be a repository of all direct tax appeals pending at the ITAT, AAR, High Court and the Supreme Court of India. The appeal data is available to a large extent in the IT Systems already deployed by the courts to computerize their registry functions. The Department has taken approval of the Supreme Court and ITAT to obtain the data from court's IT systems for the NJRS project. Requests to various High Courts have also been made and approvals are expected shortly. Punjab & Haryana High Court and Gujarat High Courts have already given approval.

4.2 All appeal documents will be scanned for NJRS and more information such as the sections, subsection of the Act involved in the dispute, keywords/catchphrase, referred cases etc., will be added for each appeal from the scanned documents.

4.3 An MIS will be developed on the database to enable status tracking, reporting and analysis. It will provide an online dashboard and alert facilities to the users. It will also have some work flows for judicial officers of the department.

5. B. Judicial Research and Reference System:

5.1 This will be a repository of the decisions of ITATs, AAR, High Courts and the Supreme Court in the direct tax appeals. It will also have the relevant statutory enactments, circulars etc. Suitable metadata and head notes will be added to the basic text of the judgment to enable ease of use. The repository will be searchable on several parameters. The repository will provide all final orders /judgments from 01.04. 2009 for Supreme Court and HCs and from 01.04.2012 for the ITAT, as well as all important prior judgments.



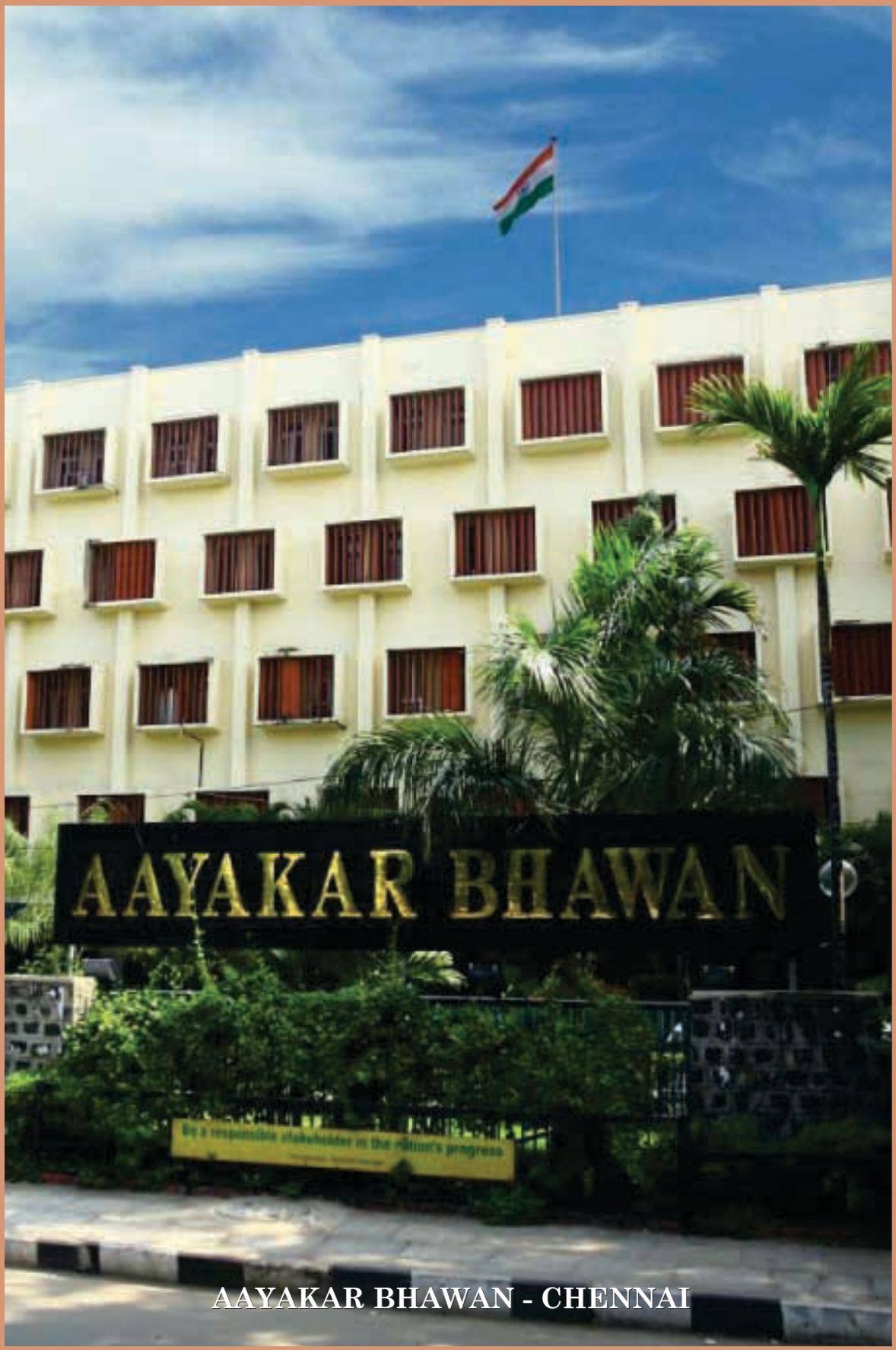
The NJRS will be a web based system which will be accessible over the internet to all officers of the department. The taxpayer would also be provided a facility to view the status of their appeal through the internet.

6. Implementation Approach

An implementation Agency (IA), has been selected through open competitive bidding. The IA is a consortium comprising a technology company and a content provider. The IA is required to setup the requisite Hardware and Software; setup scanning centers at 27 ITAT locations and at DGIT (L&R); scan appeal documents provided by the department; setup and operate a Central Data Processing Centre (CDPC) where the scanned appeals from the 28 scanning centers will be received, analyzed and linked with the data from the courts.

7. Present Status

NJRS project is at an advance stage of development. The contract was executed in April 2014. Scanning activity is being carried out at the scanning centers. The software development is underway. The system is expected to go-live shortly.



AAYAKAR BHAWAN - CHENNAI

ASSESSMENT ORDERS

ASSESSMENT ORDERS

ASSESSMENT ORDERS

LIABILITY TOWARDS SHORT TERM CAPITAL GAINS ON LUMPSUM PAYMENT TO RETIRING PARTNER OF A FIRM

Lump-sum payment by a firm to its retiring partner – revaluation of asset – claim of consideration received as capital receipt was countered and treated as short term capital gains by detailed analysis of the partnership agreement, property development and sale

The taxpayer, Mr. S. Martin engaged in the business of Lottery, Real Estate and Generation of Power filed return of income for the A. Y. 2009-10 on 29.09.2009 admitting total income of ₹ 46,32,99,070/-.

2. During the course of assessment proceedings, it was noticed that the taxpayer, Mr. S. Martin retired from a partnership firm namely Best & Golden Ventures on 19/08/2008 and received lump sum payment of ₹ 47,07,30,598/- (over and above his capital contribution of ₹ 49,00,00,000) within a short span of time. However, the taxpayer did not offer this receipt for taxation stating that it is a Capital receipt.

3. In this regard, all the relevant evidences were collected and analysed in detail in the assessment order. It was found that as per the partnership deed, the taxpayer had right to the profits but had no liability to suffer any loss and that the other partner had the right either to sell, mortgage or execute any document relating to purchase or sale of the properties of the firm. On verification of details, it was clear that it is the taxpayer who is managing the entire transactions for his own benefit and the firm was in name only.

4. The land purchased in the name of the firm was revalued. It was held that the benefit from revaluation is in the form of capital gains which has been routed through the partnership firm to the capital account of the taxpayer. Therefore in this case, the evidences collected showed that the taxpayer used a creative method to evade tax by way of retirement of the Managing Partner

Mr. S. Martin from the Partnership firm.

5. After detailed discussion of the facts in the assessment order, the receipt of ₹ 47,07,30,598/- was assessed as Short Term Capital Gain (STCG). Subsequently, both CIT(A) and ITAT confirmed the addition made in the assessment order and the taxpayer has also paid the total demand of ₹ 22,75,34,990/-.

Names of the Officers :

Mr. S. R. Karuppusamy, DCIT, Company Circle 1(3), Coimbatore

Mr. M. Chandramohan, Addl.CIT, Range 1, Coimbatore

Mr. D. B. Manival Raju, CIT-1, Coimbatore

WRONG CLAIM OF COST OF IMPROVEMENT IN COMPUTING CAPITAL GAINS

Project Developers – Agreement for Development – claim of cost of improvement while computing capital gains – non-genuineness proved by detailed analysis of the agreement and by conducting external enquiries

While browsing the official website of CMDA, the details with regard to transfer of Open Space Reservation land to the local authorities, in and around the city of Chennai surfaced. The webpage containing such details threw up information about the area of land at Perungudi gifted by Coromandel Cables Private Limited (CCPL), being assessed in Company Circle, Chennai.

2. Such transfer of Open Space Reservation land to the local authorities is made in cases where approval for development of projects is sought. On the basis of the extent of land transferred to Local Authorities for "Open Space Reservation (OSR)', it was ascertained that the project that was developed was about three acres. Field enquiries were also conducted which revealed that an elegant residential project named 'Etopia I' was developed on the land owned by CCPL through a Joint Venture Agreement with Doshi Housing.

3. A survey u/s 133A was also conducted at the business premises of CCPL. During the course of survey, a Joint Venture agreement between CCPL and Doshi Housing dated 23/11/2005 was found, which revealed that 37.54% of saleable area was earmarked and allotted to CCPL in lieu of transfer of 62.46% of land.

4. For A.Y.2006-07, CCPL did not file return of income and therefore a notice u/ s 148 of the IT Act, 1961 was issued. During the course of the assessment proceedings long term capital gains were sought to be brought to tax. It was noticed that Schedule 'D' of the Balance Sheet showed additions of ₹ 4,58,32,980/- to land at Perungudi. Since this could be regarded as cost of improvement, the expenditure was subjected to detailed scrutiny. It was found that the contractor engaged was Takshil Trading Private Limited, Mumbai. Only a copy of agreement was produced but no payment was made for six years. Evidence to establish the wherewithal and expertise to execute such a voluminous contract was not made available.

5. To substantiate the non-genuineness of the claim of expenditure, information was gathered from the official website "MAHAVAT" of the Commercial Taxes Department, Maharashtra with regard to list of Hawala Operators issuing bogus bills. Takshil Trading Private Limited figured prominently in the list and at the request of this office, the ACsT, Mumbai Investigation Unit of Maharashtra Commercial Taxes Department conducted a survey and conclusively reported that the claim made by CCPL is not genuine.

6. The claim of cost of improvement was disallowed in working out the taxable capital gains. The assessment in the case of Coromandel Cables Private Ltd., for A.Y. 2006-07 was completed on 14.5.2012 determining the taxable long term capital gains at ₹ 12.20 crore and raising a demand of ₹ 6.70 crore. The denial of deduction on account of cost of improvement was upheld by the CIT(A)-I, Chennai, vide order dated 28.8.2013.

Names of the Officers :

Mr. K. N. Dhandapani, DCIT, Com. Circle 1(3), Chennai

Ms. S. Uma Venkatesan, Addl. CIT, Range 1, Chennai

Mr. P. R. Ravi Kumar, CIT – 1, Chennai

UNDERSTATEMENT OF LONG TERM CAPITAL GAIN ON SALE OF LAND & BUILDING

Examination of the Schedule of fixed assets to Balance Sheet – land and buildings – determination of value of land and building – computation of LTCG – disallowance of maintenance expenses claimed twice under the head business and also property income

The taxpayer Shriram Capital Limited sold a property consisting of Land & Buildings for ₹ 4.5 crore and the sale proceeds were apportioned in two parts viz., ₹ 3 crore towards land value and ₹ 1.5 crore towards cost of building i.e value of the structure. The structure consisted of 3000 square feet, built in the years 1961 and 1980 and the same was valued by the taxpayer @ ₹ 5,000 per square feet for the purpose of working out the LTCG i.e. the building was valued at ₹ .1.5 crore.

2. On enquiry it was found that the purchaser of the property, got the building demolished within 15 days from the date of registration and constructed a new building. This act of the purchaser clearly showed that the value of the building portion (excluding land) was not much. Further, in the books of accounts prepared according to the Companies Act, an amount of ₹ 26.24 lakh only was shown against the Buildings Block in the Depreciation statement.
3. Though, the worth of the structure has to be adopted at 'ZERO' for all practical purposes, considering the fact that there was a structure existing at the time of sale and considering the value of the entire building at ₹ 26,23,987 adopted by the taxpayer in the accounts prepared according to the Companies Act, the value of the structure on the land for the purpose of computation of LTCG was taken at ₹ 26,23,987 and the remaining sale consideration of ₹ 4,23,76,013 was adopted as the consideration received for sale of land.
4. As the land value was adopted by the taxpayer at ₹ 3 crore, there was an understatement of LTCG on sale of property to an extent of ₹ 1,23,76,013 and the same was added back to the LTCG returned.

5. In addition to the above, business expenditure claimed under the head Depreciation and Maintenance charges amounting to ₹ 20,58,063 against the house property was disallowed as such deductions are not allowable u/s. 23 & 24, considering the fact that the income from the property was offered and assessed under the head income from house property.
6. The taxpayer has not filed appeal before the CIT (A) on these two issues.

Name of the Officer :

Ms. T. V. P. Latha, DCIT Company Circle –6(2), Chennai.

NON INCLUSION OF RETENTION MONEY PAID TO CONTRACTORS IN TAXABLE INCOME

Mercantile system of Accounting – construction business – Retention money held back by the contractees – scheme between holding company and subsidiary company - funds retained not admitted as income but claimed as expenditure

The company Consolidated Construction Consortium Ltd., in which public are substantially interested and listed in Bombay Stock Exchange, filed its return of income for A.Y. 2009-10 on 29/09/2009, admitting a taxable income of ₹ 63,06,86,390/- earned from its business of executing construction contracts. The assessment was completed u/s 143(3) on 21/12/2011 assessing the taxable income at ₹ 83,34,61,120/- including disallowance of claim of retention money of ₹ 13,28,86,446/-.

2. In respect of the 'retention moneys' held back by its contractees and in view of decision in the case of CIT Vs. ECCI Limited [283 ITR 297 (Mad)], the taxpayer had excluded the entire quantum in the computation of total income. The taxpayer had in turn granted various sub-contracts and had also retained the moneys in a similar fashion, with a condition that the same would be parted after satisfactory performance of the contract. However, the funds retained were not added back in the computation of total income but continued to be claimed as expenditure, though remaining unpaid.

3. Taxpayer was following this practice since A.Y. 2006-07 and was not disclosed by the taxpayer and its Auditors in the final accounts/ in the notes on accounts forming part of Audited Financial Results. The same surfaced only by the action of the Department while scrutinizing the return of income of one of the company's sub-contractors, Consolidated Interiors Limited which is also a wholly owned subsidiary. It was found that retention money was not being offered to tax by the subsidiary. The scheme between the holding company and subsidiary company had defeated the very purpose of enforcing mercantile system of accounting uniformly to all the companies and the consequent revenue recognition was made ineffective.

4. The assessment order expressed the contention of the Department in a schematic manner, countering the arguments of the taxpayer i.e. the taxpayer was not expected to follow two principles of accounting, one for recognizing income and another for expenditure and the same yardstick for retention moneys has to be followed. By placing reliance on decisions of the Apex Court and jurisdictional High Court, the expenditure of ₹ 13,28,86,466/- was held to be contingent and added to the taxable income.

5. The company had withheld ₹ 63 Crore of retention money belonging to the subsidiaries till 31/03/2014 and this quantum till that date and in the ensuing years was not likely to be offered to taxation. The assessments for A.Y. 2007-08 and A.Y. 2008-09 were at first appellate stage pending disposal and the Commissioner (A) was requested to enhance the taxable income by such value corresponding to those years.

6. The assessment for A.Y. 2006-07 was reopened u/s 147 based on the finding in scrutiny of the later year i.e. A.Y. 2009-10. The Writ filed by the taxpayer was dismissed by the Hon'ble Madras High Court. The taxpayer has once again filed a Writ reiterating the same cause, requesting the Court to quash the reassessment proceedings.

7. The appellate orders for A.Y. 2007-08 to 2009-10 have upheld the disallowance. As a result, ₹ 63 Crore of suppressed income has been bought to tax.

Names of the Officers :

Mr. K. N. Dhandapani, DCIT, Company Circle 1(3), Chennai

Ms. S. Uma Venkatesan, Addl. CIT, Company Range 1, Chennai

Mr P. R. Ravi Kumar, CIT, Chennai 1, Chennai

DISALLOWANCE OF CLAIM UNDER SECTION 10A IN COMPUTING BOOK PROFITS U/S 115 JB

Claim of exempted income U/S 10A – held not eligible - warranting disallowance – disallowed after affording opportunity to taxpayer – similar claims made in earlier and subsequent A.Y.s also disallowed

The taxpayer Seventh Sense Technologies Pvt. Ltd. admitted taxable book profits at ₹ 20,72,860, according to the provisions of section 115JB, after deducting the exempted income u/s 10A of ₹ 3,83,96,789.

2. From the A.Y. 2008-09, there is a change in the provisions of section 115JB and exempted income qualifying for deduction u/s 10A cannot be deducted from the book profits for the purpose of working out tax liability u/s 115 JB. The book profits of the taxpayer, before deduction u/s 10A, for the relevant year were at ₹ 4,06,43,118. In view of the above, the taxpayer was asked to explain as to why book profits u/s 115JB cannot be adopted at ₹ 4,06,43,118 as against ₹ 20,72,860 disclosed. The taxpayer agreed to the A.O's stand, resulting in addition of ₹ 3,85,70,258/. The resulting demand of ₹ 88,84,117/- was immediately paid by the taxpayer.

3. Verification of records for the A.Y. 2009-10 also revealed that similar claim was made in that year by the taxpayer. Therefore, a notice u/s. 154 was issued to the taxpayer on 25.02.2013 calling for its objections if any for the proposed addition of ₹ 3,69,50,954 to the taxable book profit admitted by it. The taxpayer filed its reply on 1.04.2013 stating that they have no objection to withdraw the deduction claimed u/s 10A for computing the Book Profits u/s 115JB. Order u/s. 154 was passed on 15.04.2013 by adding ₹ 3,69,50,954 to the book profit admitted by the taxpayer, which resulted in a demand of ₹ 57,69,750. The taxpayer paid an amount of ₹ 48,46,581, on 27.03.2013 even before passing of the order u/s 154.

4. For the A. Y. 2011-12 records revealed that the Book profit under section 115JB was shown at ₹ 37,64,525 after deducting the exempted income of ₹ 5,16,48,988 as per s/10A. Therefore, the taxpayer was asked to explain as to why the taxable book profits be not adopted at ₹ 5,54,13,513 as against ₹ 37,64,525 returned by the taxpayer. In response to the letter , the taxpayer has filed a revised return of income on 30.03.2013 admitting the taxable book profit at ₹ 5,54,13,513 and computed the tax liability at ₹ 1,13,63,585.

Name of the Officer :

Ms. T. V. P. Latha, DCIT, Company Circle- 6(2), Chennai.

CLAIM OF CASH DEPOSITS IN SAVING BANK A/C FOUND TO BE FICTIOUS

AIR information - cash deposited in the bank accounts were not found shown in the financial statements - taxpayer's explanation that this money deposited belonged to various people examined in detail - taxpayer's claim of cash withdrawals for payment to various persons examined - verification of bank account revealed that debits were on account of transfer to term deposits and no cash was withdrawn – addition made U/S 69 of the Income-tax Act, 1961.

Mr. S. Muthu Kumar and Mr. Stanley Rajan are Civil Engineers deriving income from professional services and are partners in a firm. The assessments for A.Y. 2009-10 in the above two cases were selected for scrutiny through CASS on the basis of information received from Annual Information Returns showing that they made cash deposits of ₹ 50,75,000/- (each) separately in their SB a/c. On verifying the financial statement filed with the return, it was found that the above SB a/c was not accounted for by the taxpayers.

2. The taxpayers explained that the money deposited belonged to different people in the neighborhood who had entrusted the same with them for getting various civil works done in respect of their house properties. On examining the bank accounts it was found that the cash deposits were made by the taxpayers during the period between 21st February and 31st March 2009. There were no subsequent cash withdrawals in the bank accounts for one full year to show that the amounts were utilized for payments due to the workers.

3. The taxpayer claimed that withdrawals of ₹15,00,000/- were made from the SB a/c for making payments due to various persons. It was however found from the bank authorities that the withdrawals were for the purpose of deposits in RIP (FD) for a period of 365 days. It was thus clear that, no amount was available for being utilized for making payments to the workers as claimed by the taxpayers.

4. Thus the above two taxpayers Mr. S. Muthu Kumar and Mr. S. Stanley Rajan could not furnish the source for ₹ 50,75,000/- deposited separately in their respective bank accounts. Hence a sum of ₹ 50,75,000/- each was added to the total income of the two taxpayers.
5. Both the orders were confirmed by the CIT (A) as well as ITAT. The Hon'ble High Court, Madras, by a speaking order dismissed appeal at the admission stage itself thereby confirmed the above two orders.

Names of the Officers :

Ms. G. Subhadra, ITO, B.W. - 4 (2), Chennai.

Mr. S. M. Sukumaran, ITO, B.W. 1(4), Tambaram.

DISALLOWANCE U/S 40(a)(ia) FOR FAILURE TO REMIT TDS WITHIN THE STIPULATED TIME

Failure to deduct tax as per the provisions of Section 195 – failure to remit tax within the time specified as per Section 200(1) of IT Act, 1961 – disallowance U/S 40(a)(ia) on the basis of payment dates

The taxpayer Sharon Solutions Limited deducted the tax at source in respect of following two payments totaling to ₹ 2,96,19,052/-, which were claimed as expenditure:-

Deductee Name	Amount (in ₹)
Timhan Technology	2,80,52,760
Sofie Sari	15,66,292
Total	2,96,19,052

But the TDS on these payments was remitted into the government account belatedly i.e., on 15.10.2010.

2. On query for the disallowance of expenditure u/s.40(a)(i) for the default, the taxpayer immediately agreed to disallowance in respect of Sofie Sari but insisted on not being subject for TDS for Timhan Technology, as the payment of ₹ 2,80,52,760/-was for import of Chips with embedded software. The T.D.S, it was claimed, was deducted as a matter of abundant precaution.

3. The addition was made holding that the payment is in the nature of royalty as per the provisions of Section 9(1)(vi) and therefore Sec. 195 for deduction of tax at source was applicable. The taxpayer did not file appeal before C.I.T.(A) against the total addition of ₹ 2,96,19,052/-

Name of the Officer :

Ms. T. V. P. Latha, DCIT Company Circle –6(2), Chennai

COMPUTATION OF BOOK PROFIT U/S 115JB (2) AND DISALLOWANCE OF EXCESS CLAIM OF DEPRECIATION

Amendment to provisions of Section 115JB (2) of the Income-tax Act, 1961 – amount qualifying for deduction - correct determination of book profit as per eligibility

The taxpayer Seven Seas Petroleum Private Limited derived profit of ₹ 89,05,442 as per the books of accounts. While making adjustments in terms of Explanation 1, the taxpayer had deducted an amount of ₹ 89,05,442 towards set off of brought forward losses and unabsorbed depreciation, as per clause (iii) to Explanation (1) to S/115 JB (2), and ultimately worked out taxable book profits at NIL.

2. Details of brought forward losses and depreciation allowance from the A.Y.s 2007-08 to 2010-11 were verified and according to which the amount of brought forward losses (excluding unabsorbed depreciation) was at ₹ 2,35,01,148 and unabsorbed depreciation was at ₹13,64,538. There fore, it was observed that least of these two i.e. unabsorbed depreciation of ₹13,64,538 only qualifies for deduction from the Book Profits, for the purpose of working out taxable book profits.

3. Due opportunities were given to the taxpayer to explain as to why the excess claim of ₹ 75,40,904 (₹ 89,05,442- ₹13,64,538) should not be disallowed and after considering the objections filed by the taxpayer, the excess claim of ₹ 75,40,904 was disallowed and taxable book profit under the provisions of section 115JB was adopted at ₹ 75,40,904 as against NIL returned by the taxpayer. The CIT(A) vide order in ITA No.1339/13-14 dated 20.11.2013 dismissed the appeal of the taxpayer.

Name of the Officer :

Ms. T.V. P. Latha, DCIT, Company Circle – 6(2), Chennai

DISALLOWANCE ON ISSUES LIKE PROVISION FOR FRAUD, UNSETTLED CROP INSURANCE ETC.

Rural Coperative Bank- detailed scrutiny leading to major disallowances on issues like Provision for Fraud, Unsettled Crop Insurance etc.,

The taxpayer Cauvery Kalpatharu Grameena Bank is a Co-Operative Society engaged in banking activities. The return of income was filed on 29.09.2011 declaring the total income of ₹ 28,72,75,710/-.

2. Analysis of the financial statements showed that the taxpayer had claimed large amount as deduction under the Head "Other Expenditure". Analysis of details showed that this item of expenditure includes several items which were actually not deductible. Accordingly, following items were disallowed. They are : (i) Provision for Fraud ₹ 1,30,25,323/-, (ii) Unsettled Crop Insurance of ₹ 8,35,933/- iii) Income tax relating to the officers on deputation ₹ 4,27,148/- iv) ₹ 36,48,284/- being depreciation on investments.

3. Other additions made were ₹ 4,58,26,322/- being provision for Leave Encashment remaining unpaid and disallowance u/s 14A. The taxpayer's claim that no interest expenditure was incurred was rejected by recording a finding of fact that investments flow from a common pool of funds wherefrom all business receipts and payments are routed through.

4. As per the records, the taxpayer has not filed any appeal against the order. The taxpayer has promised to pay the demand in installments.

Names of the Officers :

Mr. I. Satish Kumar, Addl. CIT, Range-1, Mysore.

Mr. M. Tirumala Kumar, CIT, Mysore.

PAYMENT OF PRIVILEGE FEE TO THE GOVERNMENT TREATED AS TAXABLE PROFIT

A State PSU was claiming deduction of huge amounts paid to Government as privilege fee - The payment was held to be nothing but remittance of profit- due addition was made and sustained by ITAT.

The taxpayer is a State PSU engaged in wholesale trade of IMFL. Though the company was earning huge surplus year after year, no tax was paid. The modus operandi adopted was of claiming entire surplus as privilege fee paid to Government of Andhra Pradesh u/s 23A of Excise Act (of Andhra Pradesh).

2. During assessment proceeding, it was noticed that there is no sanctity for the claims of the taxpayer. The taxpayer claimed the fee as normal business expenditure and not a fee or cess, in the sense it is defined under the Income-tax Act, 1961. Various alternative claims like there is overriding title to Government of AP, the money belongs to State, the taxpayer is only an agent discharging the functions of state, under Article 289 of the Constitution income of State is not taxable etc were taken. It was also claimed that the entire money is remitted to Government and the taxpayer has no say and even the daily expenditure of the taxpayer is sanctioned by Government from time to time.

3. To ascertain the true nature of the payment, details like how the privilege fee was computed from month to month, the mode of remittance to Government, whether Government issued any GOs for collection of specific amounts, the manner in which the accounts of the taxpayer are prepared, the turnover disclosed as per tax audit reports etc., were gathered. The treatment vis-à-vis, the Accounting Standards and as per the provisions of the Companies Act was also examined in detail. It was also noticed that in its own website the taxpayer had claimed that surplus profit is ploughed back to the Government. The evidences gathered were confronted to the taxpayer at each stage and its response was considered.

4. Upon careful consideration of the facts and law, it was held that tax needs to be considered as expenditure in commercial sense as per AS-22 and Schedule VI of the Companies Act before remitting

profits and privilege fee is only a balancing charge on the profits and is application of income. Therefore, it was held that the taxpayer was misinterpreting section 23A of the Excise Act, which never prescribed the mode of computation of privilege fee adopted by the taxpayer. It was also noticed that there is no prescribed method for the computation of the fee and adhoc payments were remitted from month to month. Nor any GO was issued by the Government of AP on the method of computation. The flaw in the arguments of the taxpayer that it is only an extended arm of the State was also countered by citing the fact that in case the taxpayer incurs loss there is no provision for Government to reimburse the same. After examination of decision of Supreme Court in the case of APSRTC (52 ITR 524) and other cases, the arguments of overriding title, activity on behalf of State and immunity from taxation were negated and it was held that a Corporation was not immune from taxation.

5. The assessment order was confirmed by the CIT(A) and during appellate proceedings before ITAT, Government of AP amended the Excise Act and inserted new provisions with retrospective effect holding that the money remitted by the taxpayer belongs to the State. The ITAT set aside the assessment to the file of CIT(A) with a direction to consider the new amendments.

6. CIT(A) examined the issue and held that only nature of payment in the hands of the payer is of relevance. CIT(A) also held that the interpretation of the taxpayer on the applicability of Article 289, if accepted, would lead to repugnancy between Central and State laws and also held that, any retrospective amendment with a view to avoid payment of tax fails.

7. ITAT upheld the view of Revenue and recorded the following findings - i) the taxpayer is a pure business venture; ii) there is no overriding title to the State; iii) as per AS-22, the taxpayer was bound to consider income tax as expenditure before arriving at the margin; iv) privilege fee is only a balancing charge and in the nature of application of income; v) as the sales are subject to VAT, the claim of status of the State is untenable; vi) by the time Excise Act was amended, the income already accrued to the taxpayer; and vii) Article 289(2) of the Constitution is applicable to the case and hence the view of Revenue is correct.

8. The tax effect for A. Y. 2008-09 is ₹ 639.79 Crore; for A. Y. 2006-07, ₹ 390.51 Crore; for A. Y. 2009-10, ₹ 865.60 Crore, for A. Y. 2010-11, ₹ 1238.33 Crore and for A. Y. 11-12, ₹ 1381.86 Crore. The collection till now is about ₹ 606.30 Crore.

Names of the officers :

Mr. C. V. Vasudeva Rao, ITO, Ward – 1(1),

Mr. Y. V. S. T. Sai, Addl CIT, Range – 1, Hyderabad,

Mr. T. Jayasankar, CIT-1, Hyderabad.

CAPITAL GAIN ARISING ON TRANSFER OF SHARES

Capital gains on transfer of shares –taxpayer claimed that there is no transfer as no consideration was received and provisions of S/45 fails- examination of the financial statements of the transferee companies revealed that transfer was effected-assessment completed incorporating the documents collected by the department- assessment was confirmed by the CIT(A) and the ITAT

Information was received that the taxpayer has entered into transaction of sale of shares during the relevant previous year. On verification of the details, it was noticed that the taxpayer has entered into a MOU dated 23rd May, 2008. As per the MOU the taxpayer had sold shares of 13 companies to DLF Retail Developers Limited (DRDL) for sale consideration of ₹ 67,35,31,170/- and the taxpayer had not admitted capital gains on sale of these shares.

2. The taxpayer claimed that the MOU for purchase of shares was unregistered, the substance of the transaction was to sell the land owned by the companies to DRDL, by means of sale of shares of the companies DRDL. DRDL did not pass on the consideration in its entirety to the taxpayer except the refundable advance given earlier, the balance consideration towards sale of shares was kept in the escrow account with a stipulation that in the event of termination of the Escrow Account, DRDL should return back the shares to sellers and take back its funds kept in the escrow deposit account along with interest. According to the taxpayer, there was no transfer of shares in the real sense of the term of the sale of shares was conditional which was terminated as no consideration was passed effectively. The taxpayer pleaded that the provisions of the charging section 45 and computation section 48 of the I.T. Act, 1961 fail under the facts and circumstances of the case as there was no transfer and no gain.

3. This claim of the taxpayer was examined by the Assessing Officer in the light of the provisions of the Act, agreements and other details furnished by the taxpayer and the details gathered by the Assessing Officer from the ROC and information available in public domain. The taxpayer has entered into an Un-registered MOU on 23rd May, 2008 with DRDL. As per the MOU the sellers have approached the buyer and offered to transfer the entire share capital and hand over ownership and management of the section

13 companies to the buyer on the condition that the balance share sale consideration is kept in Escrow account and the loan amount is returned to the seller. Subsequently, the seller has transferred the entire share capital in the name of the buyer and delivered the physical share certificate with requisite share transfer deeds duly signed by the seller. The seller has appointed nominee directors of the buyer in the 13 companies. The seller has vacated the office along with duly signed resignation letters. The buyer has taken possession of all the records, registers and other documents of 13 companies. The seller has completed all corporate and legal formalities including filing of forms with ROC. The details of the annual report of the company were downloaded from the ROC website, effecting the transfer. As per the annual report of DRDL, the company has also included the names of the companies in its annual report for the F.Y.. 2008-09 as its subsidiary company.

4. Regarding the taxpayer's claim of the theory of real income and that the computation mechanism fails, the Assessing Officer observed that from the facts and circumstances of the case the gain is accrued to the taxpayer consequent upon transfer of shares which is real and substantial. Since the dominion and control over the transferred shares vests with transferee and the taxpayer is stripped off all his substantial rights like receipt of dividend, right to participate in decision making process, conduct of day to day affairs etc., the subsequent transfer of shares on 24.06.2009 by DRDL to the taxpayer (not effected in the previous year relevant to the A.Y 2009-2010) is not a factor germane and relevant for taxing the capital gains already accrued to the taxpayer since the transfer of shares had already happened on 23.05.2008 and was given effect to by both the transferor and the transferee.

5. The taxpayer preferred appeal and the CIT(A) observed that transfer deeds had been duly registered in the records of the companies, the transfer had been duly taken note of by the Registrar of Companies, and the management of the companies had been handed over to DRDL. Transfer of the shares did take place from the taxpayer to DRDL, Hence, the appellant's plea that a 'holistic view' of the transactions should be taken cannot be accepted. The subsequent transactions are in the nature of repurchase of shares by the appellant and cannot be held to negate the fact of the earlier transfer.

5.1 The ITAT held that there is transfer of shares within the meaning of section 2(47) of the Act which is chargeable to capital gains and upheld the order of the CIT (A) and dismissed the grounds raised by the taxpayer.

6. The Assessing Officer computed the capital gains on sale of shares at ₹ 58,69,95,045/- and the demand raised was ₹18,87,54,830/.

Names of the Officers :

Mr. D. Sreedhar Reddy ITO, Ward-6(3), Hyderabad

Mr. H. Phani Raju, Addl. CIT, Range-6, Hyderabad

Mr. A. Bhasker Reddy, CIT-3, Hyderabad

MERE SICKNESS IS NOT ENOUGH TO CLAIM EXEMPTION FROM MAT

Taxpayer claimed exemption from provisions of S/115JB(2) on the ground that it was a sick industrial company as per the Sick Industrial Companies (Special provisions) Act, 1985- the claim was disallowed by subtle interpretation of the term sick industrial company and the same was upheld by the Hon'ble AP High Court.

The taxpayer Panyam Cements & Mineral Industries Ltd. is a cement manufacturing company. The taxpayer claimed that it had incurred heavy losses as a result of which it had become a sick industrial company as on 31.3.2002 as per the provisions of s/3(1)(o) read with s/3(1)(ga) of the 'Sick Industrial Companies (Special provisions) Act, 1985 (SICA). Therefore, the taxpayer claimed exemption from paying tax under clause (vii) of Explanation-1 to s/115JB(2), which exempts a sick industrial company from payment of MAT.

2. The Assessing Officer rejected the claim of the taxpayer by relying on s/17(1) of the SICA to interpret the term sick industrial company for the purpose of s/115JB. This is because, for the purpose of s/115JB(2) a company should have become a sick industrial company as per s/17(1) of SICA. As per s/17(1) of SICA-'If after making an inquiry under section 16, the Board is satisfied that a company has become a sick industrial company, the Board shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be by order in writing, whether it is practicable for the company to make its net worth exceed the accumulated losses within a reasonable time'.

3. In the instant case the BIFR did not conduct any inquiry u/s 16 of the SICA to arrive at the conclusion that the company is a sick industrial company. Therefore, it was held that the company was not a sick industrial company within the meaning of s/17(1) of SICA and hence the company was brought under the provisions of s/115JB for computing the tax.

4. On appeal, the CIT(A) held that to be able to claim exemption u/s 115JB(2)(vii) the company should be a sick industrial company as per s/17(1) of SICA and not as per s/3(1)(o) of the SICA, which merely defines “Sick Industrial Company”, whereas s/17(1) goes

further to determine the Sickness of Company by prescribed procedure. Since, the company is not declared as sick u/s 17(1) of the SICA, the company needs to pay tax u/s 115JB.

5. The ITAT and the Hon'ble AP High Court also upheld assessing officer's interpretation of the term Sick Industrial Company. A total demand of ₹ 2.22 Crore was raised, a major portion of which has already been collected.

Names of the Officers :

Mr. H. Phani Raju, Addl. CIT, Kurnool Range, Kurnool

Mr. A. Bhaskar Reddy, CIT-3, Hyderabad Assisted by

Mr. K. Srinivasa Rao, ITI, Kurnool

INVESTMENT MADE IN PURCHASE OF FDRS AND INTEREST INCOME EARNED NOT REFLECTED IN THE RETURN OF INCOME

Ghulam Ahmad Wani, Forest Contractor failed to declare income earned on Fixed Deposits and source of investment for such deposit-investment made in purchase of FDRs and interest income earned not reflected in the return of income held to be taxable.

Return of income was filed by the taxpayer on 02.11.2011 declaring his income at ₹ 3,36,347/-, from business of extraction of wood from Forest, on contract basis, allotted to it by the J&K State Forest Corporation and also interest earned on FDRs purchased from different banks. As per computation of income, the taxpayer had claimed credit of TDS at ₹ 58,160/- and had claimed refund of ₹ 48,237/-. During the course of scrutiny, it was noticed that as per 26 AS available on AST system, the total TDS appearing against the PAN of the taxpayer was ₹ 3,73,532/- and the said amount was shown against four specified TAN Nos.

2. On verification of the bank details, with reference to the Balance sheet, Profit and Loss account filed by the taxpayer along with the return of income it was noticed that there was huge difference in the interest income, as reflected by the taxpayer in the Profit and Loss account and as earned by the taxpayer. It was noticed that as against the total receipts on account of payments received from J&K SFC (Extraction Division) and interest income at ₹ 38,75,730.32, in the Profit and Loss account, the taxpayer had shown receipt of only ₹ 3,99,900/- from J&K SFC and no interest earned on FDRs had been reflected in the Profit and Loss account.

3. The information was cross verified from the banks who had credited the taxpayer's account with interest and had also deducted income tax at source on such payments. The said banks namely State Bank of India, Talab Tillo, Jammu and State Bank of India, ADB branch, Canal Road, Jammu not only confirmed the payment of interest and deduction of TDS on the said payments but also provided the details of the FDRs purchased from the said banks on which the interest income has been earned by the taxpayer.

4. The taxpayer was confronted with these discrepancies and a detailed questionnaire was issued asking as to why he had not shown the interest income of ₹ 34,75,830.32 for the period from 01.04.2010 to 31.03.2011, which he had earned from the seven FDRs purchased by him in September, 2010 and in March, 2011. The taxpayer was also requested to explain the source of investment of these FDRs and also furnish necessary evidence in support of his reply.

5. Further, it is also observed that there are number of other FDRs which have either been purchased prior to the A.Y. under consideration or subsequent years. The taxpayer was requested to intimate whether the income earned during the earlier years or subsequent years had been reflected by him in the return of income and also whether the source of the said investment had been explained by him.

6. In response to the said query, the taxpayer admitted the discrepancies and as a result of which total concealment of ₹ 3,66,33,513/- was detected spread over different A.Y.s from A.Y. 2008-09 to A.Y. 2012-13.

7. As a result of detection of the concealment, the taxpayer not only deposited the tax as worked out in the A.Y. 2011-12 but also deposited the tax in respect of A.Y.s 2008-09 to 2012-13 totaling to ₹ 1,53,77,322/- and also did not prefer any appeal against the said assessment order. He filed the returns of income along with payment of tax for the A.Y.s 2008-09, 2009-10, 2010-11 and 2011-12. Notices under S/148 of the Income tax Act, 1961 have been issued and the reassessment proceedings are now to be finalized for these years. The assessment for the A.Y. 2011-12 has already been completed on 21.02.2014 and the entire tax liability has duly been deposited within one week from the completion of assessment. The penalty proceedings u/s 271(1)(c) have also been initiated.

Names of the Officers :

Mr. B. K. Raina, ITO, Ward 2(1), Jammu

Mr. A. K. Thatai, CIT, J&K, Jammu

VERIFICATION OF INCOME LEADING TO ADDITION UNDER CAPITAL GAINS

Taxpayer Sapnaben Patel filed return declaring total income of ₹17,95,620/--Verification of AIR/ITS done- found that capital gains not shown by the taxpayer-instead money routed to an entity where the relative of the taxpayer had a substantial interest-addition of capital gains done-upheld by CIT(A).

The taxpayer Ms. Sapnaben Dipak Kumar Patel, filed return of income for A.Y. 2010-11 declaring total income of ₹ 17,95,620/-. On verification of AIR/ITS details by the assessing officer, it was found that the assesse had sold certain properties during the year but the corresponding capital gain was not shown in the return of income.

2. On verification, it was noted that the taxpayer was in possession of a property, for which she entered an MOU (Banakhat) with one Sanjiv D. Shah (as confirming party) on 04.04.2008 and the consideration of Banakhat was ₹ 76,75,413/-. An amount of ₹ 3 lakhs was paid in cash at the time of entering into Banakhat.

3. Assessing Officer found that the said properties were purchased during A.Y. 2008-09 for a consideration of ₹ 67,96,432/-, however the return of income for A.Y. 2008-09 which was due on 31.07.2008 was filed on 01.06.2009 (only after the tripartite agreement between the taxpayer, Sanjiv D. Shah and one GATIL Properties Pvt Ltd was signed) showing only interest income of ₹ 54,453/- from savings bank a/c. This was the first ROI filed by the taxpayer and the transaction (purchase) of property of ₹ 67,96,432/- was not shown in the return of income.

4. It was further noted by the assessing officer that the taxpayer, Sanjiv D. Shah and GATIL Properties Pvt Ltd entered into a tripartite agreement on 02.03.2009 in which it was stipulated that the property shall be sold directly by the taxpayer for an amount of ₹ 10,67,08,660/- to GPPL. It is important to mention here that Deepak G. Patel, husband of the taxpayer had 'Substantial interest' in GPPL. It is noted that in accordance with the tripartite agreement the remaining amount of Banakhat i.e., ₹ 73,75,413/- was paid to the taxpayer directly by GPPL and further amount of ₹ 9,40,33,247/- was paid by GPPL to the confirming party Sanjiv D. Shah.

5. The assessing officer, on verification of the bank statements of Sanjiv D. shah found that the confirming party transferred the above amount on the same date to one Ganesh Plantation Ltd in which the taxpayer's husband, Mr. Dipak G. Patel is a Director and Mr. Govind C Patel, father of the husband of the taxpayer, is Chairman.

6. The assessing officer collected the copy of return of income with all annexures of the confirming party from another AO. In P&L a/c for A.Y. 2009-10, the confirming party had shown profit on sale of right of land of ₹ 9,87,33,247/- and against this had claimed gross loss of ₹ 9,17,78,957/- from his business of trading of shares and securities. The auditor had mentioned in the column 8(a) of Form No 3CD, the nature of business of confirming party as trading of shares & securities etc and did not mention or leave any remarks in form no 3CD or form no 3CB about the profit on sale of right in land shown in the P&L a/c. Thus Sanjiv D. Shah, had shown the sale consideration out of the above transaction as his business income (as profit on sale of rights on land) which was set off by carry forward business loss of ₹ 9,17,78,957/-. No taxes were paid either by the confirming party or by the taxpayer on the transfer transaction of capital asset from the taxpayer to GPPL.

7. However, after detailed verification, it was noted that in the return of income of the confirming party, the amount of ₹ 9,40,33,247/- which was paid to Ganesh Plantation Ltd is shown as repayment of unsecured loan from Ganesh Plantation Ltd whereas in the return of income of Ganesh Plantation Ltd no such loans and advances is shown in the name of Capital Consultancy (Prop. concern of Sanjiv D. Shah) or Sanjiv D. Shah for A.Y. 2009-10. This became the focal point on which the narration of events by the taxpayer was contradicted by the facts presented by the taxpayer herself.

8. On the basis of the above, the assessing officer concluded that the above Banakhat transaction is basically a colourable device. As the consideration was finally received by a relative of the taxpayer. Capital gain has been levied on the taxpayer. Addition of ₹ 10,08,60,790/- was made in this case raising a demand of ₹ 4,67,30,310/-. Penalty proceedings u/s 271(1)(c) of the Act had been initiated for furnishing inaccurate particulars of income. The addition has since been upheld by CIT(A) XVI, Ahmedabad.

Names of the Officers :

Mr. Kashmira Dabhi, ITO-Ward 10(1), Ahmedabad.

Mr. Vivek Anand Ojha, JCIT Range 10, Ahmedabad.

Mr. P. K. Vatsayan, CIT-5, Ahmedabad

WRONG CLAIM U/S 80IB(10) AND NON DISCLOSURE OF TAXABLE INCOME

The taxpayer is engaged in the business of Real Estate - purchased agriculture land and thereafter applied for conversion of said land for residential and commercial purposes after taking approval of township Plan and map from the Authority concerned- the taxpayer also carried on trading of land/plots/properties claimed deduction U/S 80IB (10) incorrectly – Claim disallowed after analysis – disallowance agreed upon by the taxpayer.

Search was conducted on 22.09.2010 in the case of the taxpayer . Various incriminating documents were found and seized during the search action. One such seized paper shows certain transactions between the taxpayer and Guru Pragya Real Mart Pvt. Ltd. The taxpayer admitted as income of ₹ 7.86 Crore u/s 132(4) during the course of search proceedings as unaccounted income on such transactions.

2. However, this admission was not honoured by the taxpayer while filing the return of income. According to the taxpayer, she had made an agreement with Guru Pragya Real Mart Pvt. Ltd. and as per this agreement, a residential scheme was launched on the land of the taxpayer with the help of this company and profit of the scheme was shared between them in the ratio 21:79. On the income earned by her from this project, the taxpayer claimed deduction of ₹ 4.58 crore u/s 80IB.

3. During the course of assessment proceedings, it was observed that the taxpayer had entered into a joint venture agreement with Guru Pragya Real Mart Pvt. Ltd. on 19.03.2008. In this joint venture agreement efforts were made to show as if the taxpayer is engaged in the construction and sale of the project developed with Guru Pragya Real Mart. Pvt. Ltd. However, a fine reading of the agreement revealed that the taxpayer was actually receiving fixed consideration (21% of sale value of flats and sale value was decided ₹ 1000 per sq. ft. as per the agreement) and various conditions imposed therein ensured protection of her interest in sale of land. It was also observed that she was compensated by payment of interest on late payments as she was not getting entire sale consideration in one go.

4. All the above conditions mentioned in the agreement clearly showed that the taxpayer had sold the land at fixed price because the saleable area and the consideration @ 21% from sale value were fixed as it had to be ₹ 210 per sq. ft. of the flat area irrespective of the value at which the flats were actually sold and irrespective of actual development and sale of the flats.
5. Accordingly, entire profit on sale of land was computed at ₹ 10,60,80,000/- and was added to the income of the taxpayer. As the immediate source of profit of the taxpayer was sale of land and not the development of the project hence, the deduction u/s 80IB of the Income Tax Act, 1961 was also denied. Even otherwise during the course of assessment proceedings it was found that the residential scheme does not qualify certain conditions as stipulated u/s 80IB(10) of the IT Act, 1961 i.e. the project was not completed within stipulated time and more than one flat (unit) was sold to one family. The taxpayer withdrew the claim of deduction of ₹ 4.58 crore and a revised return was filed by her on 26.03.2013. Additional tax of ₹ 1.55 crore was paid by the taxpayer immediately.
6. Finally addition of ₹10.81 crore was made in the returned income including an addition u/s 2(22)(e) and demand of ₹ 4.16 crore was raised vide order dated 31.03.2013.
7. The taxpayer did not prefer appeal against the Assessment Order and paid entire demand as on date. Thus the assessment order has attained finality.
8. Penalty u/s 271(1)(c) amounting to ₹1,47,78,000/- and u/s 271AAA amounting to ₹ 1,06,08,000/- has been imposed against which the taxpayer has gone in appeal.

Names of the Officers :

Ms. Sadhana Panwar, ACIT, Central Circle –3, Jaipur

Mr. Shailendra Sharma, JCIT, Central Range, Jaipur

Mr. Satish Sharma, CIT (Central), Jaipur

WRONG CLAIMED EXEMPTION U/S 54

Taxpayer is engaged in business of handling and a transportation contractor - trading in iron & steel and development of infrastructure project - claimed exemption U/S 54 - Investigation revealed that the agreement to sell was only a paper transaction to claim exemption u/s 54- exemption denied by the Assessing Officer.

The taxpayer Vinay Kumar, Tara Chand & Sons was a contractor engaged in the business of handling and transportation and trading of iron and steel. The taxpayer was also maintaining export yard and developing infrastructure project. Return declaring an income of ₹ 1,08,02,310/- was filed by the taxpayer for A.Y. 2011-12.

2. The taxpayer had sold some plots in Mumbai and part of the resultant capital gain amounting to ₹ 2,25,24,024/- was claimed exempt u/s 54 by him on account of purchase of a pent-house in Navi Mumbai. Detailed investigation was carried out on the issues related to the property purchased by the taxpayer i.e. ownership of the land on which the property was situated and ownership of the building raised on the land.

3. During the investigation of the above, it emerged that the taxpayer had purchased pent house from a company namely Tara Chand Inds. Limited (TCIL) in which he held substantial interest and the company was controlled by his family and that the land on which TCIL had built apartments and pent house was owned by the taxpayer, himself. Further, Mr. Vinay Kumar had given plot on lease/rent to TCIL on a monthly rent of ₹ 25,000/- only and as per the agreement TCIL had no right to sell/transfer apartment/pent house.

4. The investigations thus revealed that TCIL was not the lawful owner of the land and hence, it could not execute any sale deed before the Registrar of property and for this reason the so called agreement of sale between TCIL and the taxpayer was not registered with the State Revenue Authorities. Moreover, the lease agreement between the land owner (the taxpayer himself) and TCIL prohibited TCIL from disposing off any property.

Therefore, the property purchased by the taxpayer was a mere paper transaction to claim deduction u/s 54 of the I.T. Act. Thus exemption u/s 54 of the I.T. Act was denied to the taxpayer and capital gain was charged on ₹ 2,25,24,024/-.

Names of the Officers :

Mr. Anil Gandhi, ACIT, Circle-2(1), Chandigarh

Mr. Jivandeep Singh Kahlon, Joint. CIT, Range-2, Chandigarh

Mr. M. C. Singhal, CIT-1, Chandigarh

RELINQUISHMENT OF RIGHT TREATED AS CAPITAL RECEIPT NOT LIABLE TO TAX

Taxpayer company is in the business of real-estate – formed a JV with other partners – applied to MIDC, Maharashtra for allotment of land for IT Park – after getting the offer letter from MIDC and taking physical possession of the land, the taxpayer relinquished its right in favour of B. Raheja who paid a sum of ₹ 43,52,50,000/- in lieu thereof – the taxpayer company treated it as capital receipt not liable to tax – however, the AO treated it as business receipt and taxed it as such

The taxpayer, Om Metals Infra Projects Ltd., is a Public Limited Company engaged in the business of development of infrastructure project including development of real estates. It declared income of ₹ 8,24,64,180/- for the A.Y. 2008-09.

2. During the assessment proceedings, it was noticed that a JV (Joint Venture) was formed vide agreement dated 16.08.2005 among three parties- the taxpayer, B. Raheja Builders Private Limited and Well Wishers Construction and Finance Private Limited for development of IT Park jointly. For the purpose of land allotment, the JV applied to MIDC (Maharashtra Industrial Development Corporation) for land allotment in Airoli, Thane, Maharashtra. MIDC allotted 50 acres of land to the JV. The land was allotted in the name of all the three partners of the JV and physical possession was taken by all the three partners including the taxpayer on 28.06.2007.

3. Subsequently, registered deed of assignment was executed on 06.08.2007 between B. Raheja Builders Private Limited and the taxpayer for giving up its (taxpayer's) rights on that land. The taxpayer received ₹ 43,52,50,000/-in lieu of this deed of assignment for relinquishing rights in the land situated at Airoli allotted by MIDC. To safeguard its interest, the taxpayer company entered into an escrow arrangement while executing irrevocable power of Attorney and Deed of Assignment in favour of B. Raheja Builders Private Limited. As per the arrangement, Escrow agents were given ₹40 crores by B. Raheja Builders Private Limited to be released in favour of the taxpayer when the deal came through.

4. The taxpayer company treated this amount of ₹ 43.52 crores as a capital receipt in its Balance Sheet, not liable to tax.

4.1 It was noticed that participation in acquiring the land was made in regular course of business to earn profit and thereafter assignment was done purely on commercial basis. Even the land was acquired with the purpose of commercial exploitation of the same. On assignment of the right, the risk and reward of a product /business asset were transferred wherein the taxpayer got involved as part of its regular business and therefore, this receipt was required to be taxed as revenue receipt. A show-cause was issued to this effect.

5. In response to the show-cause, the taxpayer submitted that in the given year, it was not in the business of IT Park/real estate development and instead was in its core business of manufacturing of hydel projects. However, in its own submissions, it had earlier admitted that it was engaged in real estate development and was also claiming deduction u/s 80IB (10) of IT Act, 1961. The taxpayer further argued that it had not invested any money in acquiring the rights in land, so there was nothing to treat as stock-in-trade or other asset. The AO observed that ₹ 5050/- was paid to MIDC while making application for allotment of plot. Therefore, the argument that no cost was involved was misplaced. It was also seen that the said right has not even been shown as capital asset in the financial statements of the company. Further, the interest amount of ₹ 55.30 lakh on the deposit was offered to tax by the taxpayer as business income.

6. Based on facts, and with the help of MIDC authorities who provided complete details through scanned copies over e-mails, assessment order was framed on 30.12.2010. The taxpayer preferred an appeal against the order. CIT (A) concurred with the findings of the AO and held that that the tenor and the language of the JV agreement clearly indicated that the intention of the taxpayer was only to get the land allotted from MIDC and after getting its share of land, selling it to the other JV partner (who was actually interested in developing the IT Park and receiving the money and claiming it to be exempt). The money was received by the taxpayer for relinquishment of its rights after the land was allotted in the name of the taxpayer. The fact that the taxpayer made an exit from the business venture did not alter the fact that the transaction was driven by business motive. Moreover B. Raheja had treated the payment of ₹ 43.52 crore as revenue expenditure in its accounts. It was held by the AO that the nature

of payment in the hands of the payer is an important indicator of the nature of receipt, particularly when the payer is a part of the joint venture of which the recipient taxpayer is also a member.

7. During the course of assessment proceedings, it was noticed that another partner of the Joint Venture Well Wishers Construction & Finance (P) Ltd. had also not declared receipts of ₹ 43,52,50,000/- received from B. Raheja Developers Pvt Ltd. as a taxable income. The same had been accepted by the AO. A letter was written to the jurisdictional CIT at New Delhi bringing out the facts of the case and consequently an order u/s 263 of the Income-tax Act, 1961, setting aside the assessment order passed u/s 143(3) of the IT Act, 1961 was passed by CIT VI Delhi.

8. The case is unique in the sense that there was no case law in respect of transfer of rights vested in a plot of land allotted by a government agency and treated by the taxpayer to be a non-taxable Capital receipts. It is understood that many big real estate players are resorting to this modus operandi.

Names of the Officers :

Mr. Sanjiv, Addl. DIT (Inv.), Jaipur .

Mr. S. K. Choudhary, CIT (A)-1, Jaipur

Ms. Neena Nigam, CIT-6, New Delhi.

AAYAKAR BHAWAN - KOLKATA

INTERNATIONAL TAXATION AND TRANSFER PRICING

INTERNATIONAL TAXATION AND TRANSFER PRICING

TAXATION OF INDIAN ORIGIN MULTINATIONAL GROUP ENGAGED IN NONPAYMENT OF TAX BOTH IN INDIA AND HONG KONG

The taxpayer, a company established in India, shifted its business to Hong Kong in 1940- the Group established a Subsidiary Company in India subsequently – the Company in Hong Kong availing exemption from taxation of its business profits in Hongkong by claiming that 100% of its business activities carried out in India- the Subsidiary in India only claiming its activity as back office operations, declaring only the fee received from WBC as its income- the group indulged in nonpayment of tax in both the countries- Survey operation carried out and evidences gathered that substantial activities carried out in India – Indian Subsidiary held to be Dependent Agent PE and the whole profit attributed to the PE of WBC established in India.

The taxpayer, Watanmal Boolchand Co. Ltd. (WBC), is engaged in trading of various products with its market in African Countries. The Company, established by Late Lalchand Watanmal in 1904 in India, shifted its business to Hong Kong in 1940. In 2003, the Group established a Subsidiary Company in India, Watanmal India Pvt. Ltd. (WIPL), for the purposes of carrying on business of providing logistics support services and back office operations.

2. It was gathered that WBC had received an Advance Ruling from the Inland Revenue Department, Hong Kong in 2006 exempting it from taxation of its business profits in Hong Kong by claiming that 100% of its business activities were carried out in India and there had been no activity in Hong Kong to which the profits of the company could be attributed. On the other hand, the Indian Company WIPL had been filing its ROI in India by stating its activity as back office operations, declaring only the fee received from WBC as its income.

3. It was prima facie believed that the group had indulged in nonpayment of tax in both the countries by misrepresenting the activities of the Indian Company WIPL in two different ways before the Tax Authorities in both the countries.

4. In order to collect evidences relating to the actual activities carried out by WIPL which could constitute the presence of a Permanent Establishment of WBC in India, a survey operation u/s 133A of the

Act was conducted in the premises of WIPL. The operation resulted in the discovery of documents from the business premises of WIPL, which confirmed the suspicion that the business activities of the foreign/ non- resident company WBC were being carried on from the premises of WIPL at Chennai. The evidences gathered along with the statements recorded clearly established that all the business activities of WBC including negotiations and conclusion of Letter of Credits, logistics maintenance and supervision, marketing strategies were being undertaken by the employees of WIPL on behalf of WBC. It established the presence of the non-resident companies in India through the business connection with WIPL which was in fact found to be its Associated Enterprises.

5. Based on the above, it was held that WIPL, an Indian Company was a Dependent Agent of WBC, Hong Kong and all the business activities of WBC were carried out by WIPL in India through which WBC was generating a large amount of income year after year on which no taxes had been paid so far. Since, the profits earned by WBC were wholly through the business activities carried out by Dependent Agent Permanent Establishment (DAPE), the whole profit was attributed to the PE of WBC established in India.

6. From the financials of WBC, Hong Kong, it was found that WBC had earned net profits, amounting to ₹ 415 crores, from its trading activities which were carried out in India by WIPL for the period pertaining to assessment years 2006-07 to 2013-14. The survey was conducted in coordination with the Investigation Wing, regular assessment charge and the Transfer Pricing Directorate.

Names of the Officers :

Mr. G. Elamurugu - ADIT (Intl. Taxn)- 2(1), Chennai

Ms. Ramapriya Raghwan- JDIT (Intl. Taxn)-2, Chennai

Mr. Rajib Hota- DIT (International. Taxation), Chennai

TDS DEMAND RAISED IN THE CASE OF TELECOM COMPANY TAKING SHELTER OF INDO US DTAA BASED ON EXPERT ADVICE AND TECHNICAL ANALYSIS

The taxpayer a Subsidiary of Telecom Multinational- remitting substantial amount to Associated Entities- the nature of payment described as Business Income- characterization of International Telecom Connectivity provided by the AE carried out based on Technical Advise and analysis- clause (i) and clause(iii) to Explanation 2 to Section 9(1)(vi) and correspondingly Article 12(3)(a) of the DTAA invoked- the payment held to be in the nature of Process Royalty and Equipment Royalty.

Verizon Communications India Pvt. Ltd. is a company incorporated and Registered in India. It is part of the Verizon Group, a Global Telecommunication Service Provider incorporated in the United States of America.

2. Examination of Form(s) No 15CA & 15CB for the F Y 2011-12 revealed that VCIPL had remitted substantial amount of payments to associate entities [MCI Communications Services Inc, USA ('MCI Inc') and MCI Intl Inc, USA ('MCI Intl') without deduction of tax at source

3. The nature of payments as described in Form(s) No. 15CA & 15CB was "Business Income Other Than Covered by Categories above". The taxpayer had made the following payments to the said NRCs.

F.Y.	Amount in ₹
2009-10	68,49,18,540
2010-11	178,64,41,749
2011-12	244,55,13,730
Total	**491,68,74,018**

4. It was noticed that the said Non Resident Companies (NRCs) had also not filed any application before the Department for lower or NIL rate of deduction of tax at source. Nor had VCIPL filed an application u/s 195 of the Act before making/crediting the aforesaid amounts to the said NRCs. The taxpayer contended that no tax was liable to be deducted u/s 195 as the payments were neither in the nature of FTS nor Royalty. It was also contended that MCI Inc. and MCI Intl do not have any business connection in India and as such they do not have a PE in India. The contentions taken by the taxpayer were as under:

- Foreign Telecom Operators/Companies (FTOs) are merely providing standard telecom services outside India and as per the service contracts no dedicated network/bandwidth are provided.
- There is no use or right to use of equipment provided by FTOs to VCIPL. No possession or control of any equipment/network deployed by them for provision of telecom services has been assigned in favour of VCIPL.
- VCIPL has no knowledge of the equipment deployed by the FTOs. The limited interest of VCIPL in contracting with FTOs to avail the connectivity services between two points. There is no identification of the equipment by VCIPL.
- The telecom network infrastructure/equipment is concurrently used by FTOs to provide connectivity services to large number of unrelated entities.
- The payments made to FTOs for utilization of telecom services are not payments for the use of any process either. The process is used by FTOs to provide telecom services to their various customers including VCIPL. VCIPL has no knowledge of / interest in the process deployed by MCI Inc in providing the service to the customers.

5. For proper appreciation of the characterization of the payments, the business model of the taxpayer company and its affiliates, along with the nature of the International Telecom Connectivity being provided by them was examined.

6. The vital issue involved in the case was, whether the payments qualify as Royalty in terms of the Act and the India-USA DTAA. The taxpayer emphasized during the course of the hearings that international connectivity provided by it is substantially through MPLS and not IPLC in which a dedicated bandwidth is provided to the user/customer. However, the precise division of the

payments/expenditure attributable separately to MPLS and IPLC was not provided by the taxpayer. No such distinction was discernible from the copies of invoices for the payments to NRCs wherein the payments have been described as "Provision of Network Capacity International Interconnect – IP Backbone". Therefore, matter was referred to a technical person (Director, Deptt. of Telecommunications) for explaining the equipments, processes and the mechanics involved in MPLS - networks. After considering the business model, the nature and processes involved in MPLS and other relevant factual and legal aspects, it was held that the payments qualify as Process Royalty as well as Equipment Royalty.

7. The network architecture involved in the MPLS contains various components & equipments consisting of Optical Fibre Sub-Marine Cables, Copper Circuits, High Capacity Routers, Data-Strength Boosters, an elaborate Elements Management System (eMS), the hardware & software tools for continuous monitoring and fault-detection & resolution etc.

7.1 The MPLS network is an end-to-end network. For providing the connectivity, VCIPL provides and installs its Service Equipments at the customers' premises. In terms of the agreements between the MCIs and VCIPL, the said non-resident entities or their associates indirectly control the fixed assets of VCIPL, therefore, their indirect control extends to the Services Equipments and CPEs at the Customers' ends.

7.2 It was established that for providing the International Telecom Connectivity, the NRCs are essentially allowing the VCIPL & its customers to use an integrated/composite equipment or giving them right to use an integrated/composite equipment or backbone which, though composed of various elements physically and logically connected, represents a continuum. The taxpayer contended that no possession or control over the equipment/ network deployed by the NRCs has been assigned to it. However, this contention was found to be without any merit. In any case, Explanation-5 to section 9(1)(vi) clearly provides that for a consideration in respect of any right, property or information to qualify as Royalty, the possession or control over property/ equipment need not be with the payer

8. It was also established that the payments made by VCIPL to NRCs are also covered by clause (i) and clause(iii) to Explanation 2 to Section 9(1)(vi) and correspondingly by Article 12(3)(a) of the

DTAA (i.e. process royalty). It was the NRCs' responsibility for provision of access to its products and service offerings which necessarily entails transfer of technical details related so that the 'process' running on telecom network of VCIPL can connect and interact with 'process' running on the network of the NRCs. With the help of technical diagrams and the opinion of the technical expert, it was established that MPLS-network based international connectivity essentially involves allowing the process running on VCIPL network to access the process running on the network of the NRCs so as to carry the telecom traffic from VCIPL over the network of the NRCs. One network (i.e. VCIPL's network) can access the other network (i.e. NRCs' network) only after the software's and algorithms are shared by the latter to enable access, integrate into and transmit data by the former over their IPLC and MPLS architecture.

9. The entire case law on the subject as well as the impact of clarifications brought in by the Finance Act, 2012 by way of Explanation 5 & Explanation 6 to section 9(1)(vi) were duly considered and discussed at length in the order. A demand of ₹ 123,57,33,565/- has been raised u/s 201(1)/(1A) of the Act. The demand is being recovered in installments of ₹ 2.5 crore per month.

Names of the Officers :

Mr. Pankaj K. Pruthi, ITO (Intl. Taxn), TDS Ward-2(2), Delhi

Mr. Pankaj Jindal, Addl. DIT (Intl. Taxn), Range -2, Delhi

Mr. Nitin Gupta, DIT (Intl. Taxn)-2, Delhi

REJECTION OF CLAIM OF FOREIGN COMPANY ENGAGED IN CONSTRUCTION CONTRACT OF NON TAXABILITY IN INDIA FOR NOT HAVING PE

The taxpayer a foreign company resident of Singapore- engaged in the business of Engineering, Procurement and Construction- claiming contractual revenue not taxable in India, in the absence of PE relying upon Articles 5(1) of the India Singapore DTAA- statement of the Project Manager recorded alongwith further factual analysis by the AO- the AO held that Article 5(1) not applicable and instead Article 5(3) of the DTAA applicable- also gave a finding of fact that the taxpayer had a PE as per Article 5(1) as well- the taxpayer on a without prejudice basis claimed the revenue taxable U/S 44BB but offered only the revenue received in India for taxation- the AO held such benefit not allowable, as the taxpayer did not comply to the provisions of section 44BB(3)- the entire revenue pertaining to the two Projects held to be taxable U/S 44BB(1).

The taxpayer, Swiber Offshore Construction Pte Limited is a foreign company of Singapore which is engaged in the business of Engineering, Procurement and Construction. The taxpayer filed Return of income declaring NIL income by claiming that its contractual revenues from contracts with BG Exploration and Production Limited (BG) were not taxable in India, in the absence of a Permanent Establishment (PE) in view of Articles 5 of the India-Singapore Double Tax Avoidance Agreement (DTAA).

2. The taxpayer relied on the maxim "generalia specialibus non derogant" i.e., principle of specific overrides general. It was submitted that wherever there was a specific enactment and a general enactment in the same statute, the former would override the latter. On that basis it was contended that Article 5(3) instead of Article 5(1) of the India-Singapore DTAA should be applied in its case for the purpose of duration of PE.

3. The following enquires and analysis were made by the Assessing Officer in the case-

3.1 The clauses of the agreements indicated that the contractor i.e. the taxpayer was required to perform the engineering, design, fabrication, installation, project management and transportation work. The contractor had overall responsibility for the project management, coordination, engineering, procurement, installation etc. for the successful completion of work.

3.2 For all these works, the taxpayer was required to work closely and communicate with BG on a day-to-day basis right from the commencement of the contract. There were weekly meetings, daily progress report, regular communication between the contractor and BG and all documents and correspondence had to be signed by the project manager/project representative. It was not possible to carry out such detailed scope of work from outside India remotely.

3.3 Accordingly, a Project Manager having an office at Powai in Mumbai was identified which meant the contractor had opened this project office in India for execution of project and for complying with the terms of contract agreements.

3.4 The Project manager, in his statement recorded u/s 131 of the I.T. Act stated that he had been nominated as a Project Manager for both the projects as a Deputy to one of the Directors of the taxpayer company. He was given office space and independent cabin along with office facilities like telephone, fax, furnished- office alongwith peon and secretarial staff and was working for the taxpayer company for BG Project. He confirmed he had been appointed as a designated representative. He also attended daily meeting for monitoring the progress of the project as well as attended weekly meeting with BG. He had been looking after this project as taxpayer's representative.

4. On the basis of these observations, the AO held that-

4.1 The statement of the Project Manager established that he was the authorized representative/designated representative of the taxpayer company who was looking after the progress of the projects in India. He was responsible for this Project only and was not involved in any other work. Hence, the fixed place PE was constituted for installation, supervision and assembly project by the taxpayer company in India.

4.2 The taxpayer's claim of applicability of Article 5(3) of the DTAA and not of Article 5(1) was not applicable as the taxpayer company had an office which was engaged in the execution of project. Infact, the project office had been set up exclusively for monitoring the installation project in India. Hence, the same would constitute the PE as per Article 5(1) as well as 5(3) of the DTAA.

4.3 It was demonstrated that even otherwise both the projects had been carried on by the taxpayer in India for more than 183 days separately as well. Hence, the PE of the taxpayer company was constituted as per Article 5(3) of the DTAA also.

4.4 Once it was found that the taxpayer company had a PE in India, its income would be taxable as per Article 7 of the DTAA. The taxpayer submitted, without prejudice to its claim of no PE, that it was taxable under section 44BB as it was engaged in the business of providing facilities in connection with oil exploration.

4.5 Since the taxpayer company had opted to be assessed u/s 44BB of the Act although without prejudice, all income whether received in India or outside India would be taxable in India as per the provisions of the Act and there was no further scope of splitting the income components. If the taxpayer was desirous of splitting the income, it should opt for the net-profit determination of income as envisaged in section 44BB(3). Since such an option was not exercised, the entire revenues were to be taxed u/s 44BB(1). Accordingly, AO held that taxpayer's gross revenues from the project whether received in India or outside India would be liable to tax u/s 44BB of the Act. The reimbursement of service tax was also included in 'receipts' for the purpose of determining 'income' under section 44BB(1) of the income tax act, 1961.

5. As against the Returned Income at Nil, the income was assessed at ₹ 26,81,37,504/-

Names of the Officers :

Mr. Mahesh Shah, Addl. DIT (Intl. Taxn), Range–2, Mumbai

Ms. Sangeeta Singh, DIT(IT)-1, Mumbai

REJECTION OF CLAIM OF REMITTER TO FOREIGN PARENT COMPANY FOR NON-DEDUCTION OF TAX IN INDIA

The taxpayer an Indian company remitting payment to its US based parent company without deduction of TDS- the AO after analysis of agreement held the payments made as 'Support Services' to qualify as Fees for Technical Services and payments made as 'Client reimbursement expenses', in the nature of consultancy payments- also invoked 'Make-Available' clause- held the same taxable in India

The taxpayer, Bain and Company India Pvt. Ltd. is an Indian Company which remitted ₹ 15,13,53,724/- to its Parent Company Bain and Company Inc at USA. On verification of Form 15CA/ CB, it was noted that no tax was deducted u/s 195 at the time of making the remittances except on royalty of ₹ 96,19,505/-. The remittances were in the nature of reimbursements related to client related expenses, standard support services, computer related expenses, consulting services, communication expenses, staff welfare and miscellaneous expenses.

2. The Assessing Officer (AO) analysed the agreements between the two companies including 'Service Agreement', 'Royalty Agreement' and found that that payments made as 'Support Services' were inclusive of income element and fulfilled all requirements of classification as 'Fees for Technical Services'. The AO also established that the fulfillment of 'Make-Available' clause after discussing the factual & legal matrix of the case. Similarly, in respect of 'Client reimbursement expenses', the AO carried out detailed verification of payments and found that these payments were primarily in the nature of consultancy payments/ professional fees and should have been subjected to TDS. The expenses under the head of 'Computer Related expenses' were verified and found to be in the nature of payments for software, which were covered under the definition of 'Royalty' and thus liable to TDS. A total amount of ₹ 7,89,70,432/- was found to be liable to TDS on which no deduction was made by the taxpayer.

3. The proceedings for earlier years in which the taxpayer had made huge remittances of similar nature have already been initiated. After the order, the taxpayer has started the deduction of tax u/s 195 on payments of the above mentioned nature.

Names of the Officers :

Ms. Parveen Burman ITO (TDS) Wards-3(2) (Intl. Taxn), Delhi

Ms. Garima Bhagat Addl. DIT Range-3 (Intl. Taxn), Delhi

Mr. M. S. Ray DIT (Intl. Taxn)-1, New Delhi

DENIAL OF BENEFIT OF ARTICLE 12 OF INDO US DTAA TO HOLD INCOME AS TAXABLE IN INDIA

The taxpayer a foreign company treating its income from services rendered in India exempt- the AO, upon analysis of the invoices and period of stay of top managerial personnel of the company held the nature of business to be Marketing Advisory and as such taxable as business income as per section 9(1)(i) of the I.T. Act- additionally, the AO established that the taxpayer's income was taxable u/s 9(1)(vii) as "fees for technical services" also.

The taxpayer, SEAF Management LLC is a foreign company of USA. The taxpayer filed Return of Income disclosing only interest income and claimed that the income from services rendered in India were not taxable as the services were rendered from outside India and that the services did not fall within the ambit of either 'managerial' or 'technical' or 'consultancy services'. The taxpayer company also relied on the Article 12 of the Double Tax Avoidance Agreement (DTAA) between India and USA by contending that it did not make available any technical knowledge, experience, skill, know-how or process in India.

2. The Assessing Officer examined the Tax Residency Certificate (TRC) and found that the taxpayer was a branch/division or business unit of an exempt entity. Consequently the AO asked the taxpayer to submit details about its compliance to Article 24 of the DTAA i.e. "Limitation of Benefits" between India and USA. Article 24 is in the nature of anti-avoidance provision which restricts the benefit of the Treaty to the genuine resident taxpayers i.e. prohibits use of treaties by taxpayer who does not comply with the conditions enumerated in this clause. The taxpayer could not prove or give any cogent reasons as to how it complied with the provisions of Article 24 of the DTAA. Hence, the treaty benefit as claimed by the taxpayer was denied and its income was computed as per the provisions of the domestic law i.e. Indian Income Tax Act. 1961

3. From a perusal of the invoice submitted during the course of assessment proceedings, the AO found that the nature of services was shown as Marketing Advisory fees. This established that the services being rendered by the taxpayer were in the nature of Marketing Advisory fees. The AO also found that the taxpayer company had a "Business connection" in India. The taxpayer

company had been earning market advisory fees from India as per its Agreement and from perusal of the details filed, the AO observed that the taxpayer company had been raising bills on the Indian entity on quarterly basis. This fact clearly established that the taxpayer had regular income from management advisory fees during the previous year leading to the conclusion of taxpayer having a "Business Connection" in India.

4. The AO additionally found that the taxpayer company's top management employees had stayed for a total period of 73 days in India. This also proved that the taxpayer had a business connection in India in so far as the market advisory fees were concerned.

5. Thus since the taxpayer was held not entitled for the benefits of DTAA, the AO held that the income of the taxpayer was taxable as business income as per section 9(1)(i) of the I.T. Act since it had a business connection in India. Additionally, the AO established that the taxpayer's income was taxable u/s 9(1)(vii) as "fees for technical services" also.

Names of the Officers :

Mr. Mahesh Shah, Addl. DIT (Intl. Taxn), Range–2, Mumbai

Ms. Sangeeta Singh, DIT(IT)-1, Mumbai

ARM'S LENGTH COMPENSATION HELD TO BE RECEIVABLE IN THE CASE, WHERE THE FUNCTIONS OF CHANNEL DISTRIBUTOR REVISED TO SERVICES PROVIDER UNDER ARRANGEMENT WITH THE AE

The taxpayer, an Indian subsidiary of Multinational engaged in Channel Distribution and agent for sale of airtime in India entitled to fee on the basis of percentage of revenue collection- on the basis of revised arrangement appointed as service provider with cost plus 10% remuneration- the TPO based on detailed analysis held the arrangement to be in the nature of restructuring- held that in an arms length scenario such an arrangement/business restructuring would have been possible only after receipt of commensurate compensation for the future losses in revenue- using Discounted Cash Flow (DCF) method along with projections of cash flow in the pre-restructuring and post restructuring arrangements, the TPO arrived at the arms length component of compensation receivable and made adjustment

During the course of the proceedings, it was noticed that MSMI, the taxpayer had been appointed by MSMS (AE) as an agent for canvassing sale of airtime of channels owned by MSMs Under the Agreement upto 31.01.2010 MSMI was entitled to service fees @15% of net advertisement revenues collected. Similarly, under the Distribution Agreement upto 31.01.2010, MSMI distributed the MSMS channels in India, and was entitled to fees @25% of net distribution revenues collected. taxpayer submitted that, in the light of external environment and MSMS's struggling market share, MSMI revised its arrangement and has been appointed as service provider for marketing of air time and distribution of MSMS channels in India w.e.f. 01.02.2010. For carrying out this activity, MSMI is now remunerated at cost plus 10% basis. The TPO was of the opinion that this arrangement has effectively converted taxpayer from being a full-fledged distributor into a limited risk distributor. Thus, as per the TPO, this is an arrangement in the nature of restructuring, for which, in an arms length scenario, taxpayer should have claimed and received compensation.

2. The taxpayer denied that this is a transaction in the nature of business restructuring and stated that it was merely a change in the revenue model or pricing policy. This transaction was examined from the perspective of the OECD guidelines. A detailed show cause was issued and finding was arrived at stating that the change in revenue model, amounted to substantial renegotiation of existing arrangements along with changing functions assets and risk profile of the taxpayer. The contentions of the taxpayer, regarding no transfer of any intangible, were rejected. Firstly on the ground that business restructuring can be carried out with or without transfer of unique intangibles. Further it was categorically held that in the instant case, local intangible in the form of customer lists etc. was transferred without any consideration. A finding was arrived at, that in an arm's length scenario such an arrangement/business restructuring would have been possible only after receipt of commensurate compensation for the future losses in revenue. After giving sufficient opportunity of being heard, and analysing the transfer pricing documentation, discounted cash flow method was used along with projections of cash flow in the pre-restructuring and post restructuring arrangements, to arrive at the arms length component of compensation receivable.
3. The total adjustments amounting to ₹ 190 crores was made by passing the speaking order.

Names of the Officers :

Mr. Jitendra Yadav Addl. CIT and TPO 1 (1), Mumbai

Ms. Malathi Sridharan, DIT TP-1, Mumbai

TP ADJUSTMENT AFTER RE-CHARACTERIZING THE INTERNATIONAL TRANSACTION OF THE TAXPAYER AS A FULL RISK CLINICAL RESEARCH ORGANIZATION

The taxpayer, engaged in manufacture and sale of pharmaceutical products and providing clinical trial services to its AE receiving compensation treating it as Routine Services Provider- analysis made by the TPO proved the taxpayer to assume various risks in India- the TPO re-characterized the functions and risks and held it to be a full risk Clinical Research Organization (CRO) and determined the ALP accordingly

The taxpayer, Astra Zeneca Pharma India Ltd, Bangalore was engaged in manufacture and sale of pharmaceutical products and providing clinical trial services to its associated enterprise (AE) Astra Zeneca AB Sweden.

2. A contract was signed between the taxpayer and the AE for supply of services and data of clinical study for which the costs incurred were reimbursed to the taxpayer and it was allowed to have a profit margin of 9%. For these transactions, it was claimed that the AE was the rightful owner of the business of clinical trials and the taxpayer was engaged in only providing routine support functions. Accordingly the remuneration provided was claimed to be sufficient for adequately compensating the taxpayer for the routine functions performed by it.

3. These group activities (supply of services and data of clinical trials)were classified by the taxpayer as services in the nature of coordination of clinical trials in India which inter-alia included activities such as Conducting feasibility studies to select the appropriate investigators/sites in India, Conduct (monitoring) of clinical trials in India in accordance with regulations of India, selection of the hospital sites and investigators in India for carrying out the clinical trials, Entering into agreements with selected investigators/sites which specified the research grant to be provided for evaluation of the specified subjects (patients) and the manner and the extent to which the other expenditure would be reimbursed to the investigators etc .

4. A detailed study was done by the TPO and it was found that the taxpayer's claim of carrying out simple coordination activities in relation to clinical trials was incorrect. Through a comprehensive FAR analysis of the transactions carried out by the taxpayer, the TPO demonstrated that the taxpayer performed all those activities which were being carried out by a full scale service Clinical Research Organization (CRO). The TPO also analyzed the risks involved in the transactions and found that the AE had completely insulated itself from all kinds of risks and the risks were being borne by the taxpayer.
5. The taxpayer failed to provide any argument against the proposal of the TPO to characterise the operations of the taxpayer as full scale CRO. The taxpayer could not substantiate its claim of being a co coordinator enterprise for clinical trials on behalf of its associated enterprise.
6. After ascertaining the true nature of the business, the TPO selected Transactional Net Margin Method (TNMM) as the most appropriate method for determining the arms length price of the transactions. While making the comparability analysis, due importance was given to the conditions prevailing in the markets in which the respective parties to the transaction operated, including the geographical location and size of the markets, the laws and government orders in force, costs of labor and capital in the markets, overall economic development and level of competition these two companies are having similar external environment etc. The TPO drew a comparison with a Bangalore based company in respect to functions, risks assumed and assets used and used the financial data of the company for applying TNMM.
7. The details were made available to the taxpayer, after a detailed discussion and providing sufficient opportunity to the taxpayer the Arms Length Price determined by the taxpayer in respect to international transactions was rejected and an adjustment of ₹ 121,283,370 was made in this case for the A.Y. 2009-10.

Names of the Officers :

Ms. Meera Srivastava, Addl. CIT (TPO) - 1(1) Mumbai

Mr. Rakesh Bhaskar, DIT (TP) Bangalore

REJECTION OF TNMM AND APPLICATION OF PSM IN THE CASE OF BRANCH OFFICE OF INVESTMENT BANKING COMPANY TO COMPUTE THE ALP OF COMPENSATION RECEIVABLE.

The taxpayer branch of a UK based Investment banking and Investment Management Company provides services to Clients-compensation received by the taxpayer from its AE holding it to be Marketing Service provider- the risks assumed and assets employed by the Branch Office analyzed by the TPO- held to be carrying out functions in respect of derivative products by employing full risk and deploying own Capital as per RBI Guidelines- TNMM applied as most appropriated method by the taxpayer rejected and Profit Split Method applied by the TPO and adjustment made accordingly.

Barclays India offers its clients Investment Banking and Corporate Finance Services including International Capital Market Products, Foreign Exchange and Money Market Instruments. Barclays is a U.K. based financial services group engaged primarily in banking, investment banking and investment management. It was observed that the taxpayer operating through its branches in India is entering into the international transaction of Derivative Products.

2. It was the contention of the taxpayer, that Barclays India performs marketing activities, originates the deal, acts as an intermediary and is involved in client relationship management in offering these products to its customers with the joint effort of its overseas AEs. It does not employ any specific assets. Further, the credit risk and market risk and all the other risks are borne by the AE. The final structuring of the deal is done by the overseas AEs. In lieu of these services, Barclays India was compensated at approximately 20% of the estimated day-1 profit/ loss from the said deals. As per the TP study, this compensation mechanism is in accordance with the Barclays Global Sales Credit Methodology.

3. The contention was analysed by the TPO and the taxpayer was directed to furnish the entire working of these sales credits separately in respect of each derivative transaction entered into by it with the AE. However, the taxpayer did not produce the separate working in respect of value added sales credit and standard sales

credit. In this connection para 130-133 of the OECD report dated 27.07.2010 on Attribution of profits to the PE were referred to support the finding that the taxpayer being a selling/marketing entity, is entitled for 100% of the initial dealer spread.Para 132 of the report cited supra was relied upon by the TPO to give a finding that marketing entity that performs highly specialized marketing function is entitled for a share in the trading profit derived out of the structuring of derivative products. Further, even when a marketing entity works with independent parties, it would expect a share in the overall profits when it works in close co-operations with the trader in structuring the overall deal.

4. After analysing the detailed comments in the notes to the Annual Report, it was observed that the taxpayer has incurred huge amount of liability, though contingent in nature, on account of the derivative transactions which are in the nature of cross currency interest rate swaps, interest rate swaps, options and forward exchange contracts. The discussion in the balance sheet clearly shows that taxpayer has been entering into currency swaps, cross currency swaps and foreign currency options on its own account. The corresponding risk undertaken is also reflected in the books of the taxpayer. Hence, the contention of the taxpayer stating that it was merely engaged in rendering of marketing support for such swaps and forex options was found to be incorrect. For incurring all the risks associated with such transaction, the taxpayer was not compensated by the AE. The compensation received by the taxpayer was only for marketing of these derivative products.

5. Further as per the RBI guidelines, for undertaking these risks, it has to maintain sufficient capital adequacy ratio. The TPO observed that such capital gets locked and cannot be lent for normal purposes. To that extent, it also loses an opportunity cost. For all these reasons, no corresponding compensation at arm's length was received by the taxpayer from the AE.

6. After going through the functional analysis, it was observed by the TPO that the transactions relating to derivative products undertaken by the taxpayer was not merely in the nature of support services and was highly integrated with function of its AE. Therefore, the TPO held that TNMM method was not suitable for benchmarking the ALP of the compensation for functions carried out by the taxpayer. The TPO further observed that where the transactions between the two related parties are highly integrated, the profits can be correctly determined only when both sides of the

transactions are evaluated. Relying upon Para 2.109 of the commentary of OECD on Transfer Pricing the TPO held that Profit Split Method was the most appropriate method for bench marking the transactions in financial instruments.

7. After a detail analysis, the arms length consideration was determined at hundred percent of the gross sales credits against 20-23% of gross sales credits adopted by the taxpayer and an adjustment of ₹ 266 crores was made to this international transaction.

Names of the Officers :

Mr. Jitendra Yadav Addl. CIT and TPO 1 (1), Mumbai

Ms. Malathi Sridharan, DIT TP-1, Mumbai

DISALLOWANCE OF ADJUSTMENT CLAIMED FOR UNDER-UTILIZATION OF CAPACITY IN THE CASE OF A TELECOM COMPANY

The taxpayer, engaged in the business of Telecommunication and Networking Services- sought adjustment on account of Capacity Utilization- based on factual analysis the TPO held, no case of under-utilization of capacity as capacity had not come into existence- held to be a case in which the expenditure incurred earlier by the AE for the use of network taken over by the taxpayer as its own expenditure to cause undue benefit to the AE- adjustment made after disallowing the claim.

The taxpayer, Cable and Wireless Network was engaged in the business of Telecommunication and Networking Services. This was the first year of business of this Company and during the year the company had rendered services to the Associated Enterprises (AEs) as well the third parties. In order to justify the arms length price of its transactions with the AE, the taxpayer claimed that its capacity utilization was low on account of its start-up phase and consequently sought an adjustment on account of low capacity utilization in its TP report.

2. The Transfer Pricing Officer (TPO) made detailed study of the record to examine the existence of any idle capacity in the use of infrastructure created by the taxpayer company. The TPO found that before the commencement of business of the taxpayer company, the AE(C & W Global) was utilizing telecommunication and networking infrastructure provided by Tata Communications Ltd. for rendering services to its customers. Once the taxpayer company was incorporated, the AE started entered into a contract with the taxpayer company. Since the taxpayer's network was not ready to use for providing services on its own, it simultaneously entered into a contract with Tata Communications Limited to take its network on lease. Thus, after incorporation of the taxpayer, Tata Communications Limited continued to provide services to the AE, as earlier, with the only difference that the payment to Tata Communications Limited was considered as expenditure in its books by the taxpayer. Though the taxpayer company was not ready to provide services to its customers by having its own infrastructure ready, it provided

services to the AE by taking the network on lease from Tata Communication Limited for ₹ 178,413,000/-.

3. The TPO held that there was no advantage to the taxpayer company in this arrangement and payment to Tata Communications Ltd. was made with the sole purpose of letting AE provide uninterrupted services to its customers. Thus the TPO established that it was no case of under-utilization of capacity as capacity had not come into existence, rather, it was a case in which the expenditure being incurred earlier by the AE for the use of network was taken over by the taxpayer as its expenditure to cause undue benefit to the AE. Therefore, after detailed calculations an amount ₹ 17.86 crores was proposed as an adjustment in the TP order.

Names of the Officers :

Ms. Meera Srivastava, Addl. CIT(TPO)-1(1) Mumbai

Mr. Rakesh Bhaskar, DIT (TP) Bangalore

AAYAKAR BHAWAN - CHANDIGARH

APPELLATE ORDERS

APPELLATE ORDERS

ORDER IN THE CASE OF A STATE GOVERNMENT PSU FILING RETURNS BASED ON PROVISIONAL ACCOUNTS

Case of a state government undertaking which was filing its return of income on the provisional accounts for many years-returns not revised even though final accounts show much higher income-alertness of the CIT(A) resulted in considerable gain to revenue.

Maharashtra Tourism Development Corporation Ltd. is a State public sector company, established by the Government of Maharashtra. During the course of its appellate proceedings, the CIT(A) noticed that the taxpayer had wrongly furnished its return of income on the basis of provisional financial accounts for A.Y. 2011-12. The A.O. had added ad-hoc 1% of total turnover disclosed in the provisional P&L Account and treated interest income from fixed deposits as income from other sources. Both issues were disputed by the taxpayer.

2. The CIT(A) insisted that the taxpayer furnish its final P&L Account and Balance-Sheet.When this was furnished after a delay of over six months, it showed under-statement of taxpayer's income by ₹ 9.48 crore.

3. The assessment was suitably enhanced. Other additions on account of service tax not deposited, prior period expenses, disallowances u/s 40(a)(ia) and unutilized revenue grant were also made. Penalty proceedings u/s271(1)(c) were also initiated by the CIT(A).

4. Similar under-assessments in earlier assessment years were also noticed by the CIT(A) in this case. The modus operandi was simple: the taxpayer would furnish returns of income on the basis of provisional accounts, the A.O. would make adhoc estimated G.P. addition, the CIT(A) would confirm the estimated addition. Inspite of such estimated G.P. additions, the taxpayer would be able to evade taxes as the income on the basis of its audited Profit and Loss Account, duly approved by Board of Directors (but never disclosed in its returns of income) was always higher than the assessed income(after considering the ad hoc additions).

5. As a result of the present appellate order, assessments for earlier years were reopened with the following results.

Sr. No.	A.Y.	Original ROI (₹)	Revised ROI (₹)	Additional Income Tax	Remarks
1.	2007-08	2,55,41,779	6,11,78,434	Additional tax payable of ₹ 60,22,488 admitted.	The revised returned income to be further enhanced by making disallowance u/s.40(a)(ia), 43B and prior period expenses.
2.	2008-09	4,68,81,234	35,94,32,600 (Reassessed u/s.147 in Feb., 2014)	18,45,19,544	**Additional demand of ₹ 11 crore already collected in March, 2014.**
3.	2009-10	4,15,39,104	6,10,53,180	Additional tax payable of ₹ 73,26,175 admitted.	The revised returned income to be further enhanced by making disallowance u/s.40(a)(ia), 43B and prior period expenses as discussed in the appellate order for A.Y.2011-12.
4.	2010-11	5,63,09,300	9,85,23,460	Additional tax payable of ₹1,94,99,324 admitted.	-do-
	Total:	**17,02,71,417**	**58,01,87,674**		

6. This case underlines the importance of Departmental officers maintaining their alertness in all kinds of cases, including public sector companies.

Name of the Officer :

Mr. N. N. Mishra CIT(A)-4, Mumbai.

CLAIM OF A STATE HOUSING BODY TO BE A CHARITABLE ORGANIZATION

MHADA, a housing body of the State government claimed registration as a charitable body u/s 12AA-claim upheld by ITAT-CIT(A) invokes provisions of S11 dealing with application of funds for charitable purposes-finding that application of funds is not for relief for the poor-hence MHADA's income is taxable.

MHADA is an organization set up by an Act of the Maharashtra Legislature. Its present function is coordinating and controlling the activities of seven regional housing boards, setup for each revenue division in the state. MHADA controls and sells large amounts of prime property, especially in Mumbai.

1.1 Consequent to the omission of section 10(20A) of Income-tax Act, 1961along with amendment to section 10(20), MHADA, like any other housing development authority was required to file its Return of Income. However, it got Registered u/s.12AA with the DIT(Exemption), Mumbai and filed its Return of Income for A.Y. 2010-11 showing Nil income by claiming exemption u/s.11 of the Income-tax Act,1961. In the meantime, DIT(Exemption), Mumbai had withdrawn the Registration u/s.12AA vide order dated 22.12.2011. The A.O. completed the assessment denying the exemption u/s.11 of the Income-Tax Act and holding:

(i) That MHADA is not a valid trust and change of its status is not permissible. (However, the Hon'ble ITAT, Mumbai decided this issue against the Revenue).

(ii) That since MHADA is engaged in commercial activity of development and sale of land, the exemption claimed by it u/s.11 is not allowable in terms of section 2(15) of the Income-tax Act,1961 which defines charity.

2. The A.O. presumed that MHADA is claiming exemption for being 'charitable' on account of 'the advancement of objects of general public utility' as contained in fourth of limb of section 2(15) of the Income-tax Act,1961.Therefore, MHADA does not remain charitable after the amendment brought in vide Finance Act, 2008, adding a proviso to section 2(15), to the effect that any activity and/or service in the nature of trade, commerce, business in respect of claim of charity on account of 'advance of any other object of general public utility' will not be a charitable activity. Hence, exemption u/s.11 will not be available.

3. MHADA claimed before the A.O. that it qualified as a charitable organisation under the other limb of section 2(15) i.e. "relief of the poor". It also claimed that MHADA is not carrying out any business, trade, commerce activity and/or service in the nature of business/commerce, therefore fourth limb of section 2(15) is also applicable(i.e. proviso is not applicable).
4. In the assessment order, the taxpayer's twin claims for qualifying as a charitable organisation for 'relief of the poor' and 'advancement of any other object of general public utility' (as provided in section 2(15)) have not been addressed, examined and decided by the A.O. on any clear factual or legal basis. The claims have been rejected summarily and arbitrarily in one sentence by stating that taxpayer's submissions/claim is not acceptable.
5. In the meantime, the Registration u/s.12AA rejected by the DIT(E), Mumbai was restored by the Hon'ble ITAT in ITA No.435/Mum/2012 vide order dated 22.02.2013.
6. Thus, the denial of exemption on the ground of withdrawal of Registration u/s.12AA and on account of change of its status resulting in invalid trust, have been rejected by the higher judicial authorities like Hon'ble ITAT, Mumbai and at the same time the claims of the MHADA as charitable organisation based on 'relief of poor' and 'advancement of any general public utility' had been summarily and arbitrarily rejected.
7. In the context of Department having failed on the ground of withdrawal of registration u/s.12AA,the CIT(A) felt that it was appropriate to examine and assess the claims of MHADAto be a charitable organization in the context of section 11(1)(a) of the Income-tax Act, 1961 which requires the application of income during each year for eligible purposes i.e. charitable or religious purpose. This requirement of application of income for charitable or religious purpose as contained in section 11(1)(a) of the Income-tax Act,1961 is an independent requirement in terms of section 2(15) of the Income-tax Act,1961. Hence this approach is free from the litigation in respect of registration u/s.12AA. Such registration is only a pre-condition for being considered for exemption u/s.11 of the Income-tax Act,1961.
8. On examination of application of income for charitable purpose, during the year, in terms of section 2(15) of the Income-Tax Act, it has been found that the claim of 'relief to poor' is contrary to facts because the plots / houses/ flats were allotted for substantial consideration to the allottees. Further such allotment is based on

classification of allottees in terms of lower, middle and higher income groups. Several of such groups have substantial income during the year and admittedly belonged to various income groups: it is not acceptable that all these groups can be classified as "poor". The allotments done from year to year show that the allotments are pre-dominantly made to middle and higher income groups. Thus, on facts, the claim for charity as 'relief of poor' is liable to be rejected.

9. It has also been found that there is substantial reservation in allotment of plots, buildings and such properties. While reservation for SC & ST persons is based on Constitutional provisions, it is seen that MHADA also provides for reservation for journalists, Central & State Government Employees and others. In making such reservation, no case is made out that these groups can be considered"poor". Such reservation for special groups on grounds other than poverty destroys the 'altruism' which must be present for claiming charity and exemption under the Income-tax Act,1961. The fact that beneficiaries should not be able to claim charity as a matter of right is the crux of 'altruism' which must be present for claiming charity and exemption under the Income-tax Act, 1961 as affirmed in the decisions in the case of Chamber of Commerce vs. CIT, 4 ITR Allahabad. The practice of reservation in allotments(which is not based on Constitutional provisions or on the income levels of the allottees) destroys the charitable character required under the Income-tax law for claiming exemption.

10 The alternate claim of MHADA to be a charitable organisation based on being a statutory authority charged with implementing Govt. Policy is not a tenable one. The decision in the case of Entertainment Society of Goa vs. CIT (2013) 23 ITR (Bom.) has already supported this finding.

11. The approach outlined above is a creative solution to the problems created by adverse decision of the ITAT on the issue of registration. Demand of ₹ 199.80 crore for Asstt. Yr. 2010-11 alone in the case of MHADA has been confirmed by this appellate order.

Name of the Officer :

Mr. B. P. Singh CIT (A)-1, Mumbai.

LARGE ENHANCEMENT IN APPEAL OF A BANK

Bank makes claim of ₹ 306.43 crore as provision u/s 36(i)(viia)-CIT(A) notices that actual amount debited to P&L a/c for the provision is only ₹ 84.31 crore-enhances the assessment in well argued order-upheld by ITAT.

Bank of Maharashtra is a leading public sector bank in India. In its appeal for A Y 2008-09, a major issue was regarding the claim of write off of bad debts u/s 36(i)(vii). It was found that the Assessing Officer had disallowed the claim of ₹ 107.66 crore on the ground that, as per proviso to section 36(i)(vii), the deduction in the case of a taxpayer to whom clause (viia) applies, would be limited to the amount by which such bad debts exceeds the credit balance. Since the provision made by the taxpayer u/s 36(i)(viia) at ₹ 306.43 crore was higher, the claim of bad debts stood disallowed.

2. During appellate proceedings, the bank tried to make a case that claim was now fully allowable, following Supreme Court decision in Catholic Syrian Bank, reported in 343 ITR 270. However, it was noticed by the CIT(A) that the taxpayer had not actually written off the bad debts in the Profit & Loss Account. It had merely adjusted the loan accounts of debtors in the balance sheet by debiting the provision made towards NPA, provision towards standard assets and provision for nominal accounts, amounting in all to ₹ 117.94 crore. The taxpayer claimed this was in accordance with the Supreme Court decision in Vijaya Bank (323 ITR 166). However, it was found that the Supreme Court had held that after the insertion of Explanation to Sec 36(i)(vii) by Finance Act 2001, with retrospective effect from 1.4.1989, the taxpayer is now required to not only debit the Profit & Loss Account, but also to reduce the debtors from the asset side of the balance sheet correspondingly, so that the advances/debtors is shown as net of provision for bad debt. Hence mere provision for bad debt/NPA cannot constitute actual write off and therefore, the Supreme Court decision in Catholic Syrian Bank cannot be applied to the taxpayer.

3. During the course of appellate proceedings, it was noticed that the A O had allowed deduction of ₹ 306.43 crore u/s 36(i)(viia) as per the formula prescribed in the section, whereas the actual provisions debited in the audited books of accounts was only ₹ 84.31 crore. The taxpayer had claimed this amount of ₹ 84.31

crore both in the original return filed on 30.09.2008 as well as revised return filed on 27.01.2010. An enhancement notice u/s 251(2) was issued on 14.12.2012, proposing to restrict the claim to ₹. 84.31 crore. The taxpayer argued that the language used in the section referred to "any provision for bad and doubtful debts made by", which showed that the legislature consciously avoided using the phrase "amount debited to the profit & loss account". This view had been upheld by Bangalore ITAT in the case of Syndicate Bank reported in 78 ITD 103. It was also contended that the calculation made in the tax books/ memorandum of accounts maintained by the taxpayer, to calculate statement of depreciation as per Income-tax Rules, computation of loss on valuation of securities at cost or market value, whichever is lower, and provisions created u/s 36(i)(viia) & its utilization as per Income-tax Act. The taxpayer contended that the definition of books of accounts as per section 2(12A) was an inclusive definition, and would also cover the tax books/memorandum of accounts.

4. These argument of the taxpayer were rejected by the CIT(A) who held that the CBDT Instruction No.17/2008, clearly restricts the deduction u/s 36(i)(viia) to the amount actually created in the books of the taxpayer or amount calculated u/s 36(i)(viia), whichever is less. The Punjab & Haryana High Court in the case of State Bank of Patiala reported in 272 ITR 59 and the ITAT Chennai decision in Bharat Overseas Bank Ltd upheld this view and did not allow the provision made in the books of the subsequent year as a deduction u/s 36(i)(viia). It was held that, as a special measure, scheduled Commercial Banks, having rural branches, in addition to writing off urban debts, were allowed a deduction in respect of a certain percentage of bad & doubtful debts in respect of rural branches u/s 36(i)(viia). At the same time, to prevent double deduction for accounting purposes, the legislature introduced a ceiling for allowance of bad debts by introducing proviso to sec 36(i)(vii), as per which the bad debts to be allowed are to be restricted to the amount by which the same exceeds the credit balance in the provision made u/s 36(i)(viia). Therefore, it was held that the provision actually created in the books of ₹ 84.31 crore is allowable u/s 36(i)(viia) which was in accordance with the Hon'ble Supreme Court decision in Catholic Syrian Bank (343 ITR 270), Punjab & Haryana High Court decision in State Bank of Patiala (supra), Chennai ITAT in Bharat Overseas Bank(139 ITR 154) & CBDT Instruction 17/2008.

5. On the contention that tax book/memorandum of accounts, or in other words, computation of income sheet (with annexure) amount to "Books of Accounts", it was held these were neither mentioned by the Auditor in Form 3CD(Col 9) furnished u/s 44AB nor was it a case where taxpayer maintained separate books of accounts for income-tax purposes. With the help of legal commentaries and Court decisions, it was held that books of accounts can be said to be any book which forms an integral part of book-keeping, such as ledger, cash book and books of original entry. At best, the phrase "other books" mentioned in S 2(12A) would include those books/documents necessary for supporting the main books enlisted in the definition.

6. The alternative contention of the taxpayer was that ₹ 86.31 crore (provision for NPA), ₹ 29.86 (provision for standard assets) and ₹ 1.82 crore (provision for nominal accounts) may be considered as provision for bad & doubtful debts made in the books for deduction u/s 36(i)(viia). This contention was also rejected since provision on standard assets and nominal accounts being against assets which are good and recoverable and not doubtful assets, as held by ITAT Chennai in Bharat Overseas Bank, are not allowable.

10. The income of the taxpayer thus was enhanced by ₹ 222.12 crore, by restricting claim allowed by Assessing Officer at ₹ 306.43 to the amount actually created in the books of account, which was ₹ 84.31 crore.

11. Pune ITAT in ITA Nos.1135 to 1138/PN/2013 vide order dated 17.09.2014 has confirmed the enhancement made u/s 36(i)(viia) of ₹ 222.12 crore by following their earlier decision in the case of Shri Mahalaxmi Co-op Bank Ltd. and Punjab & Haryana Court decision in the case of State Bank of Patiala Vs CIT (272 ITR 54) and the CBDT instruction No.17/2008 dated 26/11/2008.

Name of the Officer :

Ms. Mithali Mathusmita CIT(A) 1, Pune

TRUST DENIED EXEMPTION U/S 12A

Trust claiming exemption under S 12A invests in preference shares of unlisted and related entity. Claim to exemption rejected and amount brought to tax.

Jamsetji Tata Trust was registered u/s.12A and claimed exemption u/s.11 of the Income-tax Act, 1961, for A.Y. 2010-11. It filed a return of income showing Nil income. During the relevant year, the Trust had sold shares of TCS for ₹ 537.10 crore and re-invested the amount by way of acquisition of preference shares of Tata Sons Ltd valued at ₹ 545 crore. Thus, the sale proceeds of TCS shares were utilized for acquisition of preference shares of Tata Sons Ltd. which is not a Public sector company. This resulted in violation of 'specified modes of investments' as provided u/s 11(5) of the Income-tax Act, 1961. It was also found that the investments so made in the Tata Sons Ltd. attracted provisions of section 13(1)(d) : transaction giving benefit to a specified person.

2. The Trust argued that the profit on sale of shares of TCS was in the nature of capital gain, exempted u/s 11(1A) of the Income-tax Act, 1961. It was further argued that the only requirement for exemption of such profit is to acquire another capital asset, and in that case, it is not relevant whether provisions of section 13(1)(d) are applicable.

3. The issue has been adjudicated in appellate proceedings. With reference to section 13(1)(d)(iii) it was held that the shares of Tata sons Ltd. were held by the appellant after the date of 1st June, 1973 thereby disqualifying the amount from exemption as a corpus fund. It was further discussed and elaborated that section 13(2)(h) is applicable to the appellant in terms of specified investment of the 'funds' of the trust, including all such amounts. The decision in the case of Talaprolu BapanaiahVidya Dharma Nidhi Trust vs C.I.T. (1987) 167 ITR 482 (AP) was followed.

4. The other arguments of the appellant have been duly discussed in detail in the appellate order on the issue of alternative exemption claimed u/s 10 of the I.T. Act based on estoppel of surrender of status and obligations of the trust as undertaken by the appellant u/s.11 r.w.s. 12 & 13 of the Income-tax Act, 1961..

5. The exemption claimed by the appellant based on computation sections under other heads of income has been denied with reference to decision in the case of DIT vs Girdharilal Shewnarain Tantia Trust [1993] 199 ITR 215/71 Taxman 150 (Cal.). The appeal was dismissed and tax demand of ₹ 300,22 crore was strengthened and confirmed.

Name of the Officer :

Mr. B. P. Singh CIT(A) 1, Mumbai

ISSUE OF WHETHER TAXABLE INCOME ARISE WHEN A COMPANY ISSUES SHARES AT LESS THAN FMV

Decision on whether on allotment of shares by a company to its shareholder at the face value which is less than FMV u/r 11UA, the difference between face value and FMV can be added u/s 56(2)(vii)(c) for AY 2010-11.

A private limited company after increasing the authorised share capital, issued further shares to an existing shareholder at face value of ₹ 100 per share on 10.2.2010 whereas the FMV of shares u/r 11UA immediately prior to issue of fresh shares was ₹ 1538 per share. When the AO considered adding the difference between issue price and FMV as income u/s 56(2)(vii)(c), it was argued by the taxpayer that the provisions of 56(2)(vii)(c) cannot be invoked on grounds that (i) there was no 'transfer' of shares upon allotment of shares by company to its share holder, relying on Khoday Distilleries 307 ITR 312(SC) (ii) there can be no 'transfer' of shares when the Company did not own such shares in its balance sheet and (iii) there can be no 'transfer' of any shares(asset) on allotment as they come into existence only after allotment of shares by appropriation of authorized share capital. In short it was argued that when shares were not born into existence nor owned by company prior to allotment to taxpayer, there could be no 'transfer' of such shares from company to shareholder and in absence of 'transfer' the provisions of 56(2)(vii)(c) could not be invoked. Without prejudice, relying upon the decision in case of Miss Dhun Dadbhoy Kapadia 63 ITR 651(SC) it was also argued by taxpayer that the FMV of shares has to be considered on a date after allotment of fresh shares and not before allotment and in that event the difference would be much lesser. The AO however held that the shares were born at the time when the company completed the necessary formalities under the Companies Act for increasing the authorised share capital and accordingly added the difference between face value and FMV u/r 11UA prior to allotment as income u/s 56(2)(vii)(c) of ₹ 27.89 crore.

2. The above arguments of the taxpayer were rebutted in appellate order by the CIT(A) by holding that the word 'transfer' and the word 'received' have different connotations. Though they might have some common implications in a given context, but these two

words are not exactly interchangeable in the context of section 56(2)(vii). Section 56(2)(vii) contemplates 'receipt' which also includes 'right to receive' under section 5 of the Income-tax Act, 1961 and 'transfer' u/s 2(47) in strict sense is not contemplated therein. As regards the date on which shares can be said to have come into existence, it was also held that there is distinction between allotment of shares and issue of share certificates; the former takes place when the shareholder is approved for allotment of shares as per Board's resolution whereas the latter event takes place when the certificates are actually issued to share holder.

3. Referring to the provisions of section 81 of Company's Act, it was also shown that in case of a Pvt. Ltd company, further shares could be issued simply by passing the resolution by Board of Directors and sending the same to ROC on form no 2 within 30 days and share certificates could be issued thereafter within 3 months. It was therefore held that 'right to receive' shares accrued to taxpayer on the date when Board of Directors passed a resolution itself deciding to allot the shares to taxpayer on 28.2.2010 coupled with receipt of entire consideration by company also on the very same day. There was a constructive receipt of ownership of shares on 28.1.2010 itself and the issue of share certificate on 10.2.2010 and making necessary entry in register of shareholders was only in confirmation of resolution dated 28.1.2010.

4. As regards the contention of the taxpayer that shares were not owned by the Company and hence could not be transferred, it was held that section 56(2)(vii) is intended to prevent mischief from the perspective of transferee who receives property for inadequate consideration and not from the perspective of transferor from whom the property is being received. Hence, whether the person from whom the property is being received has recorded the said assets in its books or balance sheet is not at all relevant. Reflection/ownership of property in balance sheet is not a precondition envisaged in section 56(2)(vii). Even otherwise, in principle there can be instances where intangible assets till quantified and accorded a specific book value, remain unrecognized in books but their existence cannot be denied just because they are not quantified and recorded in books. Hence the moment shares are allotted below the FMV, the benefit of difference between FMV and face value accrued to taxpayer, even if there was no such property appearing in balance sheet of company. By drawing support from the provisions of FEMA relating to FDI and also from provisions (viia) and (viib) which are pari-materia

with provisions of 56(2)(vii), it was further proved that pre-ownership of shares by a company was not contemplated for purposes of 56(2)(vii). Alternatively, it was also shown that the money's worth of the difference between face value and FMV would also fall under section 56(2)(vii)(a) also. Since section 56(2)(vii) is intended to prevent tax evasion and avoidance, it is to be strictly interpreted. It was shown on facts that the whole arrangement of issuing shares by a company at much below the FMV to taxpayer, who was also holding controlling interest in the company, was in the nature of device as the company transferred the accumulated profits to share holder by issuing shares at face value only, circumventing 56(2)(vii) in hands of taxpayer and at the same time not paying dividend tax in hands of company also. The decision of SC in Khoday distillery(supra) was also distinguished as same pertained to Gift Tax Act where the provisions contemplated 'transfer' and the context in which that decision was rendered was also not found applicable to taxpayer's case. The alternate argument that FMV of shares should be computed after the date of allotment of shares was also held to be not tenable on the basis of various decisions of High courts wherein the ratio of Miss Dhun Dadbhoy Kapadia(supra) was explained and on that basis the said decision was held to be not applicable to facts of taxpayer's case. Accordingly after demolishing all the arguments of taxpayer and by marshalling fresh facts and new line of arguments as above (which was not considered by AO), the addition of Rs 27.89 crore was confirmed by the CIT(A).

5. The ITAT has passed an order dated 12/3/2014 in the appeal filed by above taxpayer wherein the ITAT in Para 4.5 of its order have upheld the findings of the CIT(A) on the first limb of argument of taxpayer wherein it has held that there was no requirement of 'transfer' and it would amount to receipt of shares when additional shares were allotted to taxpayer. It is only the second limb of argument of taxpayer which was upheld by the ITAT in favour of taxpayer by holding that FMV of the shares have to be considered as income u/s 56(2)(vii) only, if the taxpayer was allotted shares in excess of proportionate shares already held by it.

6. Though the addition has been deleted by ITAT on fact that it was found that the additional shares allotted to taxpayer were not more than the proportionate share as per his original shares but the principle upheld on page 11 of ITAT order is that when the shares are allotted below FMV by a company (in which public is not substantially interested) to an existing share holder, then

provisions of 56(2)(vii)(c) could be invoked only with reference to additional shares which are received disproportionate/excess of the proportionate percentage of shares already held by it based on FMV after the allotment of additional shares. This would interalia also mean that if a person is not an existing shareholder, then any shares allotted below FMV would attract provisions of 56(2)(vii)(c) irrespective of number of shares allotted.

7. In fact in case of some other shareholders of the same group receiving shares below FMV from same company, there are disproportionate allotments also which as per this very ITAT order itself would be hit by 56(2)(vii)(c). Thus finding of the ITAT could be successfully applied in dealing with other cases as well.

Name of the Officer :

Mr. Ajay Kumar Srivastava CIT(A)-32, Mumbai.

LARGE ENHANCEMENT BY APPLYING ACCOUNTING STANDARDS

Enhancement made by CIT(A) in the case of a developer by applying the provisons of Accounting Standards and by scrutinizing the accounts.

Parinee Developers Pvt. Ltd., is engaged in the business of construction. The taxpayer filed an appeal against an addition of only ₹ 11.81 lakh on account of certain ad hoc disallowances made by the AO in A Y 2009-10. The CIT(A) found that though the taxpayer was following Accounting Standard-9 read with Accounting Standard-7, it had inflated its future estimated expenditure by almost ₹ 500 crore so as to bring down the percentage completed during the year from 58.39% to 42.92%, thereby showing lesser profit. The CIT(A) then issued a notice of enhancement and called for the estimated expenditure submitted by the taxpayer to the banks for getting loans. The taxpayer was left with no alternative but to admit that its estimate of future cost was nowhere close to reality and that the same stood at ₹ 1425 crore instead of ₹ 1939 crore shown by it earlier.

2. The basis of this action was that the taxpayer was recognizing income based on percentage completion method. If the actual cost was booked in accordance with percentage completion method, such actual cost would only include expenses incurred for the work done. The taxpayer however had debited expected, or possible loss. This was only an anticipated loss that might arise in future. If anticipated, possible costs were allowed as period expenditure, the matching concept would not be satisfied.

3. For tax purposes, it is a cardinal principle that only expenses actually incurred could be allowed. If taxpayers are allowed to consider future, possible costs as a current period expense, there will be few taxpayers left, who are liable to pay any tax. No tax regime can work based on subjective estimations and future exigencies which are not amenable to a reasonable determination. Faced with sustained investigation, the taxpayer was left with no alternative but to admit that there was no basis for showing inflated future cost.

4. It was also found by the CIT(A) that the taxpayer had reversed sale of ₹ 179 crore during the year. On verification, it was found that there was no basis for the reversal of sale and it was merely a case of deferment to avoid paying taxes in the year under appeal. On sustained questioning, the taxpayer broke down and filed a letter admitting to enhanced income of ₹ 120.03 crore for the year under appeal and offered total additional income of ₹ 186.79 crore for the subsequent years and paid taxes of approximately ₹ 65 crore.

5. This case underlines the importance of proper understanding of Accounting Standards.

Name of the Officer :

Mr. Prawin Kumar CIT(A) 37, Mumbai

CIT(A) LEVIES CONCEALMENT PENALTY ON THE BASIS OF UN COMMITTEE REPORT

Rare case of CIT(A) initiating and levying penalty in a case where the taxpayer was indicted by the Volkar committee for acting in contravention of U N sanctions against Iraq, then ruled by Saddam Hussein.

NSIL Exports Ltd. engaged in the business of trading exports and its name appeared in the report of the Volkar Committee appointed by the United Nations Security Council with reference to "Oil-For-Food" Scam. The taxpayer paid certain kickbacks or bribes to Saddam Hussain Regime in Iraq in the disguise of "Inland Transportation Fees", "After Sales Service" and "Commission" to certain dubious parties in Iraq.

2. In this case, the taxpayer furnished its return of income for A.Y. 2003-04 on 19.11.2003 disclosing total income of ₹ 2.28 crore. The assessment was made u/s.143(3) of the Act on 28.02.2005 determining total income of ₹ 3,77,37,140. Subsequently, after the receipt of Volkar Committee report, the AO completed the reassessment u/s.147 r.w.s.143(3) of the Act on 23.11.2007 reassessing total income at ₹ 7.08 crore. In the first appeal, NSIL Exports Ltd.'s assessed income was enhanced by a sum of ₹ 3.44 crore because the taxpayer made false claim of commission payment and inland transportation fees. Though the A.O. had not initiated any penalty proceedings, the CIT(A) recorded a satisfaction for initiating penalty proceedings against NSIL Exports Ltd. in the appellate order for A.Y. 2003-04.

3. The taxpayer had claimed before the A.O. that it had exported certain hot rolled mild steel window section, black tea, aluminium phosphide, etc. to certain parties in Iraq as per approval by the U. N. approved and empowered committee and by the Indian Embassy. On a specific query by the CIT(A), however, the taxpayer was unable to furnish evidence of such approval. The taxpayer also failed to furnish credible evidence and complete details regarding nature and commercial expediency of services rendered by the contractors in Iraq for which commission had been paid by the taxpayer. Even details of communication between the taxpayer and the commission agents in Iraq could not be produced.

4. In the light of the above facts and circumstances of the case and the legal scenario discussed in detail in the penalty order, the CIT(A) levied minimum penalty of ₹ 3,02,79,791u/s. 271(1)(c) of the Act r. w. Explanation-1 and r.w.s. 274 of the Act.

5. Similar penalties of ₹ 1.92 crore in A.Y.2002-03 and of ₹ 38.52 lakh in A.Y. 2001-02 u/s.271(1)(c) of the Act were levied on the corresponding enhanced income in "Oil-For-Food" Scam as detected by the Volkar Committee

Name of the Officer :

Mr. N. N. Mishra CIT(A)-4, Mumbai.

CENTRAL REVENUE BUILDING - PATNA

SEARCH AND SEIZURE

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SUPPRESSION OF INCOME BY DEBITING BOGUS MATERIAL PURCHASE BILLS

Study of procurement procedure followed in SAP based accounting software - identification of dummy employee codes – detection of bogus purchase bills

Enercon India limited "EIL" is a 56:44 venture between Enercon GmbH, Germany and the Mehra family of Mumbai, which commenced its commercial operations in 1995, in the field of manufacturing of wind mills and generation of power.

2. On viewing the profile of the taxpayer on internet it was seen that the relations between the German principals and the Indian shareholders were strained and that they were into litigation since the year 2008. On verification of the Income-tax returns on the ITD, a very peculiar pattern was observed in the post dispute period, wherein huge creditors were outstanding for a long period. There were evidences on record that the taxpayer was booking bogus purchases from fictitious parties. This gave a strong indication that the purchases booked by the taxpayer were being manipulated. Pre-search, discreet inquires with the marketing team of Enercon revealed that the taxpayer was required to pay huge sum of "Speed Money" in order to get approvals from various departments and clear various hurdles for the smooth functioning of the business. This further strengthened the suspicion that the taxpayer was involved in booking bogus purchases on a large scale. This formed the major part of the allegations, amongst others.

3. The Corporate Office was a 7 storied building. Pre-search enquires revealed that the accounts office was on the 2nd floor and the Directors' chambers were on the 5th floor. It was also gathered that the taxpayer was maintaining its accounts in the SAP System. Therefore, a strategy was made whereby one team would focus only on the accounts office to study the entire purchase procedure in detail. The Authorised Officer Mr. Ankur Alya, DDIT, identified the main persons involved in making the entries in the SAP System. The statements of the Accounts Head and the Sr. Manager (Finance) were recorded wherein the "Standard Operating Procedure" followed by the company was noted. A complete set of documents of purchases made from a reputed corporate house was shown to the Sr. Manager (Finance) and the procedure followed was recorded in the statement. There after, the purchases booked

by the taxpayer from a fictitious party were taken and the procedure followed in these transactions was recorded. The taxpayer was confronted with this fact, wherein he admitted that the "Standard Operating Procedure" was not followed while booking purchases from the fictitious party. It was identified that in such cases the purchase orders were created by using a dummy code - "ID-PROJINFRA01". A code PROJINFRA03 was developed to create GRN and few IDs UDAVE and DGOR to enter expenses / purchases in the accounting system, mostly at midnight. He also admitted that this was done on the instructions of the management. Having identified the deviation made by the taxpayer while booking bogus purchases, the taxpayer was asked to identify all such purchases booked through the dummy codes. Simultaneously, the team at Daman was asked to identify the purchase bills of such parties. The taxpayer did not have the bills pertaining to purchases booked through the dummy codes.

4. The taxpayer furnished a list of 41 parties in respect of which purchases were booked in deviation to the Standard Operating Procedure by using the dummy codes. The total purchases booked by the taxpayer from these 41 parties in deviation to the Standard Operating Procedure amounted to ₹ 266.53 crore. Having recorded the statements of Accounts Head and Sr. Manager (Finance), the Director was confronted step by step with the procedure followed in the genuine purchases and then in the bogus purchases. Finally, he was confronted with the dummy codes created and the deviations made to the Standard Operating Procedures and justify the genuineness of the purchases, the documentary evidences in respect of actual purchases of material, entries in stock inward register, goods receipt note, lorry receipts, delivery challans, octroi receipts etc. The taxpayer expressed his inability to justify the genuineness of the purchases and admitted having booked bogus purchases to the tune of ₹ 170 crore for the period FY 2009-10 to 2012-13. The taxpayer was asked to produce the books of accounts for the period FY 2006-07 to 2008-09. The taxpayer could not produce the books of accounts for this period. Therefore, a laborious exercise was carried out on the spot during the search itself by physically verifying the various purchase bills for the period FY 2006-07 to 2008-09. Documentary evidences were un-earthed, wherein the taxpayer had booked bogus purchases from fictitious parties in the FY 2006-07 to 2008-09. The taxpayer had admitted earlier that it had paid Speed Money in all the years. Therefore, the taxpayer was confronted with these facts.

5. The taxpayer was found to be paying speed money for getting various clearances and overcoming various hurdles in day to day smooth functioning of the business. The taxpayer admitted that in order to generate cash for such speed money he had booked bogus purchases of around ₹ 267 crore in all the years.
6. The above modus operandi gives an in-depth understanding of how the taxpayer manipulates its accounts. By understanding the Standard Operating Procedure and the deviation to the same, the concealment of income can be easily unearthed. Infact, the SAP system can be used to assist the department in identifying the manipulations made by the taxpayer. The detection of this modus operandi in the case of the taxpayer can be very helpful in other cases which are involved in the same kind of business at other places.
7. Besides detection of transactions incriminating in nature to the tune of ₹ 343.51 crore covered under section 40A(2)(b) & 37(1), omission to offer ₹ 50 crore as deemed dividend u/s. 2(22)(e) was also detected.

Names of the Officers :

Mr. Mukesh Jain, DDIT (Inv.)-Unit 1, Mumbai
Mr. R. N. D'Souza, DDIT (Inv.)-Unit 4, Mumbai
Mr. Rakesh Garg, Addl. DIT (Inv.), Unit 4, Mumbai
Mr. K. K. Vyawahare, DIT (Inv.)-2, Mumbai
Mr. Swatantra Kumar, DGIT (Inv.), Mumbai

ACCURATE INTELLIGENCE OF SECRET LOCATIONS AND PENETRATIVE POST SEARCH INVESTIGATIONS LEAD TO SUBSTANTIAL UNDISCLOSED INCOME

Diary and other documents seized from secret location – followed by consequential searches in other groups – leads to detection of substantial concealed income/undisclosed transactions relating to cash loans and accommodation entries

A search and seizure operation was carried out on Riddhi Siddhi Bullion Ltd. (RSBL) and its group concerns on 11.06.2013. The taxpayer is engaged in the business of trading of bullion, diamonds, gold traded ETF, coin manufacturing and trading, trading in commodities etc.

2. Search in one of the premises occupied by Supama Forex Pvt. Ltd., which is one of the group concerns of the RSBL group, led to startling discovery of a clandestine room in the same complex on the first floor after intensive local inquiries, which confirmed intelligence gathered that the group members are having a secret location around or in this office. The room was impossible to detect as it was located above another shop on the ground floor which is one shop away from the main premises, and was found to be connected by a hidden dark and narrow alley which had a concealed opening on the roof leading to the hidden room where the diaries and loose papers were found. These diaries and loose papers were found to be containing crucial details of undisclosed transactions in the extensive post search enquiries. Intense post search investigations were carried out to comprehend correctly the entire unaccounted transactions and its categories in the diaries. All the entries in all the diaries were tabulated in excel sheet format with dates, amounts and nature of entries. The total number of entries is more than 1800.

3. A careful perusal of the accounts written in the diaries shows that these contain broadly five types of transactions:

3.1 Transactions relating to unaccounted investments in properties and expenses in acquisition of the properties: Total unaccounted investments in properties, detected in the diaries, is ₹ 64.69 crore for different years and different properties in Mumbai.

3.2 Transactions of consolidated cash loans/finances mentioned under the head "Jama/Udhar": These contain cash loans/advances given in foreign currency for acquiring assets in foreign country by group members. The taxpayers have advanced total loan of ₹ 206.22 crore under heading "Jama / Udhar" accounts appearing in various diaries. The taxpayers have also taken deposits "Jama" in the same account amounting to ₹ 24.02 crore. The difference of "Jama / Udhar" amount to ₹ 182.2 crore (₹ 206.22 crore – ₹ 24.02 crore).

3.3 Cash loans advanced to known builders of Mumbai without dates: It was detected that the RSBL group is regularly financing known builders in Mumbai by way of cash loans. Total cash loans given by RSBL group are ₹ 172 crore and total cash received back is ₹ 59 crore.

3.4 Transactions relating to accommodation entries: The taxpayers of RSBL group have provided accommodation entries to the tune ₹ 270.04 crore. It was detected that the entries were provided mostly at a rate of 0.35% per month as commission.

3.5 Transactions relating to unaccounted cash loans given to family members and others: The total amount of unaccounted cash given to the family/group members is ₹ 27.05 crore and the total amount of unaccounted cash received from the family/group members is ₹ 14.29 crore. Besides, the taxpayers have advanced unaccounted cash loans to various persons on various dates at different rate of interest ranging from 1% to 2.75% per month. The total amount advanced as cash loans is ₹ 291.38 crore and also the cash loans which have been apparently returned, stand at ₹ 139.37 crore. In addition, unaccounted money has been brought in India to the tune of ₹ 11.97 crore.

4. As a result of post search investigations with regard to the incriminating diaries seized, total concealment of income detected is ₹ 275.71 crore (₹ 64.69 crore + ₹ 172 crore + ₹ 27.05 crore + ₹ 11.97 crore). Besides, undisclosed financial transactions relating to undisclosed cash loans, undisclosed accommodation entries etc. amounting to ₹ 931.03 crore (₹ 206.22 crore + ₹ 24.02 crore + ₹ 270.04 crore + ₹ 291.38 crore + ₹ 139.37 crore) were also detected . It is pertinent to mention here that the diaries and the loose papers were solely deciphered because of the efforts made in the examination and investigation by the officers of the Unit.

5. The findings during the search and subsequent post search investigation led to search in five other cases wherein substantial undisclosed income/ beneficiaries of about ₹ 500 crore were detected.

Names of the Officers : -

Mr. Saurav Modi, DDIT (Inv.), Unit-8(2), Mumbai

Mr. M. K. Singh, DDIT (Inv.), Unit-8(2), Mumbai

Mr. Manoj Mishra, Addl. DIT (Inv.), Unit-8, Mumbai

Mr. B. R. Balakrishnan, DIT (Inv.)-1, Mumbai

Mr. Akhilesh Ranjan, DIT(Inv.)-1, Mumbai

Mr. Suresh Jandhyala, DGIT (Inv.), Mumbai

Mr. Swatantra Kumar, DGIT (Inv.), Mumbai

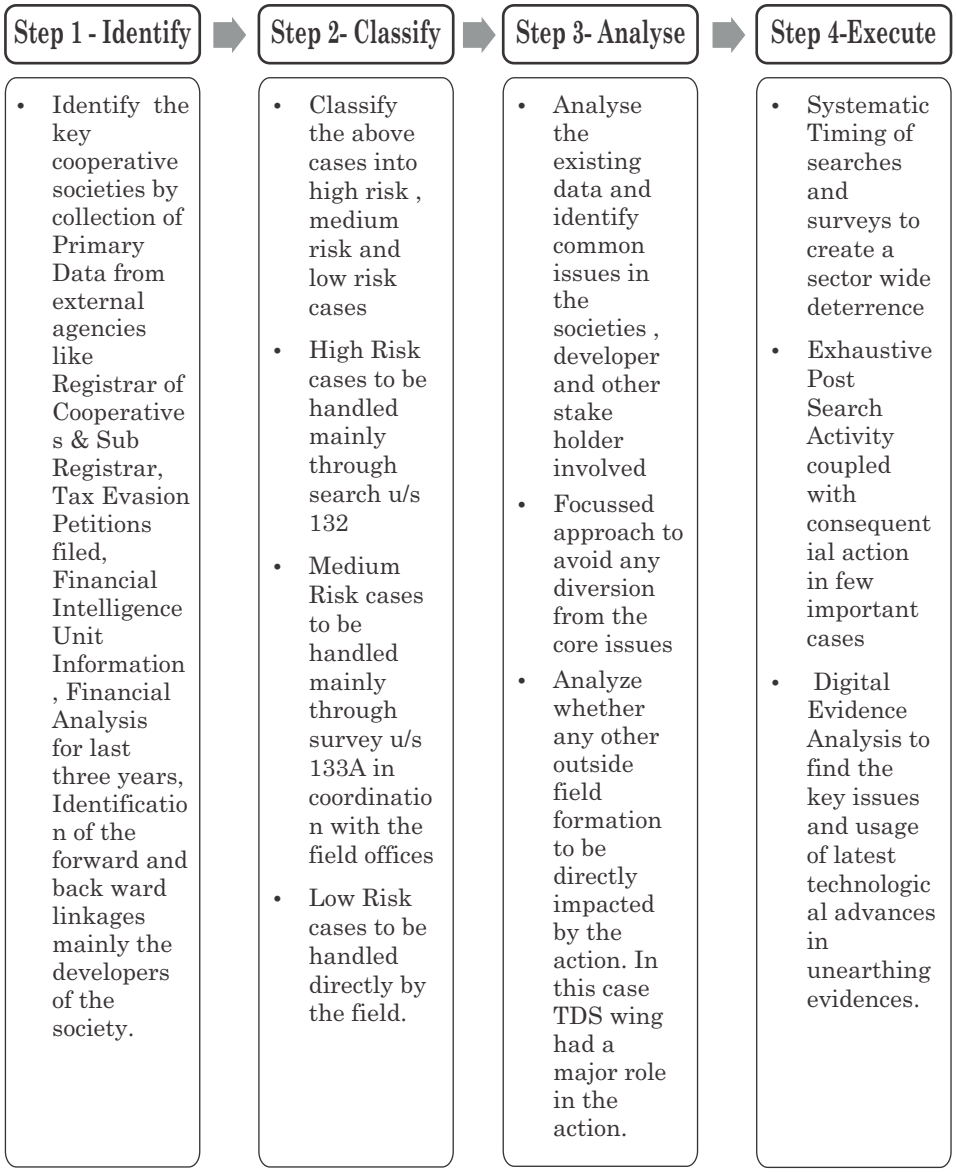
USE OF SECTOR SPECIFIC INFORMATION ANALYSIS (SSIA) FOR CREATING DETERRENCE IN HOUSING COOPERATIVES

Encroachment of land by Housing cooperatives – pronged approach to identify, classify, analyse and execute helps in unravelling the modus operandi and detection of huge unaccounted income

Encroachment of government and public lands belonging to statutory and local bodies is rampant in Karnataka. It was widely reported in the news that many Housing Cooperative Societies have been used for allotting private real estate to non- members. As per several reports, bulk of the agricultural land released for development was garnered by societies. As per the A. T. Ramaswamy report, out of the functioning 195 Housing Cooperative Societies, many of them were found to indulge in illegal acts like diversion of CA amenities and parks for private use, diversion of funds/lands of society for private benefit, allotment of sites to non-members and ineligible persons. Many societies had acquired huge tracts of land in violation of Section 79(A), 79(B), 109 of the Land Reforms Act.

2. Looking at the scale of operations required, the Directorate of Income-tax (Inv), Karnataka and Goa devised a new mechanism called a pronged approach to investigate the matter. The various steps in Sector Specific Information Analysis (SSIA) are given below:

2.1 Identify : Information regarding the functional housing cooperative societies was procured from Registrar of Cooperative Societies, Karnataka. TEP's and FIU information regarding various cooperative societies was gathered and analysis in the nature of the amount of money collected from members, number of non-members to members, whether Income-tax Return filed or not and other parameters were carried out. Housing Cooperative Societies invariably appoint a developer for land aggregation and layout development work. Substantial tax evasion and siphoning of funds were reported at the developer side also. In some societies, even bogus members were formed to accommodate transfer of sites to non-members. All the possible high risk forward and backward linkages to the societies were identified.



Steps in SSIA

2.2 Classify: Out of the existing data available, classification into high risk, medium risk and low risk tax evasion cases was done on the following parameters: (a) Amount of money collected from members (b) Disproportionate number of non- members to members (c) TEP's and FIU's information present in cases of societies, developers (d) Status of tax filing (e) TDS default (f) Evidence of unaccounted transactions.

Based on the above classification, high risk, medium risk and low risk tax evasion cases were identified. Three cases, Karnataka Telecom Employees Cooperative Housing Society, Telecom Employees Cooperative Housing Society, Ministry of Communication Employees House Building Society were chosen as high risk cases and action under section 132 was contemplated. In another 23 cases of medium risk, action under section 133A was contemplated. Remaining cases of low risk were given to the field for further action

2.3 Analyse : In this step, the major tax issues were analysed in the hands of the societies and developers. It was noticed that there were multiple steps like procurement of land through agricultural entities, zone change from green zone to yellow zone, conversion of agricultural to non-agricultural land, transfer of converted land to society in a few cases, Plan approval, development of layout and finally allotment and registration of sites. The chart given below gives the gist of all issues in the sector, at various stages.

2.4 Execute : Systematic planning mainly with timing and execution of searches and surveys was carried out. The execution is one of the largest in the history of the directorate with a deployment of more than 500 personnel in 80 premises. Coordinated effort resulted in bringing a non-compliant sector to the tax net. In post search enquiries, digital evidences (running into terabytes of data) were analysed successfully with unique key word searches and crucial evidences were unearthed. Consequential action was mounted in four more cases based on these evidences and substantial undisclosed income was brought to tax. In the first of its kind, taking clue from our action, more than 200 cases of Housing Cooperative Societies were reopened in the TDS wing for earlier years.

Modus Operandi-House Building Cooperative Society

Employee House Building Cooperative Society	Developers paid for Land Aggregation and Layout Development	Developers procures agricultural land through agricultural entities	Conversion of Zoning from Green Zone to Yellow Zone	Conversion from Agricultural to Non Agricultural Land	Layout Plan Approval	Development of Layout	Allotment and Registration of Sites
1. Employees want plots at reasonable rates and due to lack of affordable housing demand for such plots increase among the non members *2. In the disguise of cooperative society, land was grabbed and then diverted for private real estate by selling many plots to non members.* *3. Huge cash collected by societies at application stage to associate members* *4. Wrong claim of 80P deduction* *5. TDS not deducted on payments made to developers* *6. Bogus/Ficitious members for diversion of sites* *7. Unaccounted Sale Receipts* *8. Ficitious cash receipts for related party transactions*	*1. Society collects money from members and gives it to the known developer for land aggregation and development of layout* *2. Many Societies usually acquired land in green belt at a very cheap cost and got the same converted to yellow belt which can be used for residential purpose* *3. Certain portion of the developer rate was paid as kick back to the directors of the society along with additional sites* *4. Many developers of the society were non filers and never filed any return of income* *5.*	*1. In Karnataka, only agriculturist can procure agricultural lands. As a result, many fictitious/benami agricultural entities in the name of relatives /employees of the developers were created and huge tracts of agricultural land was procured in their name.* *2. Huge cash paid to land owners resulting in evasion of capital gains(for land with in 8 kms) and stamp duty evasion.* *3. Huge Brokerage paid in cash to intermediate land aggregators. Many of them where found to be non filers* *4. Prime Land procured for society was diverted for private real estate by formation of independent layouts*	*1. Zoning Regulations bring about a huge appreciation in land prices. Society usually acquired huge tracts of land in green belt and then converted the zone to yellow belt resulting in a sudden appreciation in land prices* *2. Huge Bribes paid to the zoning authorities.* *3. Developers produced cash by bogus earth levelling/earth filling and cutting trees charges.* *4. Bogus zoning charges where money actually spent for zoning purposes was spilt into amounts less than Rs 20,000/- to avoid Section 40A(3)* *5. Additional land procured for private real estate*	*1. The next step is conversion of land from agricultural use to non agricultural use* *2. Huge Bribes paid to the conversion authorities* *3. Developers produced cash by bogus earth levelling/earth filling and cutting trees charges.* *4. Bogus zoning charges where money actually spent for zoning purposes was spilt into amounts less than Rs 20,000/- to avoid Section 40A(3)* *5. Analysis of bank accounts introduced by developer revealed that many ficitious accounts were opened and money siphoned off for generation of cash*	*1. Only in few cases, the converted land was registered to the society and the society further applied for layout plan approval independently. In such cases the land aggregation is deemed to have been completed and the revenue arising only out of land procurement and aggregation should be offered to taxation.* *2. In other cases, where land aggregation was not over, a suitable point for completion of the land aggregation milestone should be found and revenue recognized* *3. Bogus contracts/sub contracts*	*1. Bogus Earth Leveling charges, Earth Filling Charges, Bogus Sub Contracts for inflation of developmental expenses* *2. Non Recognition of income based on percentage completion* *3. Complex Layering used to siphon of founds in the name of developmental work which was given to a known contractor who in tern gives the cash back to the real owner.* *4. In many cases, the developmental income was less than 8% showing huge inflation of expenses* *5. Project wise accounts not maintained*	*1. Allotment in bogus/fictitious names and immediate transfer to the actual customer with huge on money payments to the society members/developers* *2. Collection of escalation charges on par with the market price resulting in hoge gains for the developers* *3. Non Transparent process followed in allotment of sites with more number of associate members getting the sites ahead of the members* *4. Huge On Money received in private layouts made by the developer* *5. Diversion of sites and huge profiteering by society/developers*

3. Prior identification of issues and clear cut strategy to handle the issues in the housing cooperative sector resulted in admission of more than ₹ 380.19 crore and estimated concealed income of ₹ 569.8 crore. By March 2014, more than ₹40 crore was collected in taxes. The action also resulted in identification of non- deduction of TDS against more than ₹ 1500 crore payments made to developers by the society. TDS wing has already passed the TDS orders and raised a demand of ₹ 47.04 crore, out of which ₹ 21.67 crore has already been collected. In effect, for FY 2013-14, the action resulted in a collection of more than ₹ 62 crore (approx.).
4. The search resulted in both widening and deepening of tax base, especially in this sector and also led to the creation of a huge database of possible tax evaders. The effort has received appreciation from the Hon'ble Finance Minister on the systematic planning and execution of entire exercise.

Names of the Officers :

Mr. Sethupathi Raja K, ITI, Bangalore
Mr. Sunil Kumar Yadav, ITI, Bangalore
Mr. Satish B, ITI, Bangalore
Mr. M. S. Nethrapal, DDIT(Inv.), Unit- 2(3), Bangalore
Mr. Kumar Ajeet, Addl. DIT(Inv.),Unit-2, Bangalore
Mr. Ravichandran Ramasamy, DIT (Inv.), Bangalore

CASH DONATIONS ACCEPTED BY MEDICAL COLLEGE DETECTED BY IDENTIFYING THE SOURCE, THE PERSONS AND BANKS INVOLVED AND THE MODUS OPERANDI

Society running several educational institutions –accepting donations for admissions – multiple bank accounts used for depositing donations – DD/BC purchased in favour of the Trust President – multiple challans used to keep amounts low – introduced as building fund and named donations

Hyderabad Karnataka Education Society (HKES), Gulbarga, runs more than 40 educational institutes in Gulbarga, Bidar and Raichur districts of Karnataka, the Mahadevappa Rampure Medical College (MRMC) run by Hyderabad Karnataka Education Society (HKES) being the most premier college of the region.

2. One of the main allegations against HKES was that it was accepting huge donations in cash for admission of students, under the management quota, in various educational institutions run by it, especially to MRMC. It was alleged that the office bearers of HKES have accumulated huge unaccounted assets.

3. Discrete enquiries revealed that the office bearers of HKES accept donations in cash. It was gathered that admissions to Under Graduate and Post Graduate programmes of MRMC were the main focal points for such acceptance of cash donations and the President of the Society was the key person. Discrete enquiries were conducted in the guise of parents of aspiring students to MBBS seats at various levels like office of HKES, office of MRMC, agents involved in the admission process, parents of the students who had sought admissions in previous years etc. At all levels it was found that the HKES was collecting donations in cash for admission into MBBS and MD/MS courses under the management quota. The other important office bearers and their residences were also identified. The enquiries also revealed that the society was utilizing Sri Ganesh Co-operative Bank Ltd., Gulbarga (SGCBL) for channelizing the cash donations.

4. The modus operandi adopted by HKES for routing cash donations through the SGCBL was two pronged:

4.1 It was found that in 12 savings bank accounts huge cash had been deposited regularly during the F.Y. 2009-10 to 2012-13, which was then used for purchasing the DD/BC's in favour of "The President", HKES. It was found that the account holders were not in existence. It was noticed from the bank account opening forms, that the applications contained only the name of the account holder and a cryptic signature. The other important fields of information like PAN, complete address of the account holders, photos of the account holders, name and address of the introducer, date of opening of account etc. were missing. The bank authorities accepted that the account holders did not exist and these accounts were operated by HKES and the cash in the account was deposited by staff of HKES.

4.2 It was found that the bank had issued multiple DD/BC's in the favour of "The President, HKES" each having value less than ₹ 50,000/- on a single pay-in slip through which huge cash has been deposited. For example on a particular day, cash of ₹ 1,60,00,000/- has been deposited by a single pay in slip and against this 400 drafts/bankers cheque were issued by the bank in favour of "The President, HKES".

4.3 The cash donations received were channelized by way of depositing the same into the account of the society through multiple challans which were deposited in Syndicate Bank and Canara Bank. During the search at the office of HKES, donation books were found which were written in same hand writing in which the name of the student and amount was written. It was also found that in most of the cases, the original and the carbon copy was with the society. It was found that such donations were never made by the name of the persons appearing in the challan.

4.4 The DD/BC/challans were then entered into the books of accounts of the society as donation received from various students and parents, and were accounted in the books of accounts of HKES under the head "Building Fund". Thus the cash donations were routed in the books of accounts of HKES as named donations.

4.5 The President of HKES was confronted with these evidences and he accepted that the named donations which have been accounted for in the books of accounts of the HKES were actually anonymous donations, and offered a sum of ₹ 39,75,62,874 u/s 115BBC of the Act for FYs 2007-08 to 2013-14, in the hands of HKES.

5. Searches were also conducted at the residences of Mr. Shashil Namoshi, President of HKES, Mr. Shivraj Nigudgi, office bearer of HKES and Mr. Sampat Kumar Loya, office bearer of HKES.

5.1 At the residence of Mr. Shashil Namoshi cash of ₹ 2.86 crore was found. The same was offered by him as unaccounted sale of his firm Volga Dresses. A survey was conducted at the business premises of Volga Dresses. The firm offered income of ₹ 4,53,94,837 on account of cash found, unexplained investment in stock and on account of repairs and maintenance. It was also found that Mr. Shashil Namoshi and his family members had not offered short term capital gains of ₹ 53,41,618 on sale of shares. It was found that Mr. Ishwar Nigudgi (brother of Mr. Shivraj Nigudgi), was one of the partners in Aishwarya Finance and in this firm he had introduced capital for which source was not explained. On this account a sum of ₹ 96,47,300 was offered. It was found that his son Mr. Amit Loya had invested in FD's and in partnership firms. He was not able to explain the source of the same and offered a sum of ₹ 1,10,65,000.

6. HKES has paid ₹ 3 crore of tax apart from the adjustment of cash seized of ₹ 2.85 crore.

7. The violation of KYC and other banking norms by SGCBL were reported to RBI. Non reporting of cash deposits exceeding Rs10 lakh by SGCBL was referred to FIU-IND. It was found that Mr. Amit Loya, internal auditor, had utilised his and his wife's account for deposit of cash for drawing multiple DD/BCs in favour of the President HKES. Information was passed on to the ICAI for his professional misconduct. A reference was also made to the Directorate of Medical Education, Bangalore regarding the cash donations accepted by HKES.

Names of the Officers :

Mr. Subbaraju, ITI, Bellary
Mr. M. N. Mantrashetti, ITI, Bellary
Mr. Manish Kushwah, ITI, Bellary
Mr. Anil Thej, ITI, Bellary
Mr. R. B. Joshi, ADIT(Inv.), Bellary
Mr. K. Parashiviah, Addl. DIT (Inv.), Belgaum
Mr. R. Ravichandran, DIT (Inv.), Bangalore

SEARCH ON SAND AND LIQUOR MAFIA REVEALS UNDISCLOSED ACTIVITIES, INVESTMENTS AND SUPPRESSION OF INCOME

Search on Sand and Liquor mafia spanning five states - Undeclared activities and investments exposed after secret pre-search inquiries, and substantiated in post search investigations - discreet inquiries reveal shell company - actual investors in JDA property unveiled - incriminating documents exposing substantial suppression of actual toll collection found.

The Jaipur Unit of the Investigation Wing, Rajasthan conducted Search and Seizure operations at M R S – Chandak group on 17.07.2013 whose flagship company is Shiva Corporation (India) Limited. This group is engaged in sand mining, liquor vends, and toll collection besides marble mining, road construction on BOT basis, hotels and hospitality. For the first time in Rajasthan, a search was conducted upon the notorious sand/liquor mafia, with business premises at unmarked properties situated at remote locations to avoid detection.

2. This group was engaged in toll collection for Municipal Corporation of Delhi, for which more than 110 entry points to NCT of Delhi were being manned by 3000 personnel/employees, though on record an unrelated SPV company had been allotted this work through auction bidding. Similarly, investment in real estate at Jaipur was done by this group through a Kolkata-based shell company.

3. One of the allegations against this group was that it had purchased a JDA property in an auction for a bid of ₹ 235 crore through a front company based in Kolkata, whose office did not actually exist at the given registered address. Information in respect of the said auction was obtained from Jaipur Development Authority (JDA). It was found that ₹ 200 crore (out of the total bid amount of₹235 crore) had been paid through a bank account of this front company, opened in Jaipur after the successful bid.

4. It was found that a Sriganganagar based associate of MRS-Chandak group, Mr. Manoj Kumar Gupta, who was covered u/s

132(1), was managing the bank account at Jaipur. The deposits in this bank account were traced backwards to analyse the money trail. It was found that out of ₹ 204 crore deposited in JDA, against instalments for the commercial property, ₹ 154 crore had come from 11 unrelated Kolkata-based companies. Mr. Manoj Kumar Gupta admitted ₹ 40 crore as his undisclosed investment in the said company. The remaining amount will be analysed at the assessment stage.

5. In respect of MCD (Municipal Corporation of Delhi) commercial toll collection, a three-year contract for collection of toll tax from commercial vehicles was awarded to SMS-AAMW Tollways Pvt. Ltd., New Delhi, for a record bid of ₹ 936 crore, but it had no visible link with MRS - Chandak group. However, web-based search of social networking sites, especially 'facebook' revealed that a number of past employees of Shiva Corporation (India) Ltd were now working in this new company. Further, Mr. Raghav Chandak, s/o Ashok Chandak, was found to be its Executive Director. Spot visit by Inspectors confirmed that he was the overall in-charge of this company.

6. During search at the Kalkaji office of the SPV Company, unaccounted cash amounting to more than ₹ 2 crore was found and seized from this premises. Out of this, ₹ 1 crore was admitted to belong to Shiva Corporation (India) Limited, on the basis of documentary evidence found and seized at this place. Thus, the hitherto undeclared link of this business activity with MRS-Chandak group was also established. Incriminating documents found also indicated substantial suppression of figures of toll collection. The figures of toll collection from the 110 check posts / entry points and from toll gates managed by three other agencies were recorded in detail in the said seized documents and quantified post-search.

7. The MCD commercial toll collection was done in two ways - through check posts (manned by the work force of MRS – Chandak group) at more than 110 entry points to the NCT of Delhi, and through three BOT concessionaires at Gurgaon, Badarpur and Noida. The Evidence seized from Mr. Raghav Chandak's bedroom were analysed, on the basis of which undisclosed income of ₹ 87 crore was detected, as against admission of undisclosed income of ₹ 35 crore, post search.

8. This search yielded cash seizure of ₹ 6.13 crore, and admission of undisclosed income of ₹ 105 crore, which was the highest achievement in Rajasthan till that date. Affidavits confirming the admission of undisclosed income, along with a pledge to deposit the entire tax liability have been filed by the respective constituents of the group. Tax of ₹ 13.85 crore has been deposited till date.

Names of the Officers :

Mr. Chandra Shekhar Sharma, ITI, Jaipur
Mr. Vishnu Datt Tank, ITI, Jaipur
Mr. Shyam Sunder Todwal, ITI, Jaipur
Mr. Vipul Kashyap, DDIT (Inv.)-2, Jaipur
Mr. Sanjiv, Addl. DIT (Inv.), Jaipur
Mr. Sunil Mathur, DIT (Inv.), Jaipur

IN DEPTH ANALYSIS OF DIGITAL EVIDENCE AND BUSINESS PROCESSES ESTABLISHES CASH RECEIPTS, ILLEGAL PAYMENTS AND SUPPRESSION OF PROFITS

Leading real estate developers – collecting consideration in cash – purchasing land through illegal payments – inflating cost – availing bogus bills - proved by thorough examination of voluminous digital evidence by linking business processes with Information Systems

Shobha Developers Limited (SDL) and Prestige Estates Projects Limited (PEPL) are leading real estate developers in Bangalore. As per the Information available and discrete enquiries made, it was found that these developers are suppressing the profits by collection of sale consideration in cash. The other issues identified were: illegal payments in cash for project approvals and facilitation of transactions; unaccounted cash payments for purchase of lands; and suppression of profits as per accounting standard 7, by inflating estimated cost of projects.

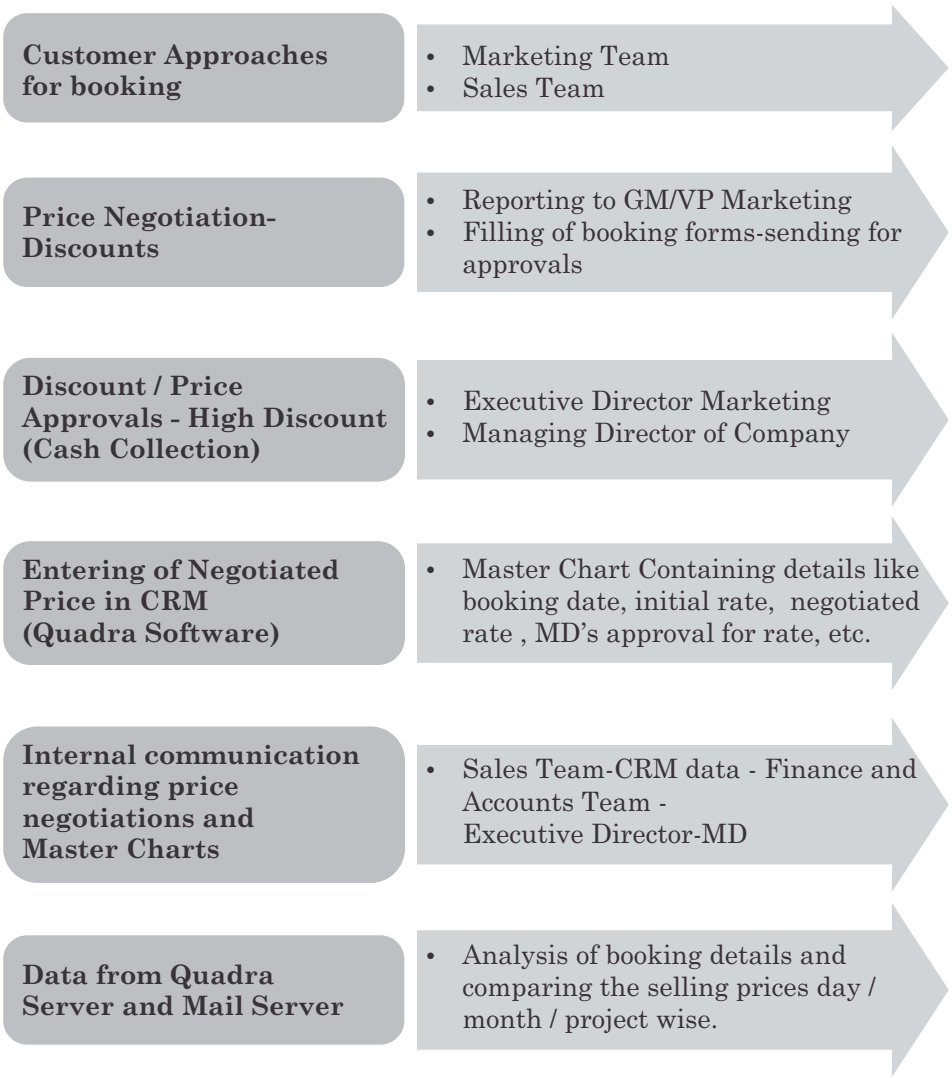
2. As both the entities covered are extremely organized, the possibility of finding raw evidence like sale agreements, cash receipts or excel sheet containing cash details was remote. In view of the same and considering the volume of transactions, presence in multiple cities and large workforce, specific sectors like sales, land procurement etc. handled by specific persons, were targeted.

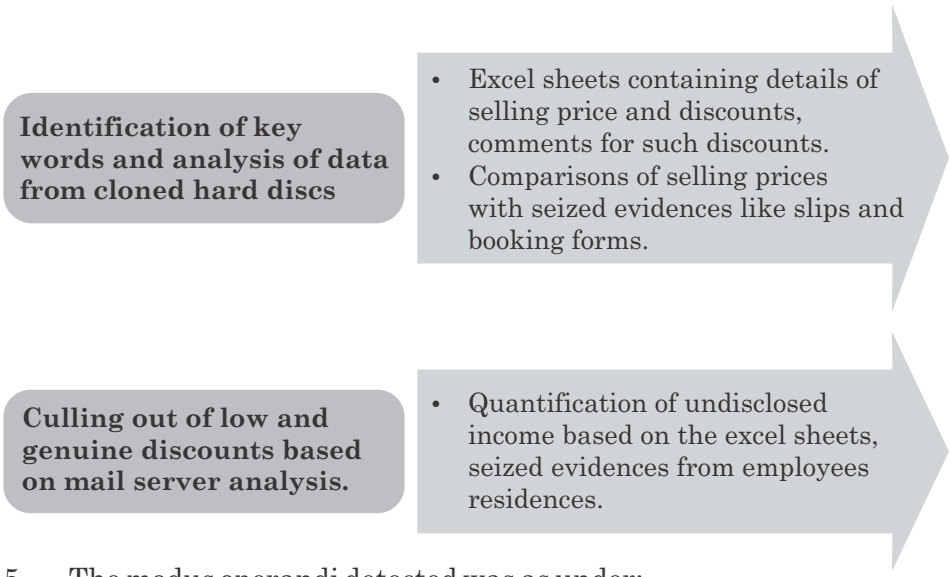
3. During pre-search enquiries, intelligence was gathered regarding involvement of key persons from the areas like-marketing, land procurement and sales. Based on the specific inputs gathered, digital evidences like, mobile phones, pen drives, CDs, Ipads, laptops and the mail servers of the key persons were cloned during the search. Cloned evidences were analysed on random key words check basis during the search itself.

4. During the post search proceedings cloned data retrieved from the digital evidences seized during the course of search was analysed to examine the details of sales made, estimated project cost and any cash payments received as sales consideration. By analysing the huge data and comparing the sale consideration received for

same type of flats during the same period of time for the same locality, it was possible to estimate to a fair degree the amount of consideration received in cash. The process adopted to analyse the huge data containing more than 4.5 lakh of excel sheets and 1.5 lakh of emails is depicted in a flow chart below:

Linking of Business Process with Information System and identification of key evidences for unearthing of undisclosed income





5. The modus operandi detected was as under:

5.1 As per the information received from DGIT(Inv) Mumbai, it was noticed that Sobha Developers Ltd. has availed bogus bills from Trishla Steel Industries to the tune of ₹ 3.99 cores for the FY 2008-09. Based on the cloned data retrieved from the seized hard discs, taxpayer was asked to furnish the vouchers, payment details, mode of transportation and the complete address of the persons who have supplied sand, jelly and steel. The taxpayer company was unable to produce any details. It was also found that cash generated out of these bogus claims of expenditure was utilised for payment to land aggregators.

5.2 Analysis of cloned data revealed that the taxpayer sells flats to known customers who are regular investors or through the regular brokers who bring in cash rich customers like film industry, cash rich trade activities like sweets/ Pharma/metal dealers / landlords/ motor vehicle dealers etc., who are looking for reinvestment of cash generated outside the books of account. The sale consideration is received in cash and cheque depending upon the cost of the project and familiarity of the customers. The agreement to construct and sale of undivided portion of land is entered with these customers at the price to be received in cheque. The amount received in cash is not reflected in the agreement and as the customer is a known person or approaches through reliable employee, no separate agreement is entered into reflecting the portion of consideration received in cash. Once the sales head is convinced that the customer is reliable and is going to book the flat, he will put the

customer across the sales manager who in-turn will discuss with higher management and will confirm the amount to be paid in cash. It was gathered that once the booking is confirmed and the cash portion to be paid is settled, taxpayer will execute a sale agreement and give allotment letter for a particular apartment at the agreed price to be paid in cheque which will be binding upon the parties and will be accounted in the regular books of accounts. The portion received in cash is never reflected in the books of accounts and as a matter of confidentiality, no separate agreement will be drawn. The portion received in cash is reflected as discount against the cost of the unit sold with the remark, "MD's approval". Further it was found that the flats under the same project with same dimension located in same block and floor were sold at varying prices in the same month or in the same period. Further it is pertinent to note that in some of the cases, flats booked almost one to two years later in the same block, same dimension and same floor are sold at the rate much lesser than launch price or the price at which apartments were sold a year ago. There is no logic for such sales and discrete enquiry revealed that the sale consideration in such cases has been received in cash and is not reflected in the books of accounts. Evidences in this regard in the form of chits, booking forms and excel sheet were found from the residence of the key persons.

5.3 The cash generated by suppressing the sale consideration is utilised to make illegal payments to get the project approvals and towards land purchases. Taxpayer enters into a sale agreement with the land owner or the aggregator for purchase of land at a rate per square feet. Subsequently, the land owner will identify a benami who will claim the title over land and settlement deed will be executed with the benami of the land owner or the amount will be paid to the benami of the land owner as advance towards property in cheque. Once the entire transaction is completed, the land owner will execute the sale deed at the rate per sq. ft., as mentioned in the sale agreement. SDL will arrange the cash and pay it to the land owner in lieu of cheques given to the benamis of the landowners which will be returned back on receipt of cash by swapping the cheque with cash, the entry will be reversed as Land advance returned / refunded or it will be claimed as expenditure towards settlement deed.

6. The search proceedings in these cases resulted in the following admissions of income for various Assessment Years : Shobha Developers Ltd. ₹ 110 crore; Prestige Estate Projects Ltd. ₹. 111 crore.

Names of the Officers :

Mr. R. Suresh, ITI, Bangalore

Mr. Rajesh Kumar, ITI, Bangalore

Mr. Narendra Kumar Naik, DDIT (Inv.) Unit 2 (1)

Mr. Kumar Ajeet, Addl DIT (Inv.), Bangalore

Mr. R. Ravichandran, DIT (Inv.), Bangalore

FORENSIC EXAMINATION OF COMPLEX SOFTWARE IN MULTIPLE DATABASES BACKED BY FOCUSED QUERIES LEADS TO DETECTION OF UNDISCLOSED STOCKS

Search on retail jeweller - extensive forensic examination of the databases at HO, branch and point of sale and reconciliation with metadata and simultaneous verification from vendors reveals discrepancies in the closing stock

Mr. G. Rajendran is the founder of GRT Jewellers group in Chennai. The group has a chain of retail jewellery shops in all the southern states. Intelligence was received that Mr. G. Rajendran had paid huge unaccounted cash to Mr. Balakrishnaraja, Managing Trustee of Solaraju Dhanuskodi Raja Thaiammal Educational Charitable Trust, for transferring its control and management. There were also allegations that the GRT group was not disclosing its full income.

2. During the searches on the premises of the group on 16.5.2013 it was found that the taxpayer has not been including the wastages and making charges of jewellery in the value of closing stock. The stock taken at various branches did not show any major deficiency. On the whole, 69.09 Kgs was found to be excess. The taxpayer attributed this to non-receipt of invoices from suppliers even though the gold was taken delivery and included in the stock. This was verified immediately. The taxpayer also produced a list of suppliers and invoices given by them (some of them after the search) to explain the excess jewellery of 69.09 kg. The residential and business premises of Mr. Balakrishnaraja, who was out of India, was also searched simultaneously. He was intercepted at the airport and questioned. He accepted that he received ₹ 20 crore in cash, in lieu of handing over the control and management of the trust.

3 Simultaneously, enquiries were conducted with various vendors who gave invoices in support of supply of jewellery. The swift action at the suppliers' side to verify the authenticity and admissibility of the invoices presented by the taxpayers sensitised the vendors and as such, the market refrained from any attempt to give accommodation entries. After taking into account the invoices, physical stock position was arrived at, which was in sync with the stock as per books of account in Tally.

4. The GRT group of concerns comprised mainly four individuals, a company and three firms. The complex business process of the taxpayer group was studied. It was found that the individual Branches (8 Branches)were making purchase indent to the Head Office (HO). The old gold purchased from customers is sent to the HO. It is then sent for purification by the HO. The HO was also purchasing gold bullion for each of the taxpayers of the group which was issued to goldsmiths for manufacturing jewellery. The manufactured jewellery is received from the vendors/goldsmiths in the HO. They are then given tag number and also made into packets as individual items or multi item packets. After this, these lists are transferred to the Branches, before the goods.

5. Analysis of the computer system revealed that the taxpayer was storing information in three different databases. A separate database was maintained at the Head Office ('DB-A') about the movement of old gold, bullion and jewellery within the group and to the Acharis. Another set of databases ('DB-B') was also maintained at the Head Office for each of the Branches. Lastly, at each Branch server, a separate database('DB-C') is maintained. This database is used for the Point of Sale (POS). The stock position observed on the day of search included this stock which was verified. The head office stock was verified separately. Detailed study revealed that the stock should include items like (a) The items of gold and jewellery that lie with the acharis, (b) The items of jewellery at HO that are not packeted, (c) Items of jewellery that are 'Packeted' but not tagged and (d) The items of jewellery that were tagged but not transferred to the Branch database. Queries were designed to generate the information from the seized database in a report for further study.

6. The taxpayer was requested to furnish his final statement regarding the stock after reconciling all the differences. The stock report furnished by the taxpayer was compared to the stock position as per the analysis of the digital evidence for the whole group. This comparison showed huge discrepancy revealing excess stock. The taxpayer tried to explain that there were several items of work that are recorded in the Branch database ('DB-C') that are not recorded in the Branch database at the Head Office ('DB-B'). This included, unsold stock returns (USSR), exhibition sale, etc. Further analysis of the digital data was made to identify the metadata to carry out reconciliation. The adjusted stock position after making good the deficiencies was obtained after reconciliation. This revealed item-wise excess stock of old gold and diamonds of different categories from the data base.

Mr. G. Rajendran admitted that it was stocked with goldsmiths and accepted the excess stock and offered additional income in his individual hands. The details of old jewellery and diamonds held by Mr. G. Rajendran, is as under:

Summary	**Item Wt (kg/ct)**	**Amount (₹. crore)**
Excess old gold Jewellery with goldsmiths	569.3	117.54
Diamonds @ ₹ 35000/ ct	1670	5.84
Diamonds @ ₹ 6000/ ct	13,650	8.19
Diamonds @ ₹ 35000/ ct	4,216	14.75
Total amount		146.33

7. Besides the above, Mr. G. Rajendran declared an amount of ₹ 33.67 crore towards under valuation of closing stock of various concerns due to non-inclusion of value of wastage and making charges in the value of closing stock. Even though he did not agree with the statement of Mr. Balakrishnaraja regarding cash payment of ₹ 20 crore for transferring control and management of the Trust, he offered the same on the plea of buying peace with the Department. Thus, Mr. G. Rajendran declared additional income of ₹ 200 crore. Mr. Balakrishnaraja declared additional income of ₹ 34 crore, including the cash of ₹ 20 crore received from Mr. G. Rajendran.
8. The case is important for the huge unaccounted income detected despite the complexities built in by the taxpayer to deflect the enquiry. It may also be noted for the delicate handling of the case leading to the voluntary admission of the additional income and full payment of tax of ₹ 70 crore within 10 months of the search, despite a slowdown in jewellery business during the F.Y.2013-14.

Names of the Officers :

Mr. J. X. Peter, DDIT, (Inv.) Unit-3(2), Chennai

Mr. Sanjay Deshmukh, Addl. DIT (Inv.) Unit-3,Chennai

Mr. V. Nagaprasad, DIT (Inv.) Chennai

EXTENSIVE PRE-SEARCH ENQUIRIES HELP IN ZEROING IN ON KEY ENTRY OPERATORS

Departmental database and internet show details of paper companies – pre-search enquiry reveals key persons – detection of transactions written with double digit suppression – accommodation entry racket unearthed

The Directorate of Income-tax (Investigation), Kolkata had compiled a data base of more than 4000 companies, which exist only on paper, and have been created by entry operators for the purpose of giving accommodation entries. Information was collected from ITDMS, ITD (ITS, AIR, CIB etc.) and the Internet in general. In the process, list of shareholders of companies of Bhalotia-Debuka Group was culled out and examined. This group, though a trader in iron ore, was giving and accepting cash loans which were totally undisclosed.

2. Extensive pre-search enquiry revealed that two employees of the Bhalotia Group, though men of very limited means, namely Mr. Naresh Kumar Sharma and Mr. Amit Kumar Agarwal, were likely to be in possession of important documents at their residence, which were located after close surveillance. The residences of these two persons were covered in the search and seizure operation, conducted on 22.08.2013. From the residence of Mr. Amit Kumar Agarwal, the Accountant of Bhalotia Group, 16 pen drives were found, concealed amidst soiled clothes kept in the washing machine, which contained complete details of undisclosed transactions of the Bhalotia Group and its activities for the last six years. These contained complete details of the ledger, dates of transaction, amounts etc. It was found that about ₹ 45 crore had been received and a similar amount had been disbursed to different parties. All such parties had entered into prima facie undisclosed transactions.

3. Investigation of the seized material revealed that the transactions were written with double zero suppression. However, this fact was admitted by the taxpayer only when the transactions were corroborated with the help of other seized documents. The fact of double zero suppression was ultimately admitted by the Directors, Mr. Sanjay Bhalotia, Mr. Deepak Bhalotia and Mr. Amit Agarwal, the Accountant.

4. Residence of the entry operator was also covered in the search. The chartered accountant who had arranged accommodation entry also admitted his complicity and gave a detailed modus operandi by way of which entries of about ₹ 10 crore were provided by him to Debuka group of concerns in the form of share premium and share application. He categorically stated that the cash received from Debuka group was returned by way of cheque through dummy companies.

5. Cash of ₹ 1.05 crore was seized during the course of the search and seizure operation. The group has admitted undisclosed income amounting to ₹ 34 crore. Tax amounting to ₹ 72 lakh has since been collected.

Names of the Officers :

Mr. Ajay Kumar, DDIT (Inv.), Jamshedpur

Mr. Sandeep Raj, Addl. DIT (Inv.), Ranchi

Mr. Kumar Sanjay, DIT (Inv.), Patna

DETECTION OF CONCEALMENT BY SEA FOOD EXPORTERS, INFLATION OF PURCHASES AND SUPPRESSION OF SALES USING SEPARATE DATABASES

Major sea food exporters doing good business but not showing commensurate income – suppression by inflating cash purchases and non-disclosure of other aqua products – books manipulated by using different databases for actual purchases and those for IT Returns – evidence of investments made out of suppressed income also detected.

Neela Seafood Exports Group (NSF) and Diamond Seafood Exports Group (DSF) are in the business of procuring, processing and exporting sea food items (prawns, squids, fish etc.) to foreign countries. They are the biggest seafood exporters from the state of Tamil Nadu. They have been earning substantial amount of foreign exchange out of exports.

2. Seafood industry has been doing well in the last few years not only because of good demand abroad but also due to considerable depreciation in the value of Rupee. However, major exporters from Tamil Nadu were not showing commensurate income in their returns. As such, intelligence was gathered regarding the activities of NSF and DSF groups which are the biggest exporters of seafood in this region. Enquiries revealed that both the groups have been suppressing their income by inflating purchases. Enquiries also revealed that they earned unaccounted income by selling export rejected sea food items locally, sale of ice bars and trading in aqua farms feed by not recording such transactions in the books of accounts. The enquiries confirmed that the groups have been indulging in large scale manipulation of books of accounts to accommodate inflated purchases and consequently showing lesser profits. Information gathered clearly showed that the tax evaded income generated was used to make unaccounted investments in immovable properties in and around Tuticorin. Therefore, the business and residential premises of both the groups were searched on 17.12.2013.

3. Searches revealed clear evidence of manipulation of accounts and suppression of income. It was found that the taxpayer groups were purchasing raw materials (sea food items) mostly in cash taking advantage of provisions of Rule 6DD(e)(iii) of the Income-tax Rules 1962, from different centres located in the coastal areas of Tamil Nadu, Andhra Pradesh and Kerala. Unaccounted assets worth ₹ 10.50 crore including cash of ₹ 5.45 crore and gold jewellery worth ₹ 5.05 crore were seized.

4. In both the groups, the Head office was found using two types of software viz. Profit plus and Tally for accounting. Profit plus is database software and has been used for maintaining the data of actual purchases. It contained complete information of each purchase made by the groups. On the other hand the Tally software showed data with inflated purchases under the heads "Seashore Accounts" and "Cochin centre"etc., which was used to prepare accounts for the purpose of filing returns of income. Sworn statements were recorded from the key staff in all the departments regarding the activities carried out by them with a view to document the manipulations resorted to for fudging the accounts. Evidence seized also revealed unaccounted local sales of export rejects besides purchase inflation. On confronting these facts, the employees, viz: Sales Manager, Purchase-in-Charge, Field Supervisor, Cashier, Accountant and Data Entry Operator admitted the fact of purchase inflation and taking cash out of the business by the partners. They also admitted to the fact that accounts for expenses like "Seashore Accounts" and "Cochin centre" recorded int he Tally software were bogus.

5. The partners of both the groups were confronted with the evidence gathered during the course of search. They admitted inflation of purchases and siphoning of cash from the business. They also confirmed the contents of the sworn statements given by their staff regarding inflation of purchases for the entire period covered by search i.e. six preceding years and the current year.

6. In course of operating prohibitory orders, the taxpayers explained that they incurred substantial business expenditure outside the books of accounts out of the cash generated by inflation of purchases. During the said operations, evidence regarding unaccounted expenditure incurred under various heads, was found. As such, they requested for reduction of such expenditure against the inflation of purchases to arrive at the undisclosed income. Besides the above, the digital data also revealed evidence

of unaccounted local sales of export rejects of ₹10.50 crore which the taxpayer admitted to have not recorded. After the end of investigations by the Wing, the taxpayer of both the groups together disclosed additional income of ₹ 142 crore (after setting off of unaccounted expenditure) and have paid tax of ₹ 25 crore so far.

Names of the Officers :

Mr. R. Krishnakumar, DDIT (Inv.), Tirunelveli.

Mr. K. Ramnababu, Addl. DIT (Inv.), Madurai Unit.

Mr. V. Nagaprasad, DIT (Inv.) Chennai.

THOROUGH ENQUIRIES DURING SEARCH BACKED BY SURVEYS LEAD TO DETECTION OF OVER INVOICING, BOGUS BILLING AND INVESTMENT IN NON-PERFORMING GROUP COMPANIES

Infra, Power and Real Estate Company - Suppression of proceeds and booking of fictitious expenses – detection of bogus liabilities and investments by paper companies.

Meenakshi Infrastructure Pvt. Ltd. (MIPL) is the flagship company in the Meenakshi Group of companies, engaged in the business of Real Estate, Infrastructure Development and Power Projects. After analysing market information and co-relating it with available information on entry operators and contents of a Tax Evasion Petition, Search and Seizure operations u/s 132 of the Income Tax Act, 1961 were conducted in this group on 10.05.2013.

2. Evidence recovered during the Search and Seizure operation in the form of kaccha books maintained by a Dy. Manager (Accounts) of MIPL showed on-money received over and above the registered value of the Flats/Villas, pointing to unaccounted gross receipts of ₹ 64,15,12,121.

3. It was also found that the project cost in setting up of hydel projects in the North-East Region was being systematically inflated through introduction of bogus sub-contractors based at Hyderabad. The hydel projects held by the subsidiary companies had given EPC contracts to the flagship company, MIPL. In turn, MIPL had given the same contract to its 100% subsidiary company, MCCPL. The Sub-contractors engaged by the above concerns were found to be bogus. It was found out that the R. A. bills have been passed without any supporting vouchers. It is also made out that the cheques issued towards sub-contract payments have been withdrawn by the employees of taxpayer company itself. On verification of the data of computers available in the corporate office of MIPL, it is observed that the R. A. bills stated to be submitted by some of the sub-contractors were being prepared at the Office of MIPL itself. It was also found that the sub-contractors do not have any expertise for undertaking the contract works in those areas. This pointed to suppressed income of ₹ 41,45,10,719 against which the taxpayer group has admitted ₹ 31,80,19,825.

4. MEPL, which has set up the thermal plant, had awarded EPC contract to Thermax Ltd, Pune for supply of Machinery and installation of a Thermal Power Project at Thaminapattanam, Nellore district of AP. It is found out that the EPC contractor has given sub-contract to SD, a Hyderabad company under control and management of the Meenakshi Group. As directed, the sub-contractor has given the work to MIHP Ltd., Hyderabad, which has admitted that some of the contract works said to have been executed by them were over invoiced or no bills had been raised and were bogus. These funds had been returned to Meenakshi Group. Subsequent survey conducted in the case of Thermax Ltd. resulted in the admission by the concern that it has over invoiced the EPC contract. This fact has been re-confirmed by its sub-contractor SD Pvt. Ltd. which has admitted ₹ 19,26,60,122. Similarly, another EPC contract to CCL-Edac which was also over invoiced at ₹ 4,84,52,470 crore, was admitted as undisclosed income.

5. The undisclosed income so generated has been routed back as equity share capital and bogus liabilities through paper companies, SDEEIHPL based at New Delhi and other Kolkata based companies. The holding investing company MEIHPL has received ₹ 99,38,34,260 from 4 Kolkata based companies which were held by another 3 Kolkata based companies in which 99% shares were held by family members of the management of Meenakshi Group of companies. It was also found that till the funds had been funnelled into the Meenakshi Group, the Directors have held the control and management of SDEEIHPL. It was so planned that the other Kolkata based companies which were ultimately held by the management personnel of Meenakshi Group of companies have also invested in Flats/Villas of MIPL. It was found that all the Directors of New Delhi and Kolkata based companies were name lenders only. As a result of the above, total funds of ₹ 140,76,34,260 had been received back in the form of equity or bogus liability.

6. As a result of above findings, the total undisclosed unaccounted income was estimated at ₹ 149,68,86,568, against which the taxpayer has admitted ₹ 140,03,95,674.

Names of the Officers :

Mr. V. M. Mahidhar : DDIT (Inv.), Unit-2 (4), Hyderabad

Mr. M. Murali Mohan : DDIT (Inv.), Unit-2 (4), Hyderabad.

Mr. B. Venkateswar Rao : Addl. DIT (Inv.),Unit-2, Hyderabad.

Mr. V. Srinivas : DIT (Inv.), Hyderabad

INTELLIGENT SCHEDULING OF SEARCH RESULTS IN DETECTION OF CASH RECEIVED AS CAPITATION FEES AND SUPPORTING EVIDENCE, AS ALSO ITS UTILISATION

Society claiming exemption u/s 10(23C)(vi) - Planning and execution of Search - Recovery of evidence for sale of seats and unaccounted cash collection - leads to withdrawal of exemption and taxation of receipts.

Arihant Educational Society (AES) runs, inter alia, the Chalmeda Anand Rao Institute of Medical Sciences (CAIMS), at Karimnagar in Telengana, which is a Medical College claiming exemption of its entire income u/s 10(23C)(vi) of the Income-tax Act, 1961. Information gathered by the Hyderabad Investigation Directorate indicated that the college collects huge amounts in cash for management quota seats.

2. Market intelligence was processed and discreet surveillance was mounted, with decoys making enquiries as parents of prospective admission seekers. An important part of the pre search planning was the scheduling of the proposed action. Firstly, the Search operation was mounted at the far end of the admission season when admissions to most of the seats were through and rates are expected to be at their peak. Secondly, the Search operation was fast tracked so as to be taken up before the close of the Panchayat Elections in Andhra Pradesh, which were held in three phases ending on 23.07.2013, 27.07.2013 and 31.07.2013. With stringent State Election Commission guidelines there was heightened monitoring and vehicle checking by the Police. Moving physical cash from one area to another within the state was bound to be more risky for anyone holding large amounts of cash. This period was chosen with the calculated expectation that the cash collections by the college would not have moved till the police vigil abated with the end of the local elections. Search was therefore, mounted on 25.07.2013 at six different premises located in Hyderabad and Karimnagar.

3. The Search yielded the desired results. Cash amounting to ₹ 9,09,99,020 neatly stuffed into bags and carton boxes, along with the details of students from whom it was collected as capitation fees, were found and seized from the college, office and residential premises during the search operations. Documents such as loose sheets with scribblings, as well as tabulated data on collections evidencing collection of capitation fees were found and seized during the search operation. The complete details of capitation fees collected by the medical college during the financial years 2007-08 to 2012-13 from MBBS students and during the years 2009-10 to 2012-13 from Post Graduate students were found and seized during the search. Evidence revealing the usage of this unaccounted additional income collected in the form of capitation fees for unaccounted payments like additional salary payments in cash to the faculty members and investments in some unknown and undeclared personal vocations of the Chairman were found and seized during the search operations. In his sworn statement, the Director of AES admitted collecting capitation fees from prospective students for the seats under the management quota in CAIMS.
4. The outcome of the search and seizure operation is an admission of undisclosed income of ₹ 40,45,26,908 and estimation of the undisclosed income of ₹ 120,85,51,318 besides recording a finding that AES was not eligible for any exemption u/s 10(23C)(vi) of the Income -tax Act, 1961.

Names of the Officers :

Mr. P. Satya Prashanth, DDIT (Inv.), Unit-2 (2), Hyderabad

Mr. B. Venkateswar Rao, Addl. DIT (Inv.), Unit-2, Hyderabad

Mr. V. Srinivas, DIT (Inv.), Hyderabad

METHODICAL ANALYSIS AND SEARCH REVEAL ROUTING OF CAPITATION FEE THROUGH FABRICATED NAMED DONATIONS AND OTHER DONATIONS AS ADVANCE FEES ACCOUNTS

Trust collecting capitation fee for admissions- fabricating donation receipts which are siphoned off – donations shown as Advance fee and introduced in accounts – credited in Co-operative banks whose Chairman is the President of the Trust

Shri Basaveshwar Veershaiv Vidyavardhak Sangha (BVVS) was founded in the year 1906 and is presently running 135 educational institutions, from pre-primary schools to professional colleges, viz. medical and engineering colleges in North Karnataka, particularly in the district of Bagalkot. The Sangha is a registered charitable institution u/s 12A of the Income-tax Act, 1961, and is also registered under the Societies Registration Act, 1860, and the Bombay Public Trust Act of 1950. It has also been recognized u/s 80G(5) (vi) of the Income-tax Act,1961.

2. Prior to the search, discreet enquiries were made in this case which revealed that BVVS was demanding and collecting capitation fee for granting admission to medical, engineering and other professional courses and no receipts were being issued; BVVS was fabricating donation receipts in the names of persons who have not actually given donations; such fabricated donation receipts created for record purposes suffered from discrepancies like prima facie forged signatures, missing dates, no addresses, multiple donation receipts for same amount, missing PANs, donor's copy not handed over; and BVVS was paying huge commissions to agents who were procuring donation-paying students.

3. The search, conducted on 19.09.2013, revealed that BVVS was indeed accepting capitation fees for granting admissions to professional courses like medical, engineering and nursing under the 'NRI & Others' quota, popularly known as 'Management' quota. Incriminating evidence of such acceptance of capitation fee was seized. The unique feature in this case was that capitation fee received in cash/by cheques was deposited in the bank accounts of the Trust/colleges.

4. It was found that capitation fee is being partially introduced in the books in the following manner:

4.1 Donation receipts are not issued in the names of the students/parents who have actually given the donation for getting admission to medical / engineering / nursing colleges. Receipts are fabricated for smaller amounts in the names of parents of students of various schools and colleges run by the Trust or in the names of outsiders. Signatures are either forged or obtained from persons who have not actually made the donations, estimated anonymous donations u/s 115BBC amounted to ₹ 56.06 crore for A.Ys 2008-09 to 2014-15;

4.2 Donation in the guise of fees far in excess of stipulated fee is collected up front at the time of admission. No receipts are issued for such donation or fee, by whatever name called. The same is credited to 'Students Advance Fees' Account in the books of the Trust/respective College. The credit in this account is systematically wiped out by transfer by way of journal entries to 'Tuition Fees' and 'Hospital collection Accounts'. No receipts are issued to students either at the time of actual receipt of cash or at the time of transfer to Tuition Fee Account. Such credits to 'Students Advance Fees' account are proposed to be brought to tax as anonymous donations u/s115BBC, estimated at ₹ 31.81 crore from A.Y. 2008-09 to 2012-13.

5. Part of the capitation fee is siphoned off by depositing cash/cheques, received as capitation fee, into the account of Bilur Gurubasava Credit Co-op. Society (BGPSS) in Indian Overseas Bank. The credit is given to certain investment accounts in the Co-op. Credit Society from where withdrawals totalling to ₹ 9.73 crore in cash had already been made. One of the investment account holders denied having opened the account. The other investment account holder denied having deposited any cash/cheque in to his account. Cash was also deposited directly into those SB accounts in BGPSS. It may be noted that the Chairman of the Trust, BVVS, is also the founder President of this Co-op. Credit Society. Therefore, withdrawal of cash from the investment accounts in the co-operative credit society and siphoning of capitation fee by depositing cash into those accounts was done at the instance of the same person. Undisclosed income in the hands of BVVS has been estimated at ₹ 9.73 crore on this account. It may be mentioned that these 'investment accounts' in the co-operative credit society were traced after carefully examining the seized material wherein

certain pencil written figures were found to be erased, following the trail of cheques passing through multiple bank accounts and examining the daily cash scrolls of the cashiers of different banks and co-relating the information gathered.

6. Evidence of payments to agents who procure students for admission to professional colleges was seized. The same is proposed to be taxed as unexplained expenditure u/s 69C, estimated at ₹ 68.50 lakh for A.Y. 2013-14.

7. To firmly establish the receipt of capitation fee and introduction thereof in the books, in the guise of donations and siphoning of funds belonging to the Trust, a number of parents were examined and about 750 letters were issued to various parts of the country. The replies were collated and analysed. A number of persons have denied giving donations and have confirmed that their signatures were obtained on blank donation receipts when they had gone to the Trust to make enquiries or to leave their wards in the hostel. The fabricated donation receipts have been given to the Government Examiner of Questioned Documents, Central Forensic Science Laboratories, Hyderabad, for their certification.

8. The taxpayer has declared ₹ 10 crore on account of non-confirmation, non-appearance of donors, mistakes, errors, omissions, wrong remittances, wrong classifications and accounting of transactions chargeable u/s 115 BBC. However, the 'declaration' is an ad-hoc amount and is not made u/s 132(4) whereas the computation of income chargeable u/s 115BBC is based on sound reasoning, evidence and methodical calculations.

9. Total estimated undisclosed income is ₹ 113.28 crore, including estimation on some other issues.

Names of the Officers :

Mr. Rajesh Kumar, ITI, Belgaum

Mr. Imran Khan, ITI, Belgaum

Mr. Ramesh V. Mudhol, ITO(Inv.), Belgaum

Mr. T. S. Khalsa, ADIT (Inv.), Belgaum

Mr. K. Parashivaiah, Addl. DIT (Inv.), Bangalore

Mr. R. Ravichandran, DIT (Inv.), Bangalore

UNEARTHING OF ACCOMMODATION ENTRIES OF BOGUS LOANS AND ADVANCES AND BOGUS PURCHASES TO BENEFICIARIES ACROSS THE COUNTRY

Search leads to detection of taxpayer operating 70 benami concerns in the names of dummy directors, partners and proprietors - providing accommodation entries of bogus purchases, loans and advances to various beneficiaries.

Bhanwarlal Jain is one of the biggest accommodation entry providers in the diamond market. He operates 70 concerns in the name of various dummy directors, partners and proprietors who are his employees and through whom he provides accommodation entry of loans, advances and bogus purchases to various beneficiaries. Searches were conducted to unearth the same. Post search investigations detected accommodation entries of loans and advances of ₹ 2000 crore provided to approximately 1500 beneficiaries and that of bogus sales of about 25,000 crore to approximately 4500 beneficiaries in various years. The major achievement of this search has been the reopening of more than 5,000 cases of beneficiaries across the country.

2. This search was an off shoot of an enquiry carried out by this Directorate on one Kushal Gems which was apparently in the business of import and trading in diamonds. The said enquiry revealed that certain concerns in the business of trading in diamonds having the following characteristics were solely used for providing accommodating entries : high turn-over; major portion of assets in the balance sheet comprised of Loans and Advances, Debtors and Investments in shares etc. These assets almost matched the figures of their business creditors; the advance tax payments or self-assessment tax payments were nil despite their running into several crore; almost the entire TDS deducted (by the builders) on the interest payable against their "Loans and Advances" was claimed as refund.

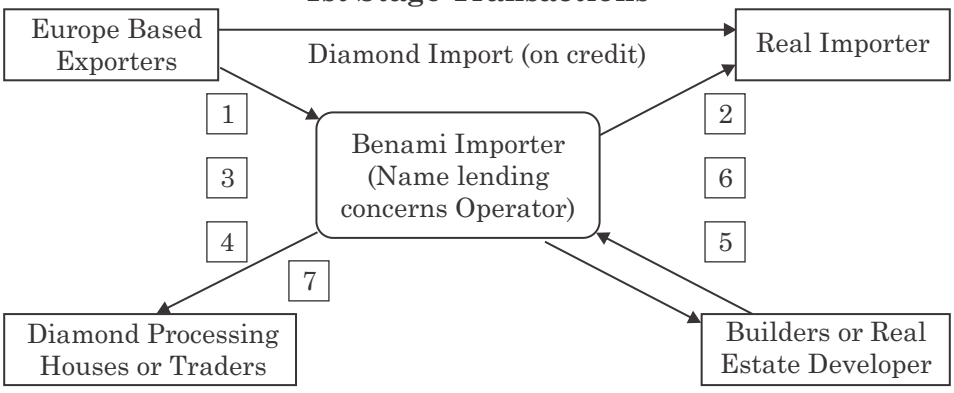
3. Based on this enquiry, import data of diamonds was collected from different agencies like the Customs, Bharat Diamond Bourse and DG Systems. Top 100 cases of diamond charges of Mumbai, Viz CIT5, CIT 16 and Surat were called for and their 360 degrees profiling was done. Certain filter criteria were applied to the data,

namely, ratio of creditor to import, refund vs tax paid (TDS), turnover, and ratio of outstanding business creditors to loans and advances to identify groups of Bogus entities. Probable genuine concerns were eliminated, based on top advance taxpayers. There after, 116 groups of entities engaged in trading of rough, and cut and polished diamonds were formed, out of which 45 groups pertained to trading in rough diamond.

4. In the search, more than 55 premises were covered including those of various associates and employees of the taxpayer. More than 100 ACs / DCs IT and 250 ITIs were requisitioned from the field including DDs IT from Mumbai, Pune, and Ahmadabad Directorates.

5. This search revealed a unique modus operandi employed by all accommodation entry providers operating in the diamond markets of Surat and Mumbai for issuing accommodation entries. These billers import diamond on behalf of real importers in the name of benami concerns which is handed over to the real importer out of books, and payment for the same is made in cash Against bogus stock appearing in the books of benami concerns, bogus sale bills are issued to diamond traders/processing houses which purchase diamonds from the grey market in cash to regularize the corresponding sale or to inflate their purchase expenses. These traders and manufacturers issue cheques towards bogus purchases against which they receive cash The cheques received are used to either pay the importer or to give loan entries mostly to builders and real estate developers who generate cash in their respective businesses through 'on money receipts". The cash received is returned to the diamond trader who has taken accommodation entry of purchase. The whole transaction is shown diagrammatically as under:

1st Stage Transactions

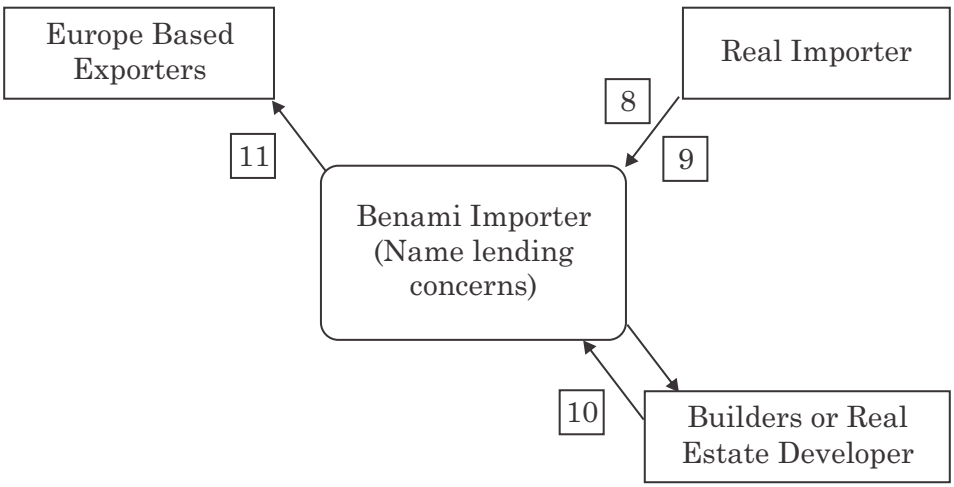


Notes:

Diamond import by benami importers (name lending concerns) from Europe based exporters. Credit period is 6 months to 2 years.

2. Diamonds handed over to real importer by the benami importer after clearance by Customs, without recording sales in the books of account.
3. Sale bill issued to Diamond Processing houses and Traders against book stock by the Benami Importer
4. Payment by cheque against bogus purchases
5. Cheque given to Builders as loan or capital
6. Cash is paid by the builder to the benami Importer.
7. Cash is paid by the benami Importer to the Diamond Processing Houses and trader against the bogus bill issued by them after deducting their commission.
8. Cash is paid by the Real Importer to the benami Importer for the actual diamonds taken at 1st stage (which was never recorded in the books of the benami importers)
9. Return of loan/capital by builder to benami Importer by cheque.
10. Cash returned back by the benami Importer to Builder.
11. Cheque payment to exporter by the benami Importer against credit purchases of diamond.

2nd Stage Transactions (after 6 months to 2 years)



6. No books of accounts or stock of diamond were found at the respective office and business premises. On the third day of search, the search team successfully located 3 hidden premises that contained all the books of accounts (regular and parallel) of 70 concerns managed and controlled by the taxpayer. A password protected pen drive was seized from the car of the taxpayer in the parking lot of the residential premise. Despite resistance by the taxpayer to provide the password, it was cracked with the help of professional software programmers. This pen drive contained parallel books of accounts showing cheques issued to beneficiaries towards loans and advances and bogus purchases against cash received and vice versa. Incriminating materials were seized from employees of the taxpayer when they were apprehended at CST, Mumbai, while trying to flee from Mumbai. Numerous hand-written loose papers containing identical accounts as the ones maintained in the pen drive were found. Certain registers and documents were found containing details of the quantum of import made on behalf of the real importers. Bhanwarlal Jain and his employees also admitted the complete modus operandi of providing accommodation entries.
7. Post search, the parallel books of accounts found in the pen drive were correlated with the regular books of accounts of the benami concerns to ascertain movement of cash and cheque for each beneficiary. Names of the beneficiaries appearing in codes in the pen drive were decoded. A program was installed on the pen drive to generate the ledger account of the beneficiary parties which gives the date wise detail of cash received by each party against issue of cheques. A year wise master data containing 38,586 records of the beneficiary parties with the names, addresses, PANs and amount was created.
8. Searches were also conducted on a few beneficiaries wherein all have admitted taking accommodation entry, thereby confirming the findings of the search. Information on all the beneficiaries (more than 5500) of loans and advances and bogus purchases has been disseminated to more than 200 CsIT across the country.

9. The investigation has set an example of deterrence for other entry providers in the diamond market. Post search, import of diamond made by such benami concerns has plummeted drastically.

Names of the Officers :

Mr. Jagdish Arlagadda, ITI, Mumbai
Mr. Hemant Nikhare, ITI, Mumbai
Mr. Meghraj Yeole, ITI, Mumbai
Mr. NarhariUmredkar, ITI, Mumbai
Ms. Nishi Padma, DDIT (Inv.), Mumbai
Mr. Rajendra Chandekar, DDIT (Inv.), Mumbai
Mr. Arun Kumar, Addl DIT (Inv.), Mumbai
Mr. K. K. Vyawahare, DIT (Inv.)-2, Mumbai
Mr. Suresh Jandhyala, DGIT (Inv.), Mumbai
Mr. Swatantra Kumar, DGIT (Inv.), Mumbai

FOCUSED APPROACH HELPS IN COVERING MORE CASES AND UNEARTHING HUGE COLLECTION OF CAPITATION FEES IN COLLEGES OF SENSITIVE TRUSTS

Sensitive trusts running colleges – charging huge capitation fees – focus on striking places of actual collection, including discreet locations and brokers - use of decoys – considerable surrender by the trusts

Search and Seizure operations were carried out in the case of several medical colleges on the basis of pre-search information regarding substantial capitation fee collection. This was part of a sectoral impact strategy, and trusts running 5 private medical colleges were covered. These included a spread of colleges across the state run by trusts having religious, social, backward class, community and linguistic tags. The colleges covered were Adichunchungiri Institute of Medical Sciences (Sri Adichunchungiri Sikshana Trust); BGS Global Institute of Medical Sciences (Sri Adichunchungiri Sikshana Trust); B. R. Ambedkar Medical College and Hospital (Ananda Social & Education Trust); Sapthagiri Institute of Medical Science and Research Centre (Sri Srinivasa Education & Charitable Trust); and MVJ Medical College & Research Centre (Venkatesha Education Society).

2. The significance of the pre-search investigations was the focused approach to strike medical colleges or associated colleges which were providing technical education and that too at the points where the cash collections took place and not the entire gamut of the activities that the trusts were engaged in. This focused approach helped the covering of a larger number and also increased the effectiveness of the operation.

3. Posing as decoy candidates, and brokers from outstation, the important persons and places were identified. A broker was identified who had common linkage with these colleges and he was also tracked. Intensive surveillance led to the crucial premises being identified. Discreet locations could also be detected by offering to pay the donation amounts in the late evenings when the offices had closed and the taxpayers themselves guided the decoys to the otherwise unidentified/unrelated locations.

4. The searches carried out were all on the same day i.e. 18.07.2013 and 19.09.2013 (in the case of Venkatesha Education Society) for greater impact.

5. The trusts represented communities and religious bodies and hence, were sensitive to cover. In fact, in the case of the Sri Adichunchungiri Sikshana Trust, the premises of the Sri Adichunchungiri Mahasamsthan Mutt in Bangalore had to be covered as there was clear pre-search information that collection of capitation fee was done there. This led to a huge mob gathering around the premise and political leaders across the parties condemning the search in the premise. But the situation was managed effectively. The fact which saved the day was that the exact room in which the capitation fee collection was kept and the exact evidence where the same was recorded was known through pre-search enquiries and the same was taken control of. Similar approach was taken in all the cases and only those assets which were pertaining to the capitation fee aspect were seized. Certain outstanding work in the search included the Inspector in one case running behind a vehicle and by making heroic effort to stop the vehicle, in which the cash was being moved out.

6. The searches yielded cash seizure of ₹ 16.51 crore and total seizure of ₹ 28.31 crore. Evidence of the unaccounted capitation fee collection, siphoning by the trustees for personal assets; malpractices like seat blocking, wrong information to Medical Council of India regarding faculty strength, etc. were detected during the search and post search enquiries. The modus adopted was varying from college to college. The colleges which were being searched for the first time were blatant in the misuse and reported whatever collection they wished to after taking out personal cuts. The colleges which were searched earlier had used the cash in investments elsewhere and also tried to bring in some portion to individual hands through inflated commission in the controlling family's hands. On the basis of the evidence gathered, the undisclosed income admitted by the various groups cumulatively was ₹ 174.85 crore.

Names of the Officers :

Mr. Rishi Kumar Verma, ITI, Bangalore
Mr. Pankaj Kumar, ITI, Bangalore
Mr. Suraj Lama, ITI, Bangalore
Mr. Sambit Mishra, DDIT (Inv.)
Mr. Kumar Ajeet, Addl.DIT (Inv.)
Mr. R. Ravichandran, DIT (Inv.), Bangalore
Mr. S. Ravi, DGIT(Inv.), Bangalore

UTMOST SECRECY DURING PRE-SEARCH RECCE AND SURVEILLANCE ENSURES UNEARTHING OF HUGE ACCOMMODATION ENTRY RACKET

Taxpayers operating numerous benami concerns - dummy directors, partners and proprietors - providing accommodation entries of bogus purchases, share application money and loans and advances to various beneficiaries – utmost secrecy with incisive recce, surveillance and profiling pre-search - racket busted and beneficiaries identified – all India network unearthed.

In view of the accommodation entry business assuming alarming proportions, a comprehensive search and seizure operation was mounted on two major entry operators of Mumbai, namely, Mr. Praveen Kumar Jain and Mr. Satish Saraf. Enquiries revealed that: The operators work through a vast network of associates and brokers; no books of accounts pertaining to accounted or unaccounted transactions are kept at the registered office or the residential premises of the entry operators; there are multiple layers of transactions between the entry operator and the final beneficiary; the entry operators control a large number of bogus concerns and hundreds of bank accounts through which accommodation entries are provided; these bogus concerns have dummy directors, proprietors and partners; the entry operators remain very alert and secretive and whenever they get a clue regarding any search or survey action to be conducted by the department through their trusted employees, they go underground and hide all the incriminating documents at secret places and they have secret back offices at undisclosed locations and also maintain data through cloud computing on remote servers.

2. To deal with the above challenges, the Directorate devised the following strategy: (i) comprehensive recce to identify all the important associates, brokers, back offices with the help of the phone numbers, call data records and result of enquiries conducted in earlier cases; (ii) physical surveillance on the movement of the operators and their associates; (iii) the mobile numbers were saved in the mobile device and whatsapp application were refreshed and actual profile pictures downloaded to identify the relevant persons.

Copy of the DIN application forms/registration documents containing photographs of the dummy concerns, addresses etc. was also obtained to ascertain the identities; (iv) ITDMS - 360 degree profiling of data, Google search, MTNL phone directory, MCA website etc. were comprehensively used to obtain the details of the entry operators and their associates; (v) no formal letters of requisitions were sent to the field formation requisitioning man power so that the operators do not get a clue on any impending search action. The field officers were informally told over phone to be present for the search so as to first cover all the premises without alerting the target, to be reinforced later; (vi) vehicles were not requisitioned from the regular vendor; and (vii) the strike time was different from the regular time of the search to catch hold of the targets unaware.

3. Search was conducted on 01.10.2013 on the two operators. For smooth flow of communication, a whatsapp group was created comprising of all the officers participating in the search. All the authorized officers were given the map of the city in which all the premises covered under the search were marked so that the officers can take help, redistribute the man power from the nearest available premises.

4. Due to meticulous planning, all the key persons were found and they were examined. During the course of search, the hidden office premises was discovered from where the regular books of accounts as well as the unaccounted cash transactions contained in various documents, hard drives and pen drives were seized.

5. The most interesting and important aspect of the search was the discovery of a crucial pen drive belonging to Mr. Praveen Kumar Jain. On day one of the search Mr. Praveen Jain appeared only after four hours of the commencement of the search, that too without his mobile and laptop/pen drive. After investigating the movement of Mr. Praveen Jain prior to search, from various sources, it was found that he had stayed with one of his associates in a hotel at Dahisar, Thane, one night prior to search. The investigation team reached the hotel, checked the CCTV footage and found that Shree Praveen Jain had checked out of the hotel the same morning with a black bag along with his associate. The trail of the movement of the bag was detected and finally after questioning 4-5 persons involved in hiding the bag, it was finally found and seized from the premise of a scrap dealer. The pen drive was a crucial discovery as it contained the parallel books of

accounts, which conclusively proved that Mr. Praveen Jain used to provide accommodation entries in lieu of cash or through multiple layers of transactions. In Kolkata too, important hard disks were found and seized from secret hide-outs.

6. After seizing all the crucial documents the following important steps were taken to identify the beneficiaries: (i) Since Mr. Praveen Jain and Mr. Satish Saraf were accommodation entry operators, all the entries appearing in the regular books of accounts of more than 100 bogus entities under their control, were actually accommodation entries. The same were extracted from the tally data and converted into excel format; (ii) The main challenge was to obtain the PAN of all these entities for which the help of ITD PAN Data base, examination of various seized documents in the case and the Banking Channels was taken; (iii) The cheque transactions contained in the tally books were co-related with the cash details contained in the parallel books seized in the case, to the best possible extent; and (iv) To expedite the process, the help of the forensic experts and customized software was taken.

7. The searches resulted in detection of accommodation entries as under :

Nature of Entry	**Amount involved (₹ crore)**
Accommodation entries of Purchase Bills	3000.00
Bogus share application money	5272.71
Bogus unsecured loans	2934.68
Bogus commodity trading	242.25
Bogus Long-term capital gains	81.82
Bogus contract/sub-contracts	316.25

8. The information in respect of the beneficiaries, around 7000 spread over the country, is being disseminated to the field officers for taking necessary action in those cases.

Names of the Officers :

Mr. Deepak Bishnoi, ITI, Mumbai

Mr. Prakash Bhatia, ITI, Mumbai

Mr. Kamlendra Meena, ITI, Mumbai

Mr. Yagyesh, DDIT (Inv.), Unit-3 (1), Mumbai

Mr. Shahnawazul Rahman, DDIT, (Inv.),Unit-3 (2), Mumbai

Mr. Sanjay Kumar Addl. DIT (Inv.), Unit-3, Mumbai

Mr. K. K. Vyawahare, DIT (Inv.)-2, Mumbai

Mr. Suresh Jandhyala, DGIT (Inv.), Mumbai

Mr. Swatantra Kumar, DGIT (Inv.), Mumbai

SEARCH REVEALS PRICE MANIPULATION TO ENHANCE PROFITS AND BOOKING BOGUS LOSSES, AND INTRODUCTION OF SHARE CAPITAL

Profits enhanced by price manipulation – SEBI circumvented by using various bogus entities – profits set off by bogus losses – ploughed back as share capital through a dummy broker – post search investigation of share applicants, directors, brokers and postal authorities – leads to unravelling of accommodation

Discreet enquiries conducted in the cases of the Ruchi Group and Betul Group showed that they were indulging in stocking up and price manipulation in case of Guar seeds and Guar gum. This was done through various entities, effectively controlled by these groups, to circumvent market regulators like SEBI and FMC. The profits so earned were set off by booking bogus commodity losses through tainted brokers to reduce tax liability. Such transaction of booking bogus commodity losses was done with the help of brokers like Inventure group which was also covered in search. After booking such bogus losses, the same profits were ploughed back as bogus share application money and premium in companies of Ruchi Group and Betul Group.

2. Based on the above information, search and seizure operations on Ruchi group, Betul Group and Inventure group (Broker) were carried out on 29.01.2013. During the course of Search, evidences gathered established that the said broker group was used to book bogus loses to set off profit earned in Guar gum/guar seeds trade. On the face of it, Ruchi group disclosed an amount of ₹100 crore and Betul group disclosed ₹ 60 crore as money ploughed back as share application money on account of these fictitious commodity trading losses.

3. During post search investigations conducted in the case of Betul Group, it was found that to give the colour of genuineness, Betul Group had introduced one Mr. Sunil Kayan as broker to arrange ₹ 280 crore from various parties. Notices u/s 133(6) were issued to such share applicants. To investigate their genuineness, a series of enquiries were conducted at Kolkata. It was found that such addresses of said share applicant entities were not in

existence or not operational. Information was collected from postal department, Kolkata. Postmen who served 133(6) notices were examined on oath. The Directors of such entities were also traced and examined on oath. These Directors accepted that they are people of no means and are Directors for namesake and dummy. Examination of postmen and dummy Directors revealed details of various accommodation entry operators who effectively controlled entities which provided share application money to Betul Group. Such entry providers were traced and examined. On examination, various accommodation entry providers deposed on oath that they have provided accommodation entries to Betul Group. Moreover, Mr. Sunil Kayan on examination deposed that he had no role in the transactions of share application money. He also deposed that he was introduced for namesake and that too post facto. Thus, entire modus operandi of obtaining bogus share application money of Betul group was conclusively established. This enquiry resulted in detection of bogus share application money to the tune of ₹ 280 crore.

4. Based on certain leads in post search investigation, a fresh round of enquiries was conducted on Mumbai based parties indulging in providing share application money to various companies of Ruchi Group. On enquiries, it was found that Ruchi group had taken accommodation entries to the tune of ₹ 160 crore from various accommodation entry providers. Enquiries with namesake/dummy directors led to identification of accommodation entry providers controlling such entities. These accommodation entry providers accepted on oath that they had given accommodation entries to various groups including Ruchi group. During this investigation, money trail was followed up to two Mumbai based builders (independent from search groups). Two independent surveys conducted in these two builders resulted in disclosure of around ₹ 110 crore. Thus, the post search investigation resulted in detection of ₹ 500 crore, over and above the disclosure made during the course of search.

Names of the Officers :

Mr. Sudhakar Shinde, DDIT, Mumbai

Mr. S. K. Poddar, Addl. DIT, Mumbai

Mr. B. R. Balakrishnan, DIT (Inv.), Mumbai

Mr. Swatantra Kumar, DGIT (Inv.), Mumbai

INFORMATION OF ENTRY OPERATORS CULLED OUT FROM FIU IND INFORMATION USED TO DETECT THOUSANDS OF PAPER COMPANIES AND BENEFIT TO BENEFICIARIES

STRs indicate entry operators with many entities – search reveals data on cash receipts from the beneficiaries, undisclosed cash deposits, movement of funds through the bank accounts and providing of accommodation entries of share capital/premium and unsecured loan to different beneficiaries.

Four STRs from FIU were received in the month of June 2013 wherein more than 500 companies and proprietorship concerns were listed along with their bank accounts, indicating suspicious inter-bank account transactions without any business rationale. On the basis of information mentioned in the STRs, two entry operators namely Mr. Anand Sharma and Mr. Janardan Chokhani were identified who were controlling a large number of entities in the STRs though their names did not appear anywhere directly in the STRs.

2. A search and seizure operation was carried out on Mr. Anand Sharma and Mr. Janardan Chokhani on 02.07.2013. During the course of search, 'back office' or operational office of the entry operators was located after making an all-out effort. As a result, the entire data starting from cash receipts from the beneficiaries, deposits of cash in undisclosed bank accounts of proprietorship concerns, movement of the funds through the bank accounts of several companies and then finally providing the accommodation entries of share capital/premium, unsecured loans through cheque/RTGS to different beneficiaries were found in the seized documents/hard disc. During the post-search enquiry, close to 1100 paper companies were identified as being controlled by Mr. Anand Sharma, apart from a few hundred more by Mr. Janardan Chokhani. Account of each company was analysed thoroughly and beneficiaries to the extent of ₹ 3000 crore were identified. A list of the beneficiaries has been mailed to the respective jurisdictional DGsIT and AOs.

3. In the process of investigation, one more entry-operator, namely Mr. Deepak Patwari, was examined who had admitted to have given accommodation entry of Long Term Capital Gains (LTCG) to the tune of ₹ 200 crore to beneficiaries. Accordingly, the details of sellers who took the entries of LTCG were collected from the BSE/NSE and information has been passed on to the jurisdictional DGsIT.
4. Mr. Anand Sharma and Mr. Janardan Chokhani have admitted ₹ 5 crore and ₹ 76 lakh respectively as undisclosed commission income.

Names of the Officers :

Mr. Novel Roy, DDIT (Inv.), Unit-3(1), Kolkata

Mr. H. N. Singh, Addl. DIT (Inv.), Unit-3, Kolkata

Mr. Bishwanath Jha, DIT(Inv.), Kolkata

MINUTE STUDY OF TDS RETURNS REVEALS PAYMENTS TO PAPER COMPANIES AND SEARCH PROVES CASH RECEIVED BACK BY THE DEDUCTOR COMPANY

TDS returns reveal bogus payments for coal raising to paper companies managed by entry operators – search and enquiries from post men, landlords and care takers established that these companies did not exist, had no dumpers, staff or any infrastructure - almost entire amount was withdrawn in cash and returned

M/s EMTA Coal Ltd., having a turnover of approximately ₹ 800 crore, is engaged in coal mining business. Quarterly TDS Returns filed by M/s EMTA Coal Ltd. were downloaded from ITD. The genuineness of parties to whom various contractual payments were made after deducting TDS by M/s EMTA Coal Ltd. was analysed from the said downloaded list of deductees. It was found that huge bogus payments of ₹ 773 crore in 6 years on account of coal raising charges were made by it to four paper companies controlled and managed by the entry operator Mr. Sumermal Jain and his son Mr. Ajay Kumar Jain.

2. Search and survey operations were conducted against M/s EMTA Coal Ltd., the entry operators and the four paper companies which had claimed to have supplied dumpers and excavators to M/s EMTA Coal Ltd. As a result of in-depth and extensive post-search enquiries, it was established that the four companies and their Directors were not in existence. They did not have any dumpers or excavators, employees or staffs or any other infrastructure. They did not even have any office. It was also found that further payments were made from the four paper companies to 53 bogus Individuals/HUFs on account of fuel and spare parts consumed, and from their Bank accounts almost entire amount was withdrawn in cash and returned back to M/s EMTA Coal Ltd. Cash-trails were prepared showing the movement of funds from M/s EMTA Coal Ltd. till the final cash withdrawal.

3. Survey conducted in mines of M/s EMTA Coal Ltd. revealed that no dumpers or excavators, allegedly supplied by the four companies, were deployed in the mines. The statement of the postmen, the Notice Server, the land lords and care taker of the buildings used as addresses for different entities and details collected from oil companies and Commissioner of Provident Fund revealed that all the entities including the four paper companies did not exist, and all correspondence was made from the office of the Jains, who are the entry operators.

4. Subsequent to the search, M/s EMTA group had filed a petition before the Settlement Commission disclosing unaccounted additional income of ₹ 201 crore. M/s EMTA group has already paid tax and interest thereon to the tune of ₹ 73.26 crore. Moreover, the Jains have also made a disclosure of ₹ 11 crore on the unaccounted commission income earned. Thus the total disclosure came to ₹ 212 crore.

5. It is also pertinent to mention that the Jains filed Writ Petition against the action u/s. 132 challenging the validity of the Search and the power u/s. 131 after search under which various enquiries were made. The Hon'ble Calcutta High Court has passed an order in favour of the department, upholding the action u/s. 132 as well as the validity of power exercised u/s. 131 after conducting search, in W.P. No. 844 of 2013 dated 24th Dec., 2013 with a cost of ₹ 6 lakh imposed on the Jains.

Names of the Officers :

Mr. N. K. V. Singh, DDIT (Inv.),Unit-3 (4), Kolkata

Mr. H. N. Singh, Addl. DIT (Inv.), Unit-3, Kolkata

Mr. Bishwanath Jha, DIT (Inv.), Kolkata

SEARCH REVEALS BUSINESS OF ACCOMMODATION ENTRIES IN CURRENCY DERIVATIVES THROUGH THE MCX EXCHANGE

Taxpayer providing accommodation entries – member of MCX – SX - purchase and sale of currency derivatives executed simultaneously through two terminals in the same office – entries provided on commission – established by identifying unusual features

The Investigation Directorate, Kolkata gathered that Mr. Sachet Saraf through his group concern, Marigold Vanijya Pvt. Ltd., was providing accommodation entries of loss or profit in currency derivatives. It had membership of MCX –SX (MCX stock Exchange Limited). It was also gathered that Mr. Saraf maintained details of unaccounted cash transactions related to his business of accommodation entries in a pen drive which was rarely brought to the office.

2. Based on these specific inputs as to when the pen drive was available in the office, a survey action u/s 133A of the IT Act, 1961 was initiated in his office where unaccounted cash of ₹ 25 lakh was found in addition to unaccounted [kutcha] cash books in the pen drive. The survey was converted into Search and Seizure operation on 25.03.2013,u/s 132 of the Income-tax Act, 1961.

3. During the search, the print outs of unaccounted [kutcha] cash books maintained in the pen drive of the taxpayer for the FY 2006-07 onwards till date were found and seized. It was found that the cash receipts by Mr. Saraf from different parties were on account of entry of profit which Mr. Saraf had paid by cheques; and cash payments by him to different parties were on account of entry of loss which he had received by cheques. The beneficiaries, to the extent of approximately ₹ 176 crore within Kolkata, and approximately ₹ 50 crore outside, were identified, and the information was passed on to their Assessing Officers. Further, Mr. Saraf admitted undisclosed commission income of ₹ 7 crore.

4. The modus operandi followed by Mr. Saraf was a new one. One future contract (Lot) represented 1000 Dollars. The original rate at which a contract was purchased was known as contract rate. Future contract was settled at the spot rate at the expiration of the contract which was determined by Exchange or it would be sold before expiration at the prevailing market rate. The contract expiry period was normally 30 days. In case the purchase transaction was not reversed, it would be carried forward to the future contract of next month when it would be settled at the spot rate which is determined by the Exchange. When a party in need of loss in currency derivatives to set it off against its normal business income approached the broker, the broker would search a party which wanted profit entry of currency derivatives. The orders of purchase and sale of currency derivatives were executed simultaneously by punching the same on the two terminals located in the same office, by following method of 123 so that no third party entered into the transaction. In case there were no real buyers or sellers corresponding to a real sale or purchase on any occasion, some dummy parties were maintained by the broker in whose accounts the sale or purchase were executed.

5. The following indications present in normal transactions prove the case of accommodation entries- i) In normal transactions, Margin is to be collected at fixed rate of 1% of contract value plus variable margin decided by the Exchange. However, no margin or inadequate margin is taken from the parties by the broker in case of accommodation entries; ii) Normal transactions are frequent and spread over the year whereas in the case of accommodation entries, the transactions are one time or occasional and mostly near the year end; and iii) Continuity of losses without settling the margin money or settling the account is also an indicator of accommodation entries which does not happen in normal cases.

Names of the Officers :

Mr. H. R. Singh, DDIT (Inv.), Kolkata

Mr. H. N. Singh Addl. DIT (Inv.), Kolkata

Mr. Bishwanath Jha, DIT (Inv.), Kolkata

SUSTAINED MULTI AGENCY ENQUIRY REVEALS DISCREPANCIES IN STOCKS IN CONNIVANCE WITH NSEL, BOGUS PURCHASES AND SIPHONING OFF OF INVESTORS' FUNDS

Enquiry of NSEL stock details and actual stocks reveals shortage in taxpayer's stocks – trading on NSEL platform on the basis of bogus purchases – confirmed during search – investor's money siphoned off – invested in sister concerns – big scam unearthed through sustained enquiry.

A search was conducted at Ludhiana, on 23.05.2013, on the Genex group of Industries, which brought to light a very large scam having All India ramifications with the active connivance of National Spot Exchange Ltd., Bombay (NSEL).

2. During the course of search, it was found that one of the group companies, by the name of ARK Imports (P) Ltd., 228, Industrial Area A, Ludhiana, Punjab is engaged in trading in Raw Wool and Wool Top at the NSEL platform. The designated godowns for Raw Wool by NSEL were also covered. Detailed stock taking was conducted and the stock of Raw Wool at the designated godowns of the NSEL was found to be much shorter than the quantity mentioned in the registers at the godowns as well as on the electronic platform by NSEL.The total quantity of Raw Wool was found to be 3152.61 MT whereas total quantity of stock of Raw Wool as per records maintained at the godowns was 11764 MT, and hence was short by 8611.39 MT. Further, as per the NSEL site (www.nationalspotexchange.com), as on 23.05.2013, the total stock of Raw Wool was mentioned as 12154 MT. Again, as per the records at the godowns and as also confirmed by the Warehousing Supervisor present, the quantity of Raw Wool was stated to be 11764 MT, as also confirmed by Mr. Jai Bahukhandi, AVP Ware Housing Department, NSEL on 28-05-2013. It is emphasized here that ARK Imports (P) Ltd., Ludhiana is the only entity who has been trading in Raw Wool stock on NSEL in the whole of India.

2.1 NSEL was questioned on the above. It stated that the stock of Raw Wool deposited in the two godowns of ARK Imports (P) Ltd. was 17397 MT. However, no explanation was given regarding the discrepancy in stock mentioned on the internet and as per their

records. Interestingly, there was a report of an Insurance Surveyor, on behalf of National Insurance Company Ltd., as per which the two godowns do not allow for keeping that huge stock.

2.2 It was not only the quantity of the stock which varied, even the quality of the stock was not same, which was shown to be traded on the NSEL platform. 40 samples were taken from the stock and the same were got tested from the laboratory of Textiles, functioning under the Ministry of Textiles, Govt. of India, at Ludhiana. The relevant test report shows that the stock was of very inferior quality than what was being traded on the NSEL Trading platform.

3. It was clear that ARK Imports (P) Ltd. was trading on electronics platform of NSEL and giving a rosy picture of the stock of Raw Wool for trading through NSEL. It took advantage of the trading cycles of T+26 days in which it could sell the same stock of Raw Wool to a number of investors and generate huge funds. These funds were then transferred to the other group concerns like Genex Industries Ltd. and Shakun Polyplasts (P) Ltd. from where they were further transferred to other group concerns.

4. The company was also found to be engaged in the booking of bogus purchases, as confirmed from their bank accounts, as the payments were being made through RTGS which were immediately withdrawn in cash In some cases, the entry provider accepted that he allowed his bank account to be operated by the Genex Group for depositing the money in the form of RTGS and withdrawing in cash For example, it was found that in all the bank accounts the introducer is Mr. Kailash Aggarwal, one of the promoter Directors of ARK Imports (P) Ltd. Genex Industries Ltd. Bank account statements of these accounts reveal the same pattern of credit and debit entries.

5. It also emerged that the stock of Raw Wool was insured by National Insurance Company Ltd. for a sum of ₹ 1300 crore for the period February, 2013 to February, 2014. However, on conducting an inspection by the Surveyor, appointed by National Insurance Company Ltd., it was found that the stock of Raw Wool was highly overstated. National Insurance Company Ltd. therefore cancelled the Insurance Policy of ARK Imports (P) Ltd. taken for the stock of Raw Wool. However, in the month of June, 2013, the stock of Raw Wool was got insured by NSEL from New India Insurance Company Ltd., Mumbai (NIA) against fire and theft for a sum insured of ₹1010 crore.

5.1 On enquiry, NIA submitted that the Insurance Policy has been issued on the basis of the declaration and proposal form submitted by the insured and that too for stocks of Grain, Oil Seed, Jute and Cotton, whereas till the date of search there was only Raw Wool lying in the two designated godowns. This irregularity noticed in the Insurance of the stock of Raw Wool has been brought to notice of IRDA vide letter dated 19.08.2013.

6. As regards the flow of money it was found that in the trading through the electronic platform of NSEL, the money of the investors was received through NSEL into the settlement account of ARK Imports (P) Ltd. maintained with HDFC Bank Ltd. On examination it was found that the quantum of money received by Shakun Polyplasts (P) Limited during the period April, 2012 to February, 2013, the total amount received came to ₹ 245.20 crore. In the case of Genex Industries Ltd., the total amount received was ₹ 193.11 crore during the period April, 2012 till May, 2013. The Director promoters of ARK Imports (P) Ltd. and other sister concerns had siphoned off the investors money in a very systematic manner and were investing the same in purchase of Real Assets or share capital in the sister concerns, as well as showing unsecured loans.

7. The trading in NSEL is a physical delivery based trading in which the seller has to physically deliver the commodities offered by him for trading through NSEL. The seller has to deposit the commodities at the designated warehouses. There is a settlement cycle for the commodities traded through NSEL. This cycle determines the time period within which the trade has to be settled. The buyer pays the money to the seller for the whole of the lot to be purchased and on the last day of the settlement cycle the traded quantity has to be delivered to the buyer. However in reality this does not happen. The trade is settled only by repaying the whole amount of money back to the buyer, which means the purchaser sells it back to the seller. All the financial transactions take place through NSEL. NSEL guarantees the quantity and quality of the commodity traded. But neither details of quantity of the commodity nor quality are available with NSEL. No satisfactory reply has been received from them.

8. This search proved that investor's money was being siphoned off by the trading entity with the active connivance of NSEL Authorities. Whole system of NSEL was being exploited brazenly. All the relevant facts were brought to the notice of Forward Marketing Commission vide letter dated 19.08.2013 as well as to the Insurance Regulatory Authority. Similar kind of modus operandi was being adopted by other specified traders who were trading their stock in other agro products, especially rice, cotton, chillies etc., in the other regions of India. As soon as the investors came to know the real facts relating to NSEL, there was a payment crisis, as the trading entities have siphoned of the funds and failed to clear the liabilities. ARK Imports (P) Ltd. is one of the biggest defaulter owing more than ₹ 700 crore to the NSEL investors. An all India survey was conducted at the various trading entities of NSEL as well as the designated godowns on 22.08.2013. Economic Offences Wing, Mumbai has also registered criminal cases against the NSEL authorities, who have been subsequently arrested. The Regulatory Authorities have stopped the NSEL Trading.

Names of the Officers :

Mr. Amit Raj, DDIT (Inv.), Ludhiana

Mr. Munish Gupta, Addl. DIT (Inv.), Ludhiana

Mr. Manish Sareen, Addl. DIT (Inv.), Ludhiana

Mr. H. S. Sohi, DIT (Inv.), Ludhiana

Mr. S. T. Ahmad, DGIT (Inv.), Chandigarh

SEARCH REVEALS WIDESPREAD NETWORK CREATED FOR PROVIDING ACCOMMODATION ENTRIES

Jewellers arranging accommodation entries – uses Kolkata-based shell companies - pen drive containing complete books of account seized - three sources unearthed –evidence of undisclosed investments detected in search

The Jaipur Unit of Investigation Wing, Rajasthan conducted Search and Seizure operations in the case of Motisons Jewellers Group on 31.10.2012. This group was alleged to have invested huge sums of money in construction of a landmark tower in Jaipur, payment of substantial on-money for purchase of commercial property strategically important for this group. However, the main allegation against this group was that it had introduced substantial money in the books of accounts of group companies.

2. During pre-search investigation, data from the MCA website was analysed to identify the source of infusion of funds. The modus operandi was apparently the share application money route. Money was being introduced in the form of share capital, share application money and loans through 6 Kolkata based shell companies. During FYs 2011-12 and 2012-13, ₹ 66 crore had been introduced through these companies. It was decided to cover the entire web of shell companies, their Directors, and source of introduction of cash.

3. The Directors of these shell companies were identified, and were found to be employees and relatives of Motisons Jewellers Group at Jaipur. On being systematically questioned they accepted that they did not have any knowledge about activities of these shell companies and all their affairs were controlled by the owners of the Motisons Jewellers Group. No business operations were being conducted at the Kolkata office. In fact, the entire books of account of the six shell companies were retrieved from a pen drive at the residence of owners of Motisons Jewellers Group.

4. During post search investigations, the entries in these bank accounts were traced backwards by calling bank statements of the parties from whom money was shown to be received. Enquiries were conducted backwards for three to four more steps. Bank statements and other details of more than 70 companies / firms

were examined during this investigation, which revealed: (i) Systematic transfer of funds across several accounts, at times as many as six accounts, in a single day, transferred from one bank account to another through RTGS, finally reaching the beneficiary (Motisons Group entity) on the same day; (ii) Initially, the above six companies received money from diverse sources. It was observed that money was being transferred from the accounts of only a few companies, which were based at Kolkata; (iii) The money coming into the accounts of the companies mentioned in point (ii) above was found to be coming from three major sources- four Kolkata firms; account(s) of one Nibu Nagi, a civil contractor based in Nagaland; and through 'instruments' issued by banks in Phuentsholing, Bhutan.

5. In respect of the four Kolkata based firms, KYC forms showed that they were proprietary concerns of some individuals. From their bank accounts, ₹ 20 crore reached Motisons group entities after being deposited in cash, and subsequent layering of bank accounts through the six shell companies. Surveys u/s 133A were conducted on these four concerns at Kolkata in April, 2013. Two of the proprietors of these concerns admitted that they received cash from Motisons Jewellers group which was deposited in their bank accounts to provide accommodation entries to this group. The other two concerns did not exist at the given addresses.

5.1 The second source was found to be the bank accounts of one Nibu Nagi and one Kevilhulie Senotsu, both residents of Dimapur, Nagaland. Inquiry conducted through Investigation Directorate, Guwahati revealed that Nibu Nagi was a civil contractor whose income was exempt u/s 10(26). He did not maintain any books of account, and he explained that he had transferred funds to unrelated Kolkata based companies under instructions from his regular suppliers of building material – steel, cement etc. who were also in Kolkata.

5.2 The third source was 'instruments' (Demand Drafts) issued by certain banks in Bhutan. On investigation it was found that these instruments were routed through 'vostro' accounts held by Bhutan based banks in Indian banks. For example, Bhutan National Bank maintained a 'vostro' account in Axis Bank, Siliguri, West Bengal. Similarly, Druk PNB Bank Limited maintained an account with Punjab National Bank, Connaught Place, New Delhi. These bank account statements were also obtained to identify the persons who had purchased these 'instruments'. However, at this stage, the inquiry reached a dead end. Hence, a reference was made to Competent Authority, Kingdom of Bhutan through FT & TR under

Article 5 of the SAARC Multilateral Limited Agreement. The information is awaited.

6. The Motisons Jewellers Group and its associates admitted undisclosed income of ₹ 81.91 crore on account of undisclosed investment in their flagship tower, payment of on-money for purchase of commercial plots, besides undisclosed stock of jewellery. This admission is apart from the ₹ 66 crore introduced through shell companies. Tax of ₹ 17.98 crore has been deposited till date.

Names of the Officers :

Mr. Chandra Shekhar Sharma, ITI, (Inv.), Wing, Jaipur

Mr. Vishnu Datt Tank, ITI, (Inv.), Wing, Jaipur

Mr. Shyam Sunder Todwal, ITI, (Inv.), Wing, Jaipur

Mr. Vipul Kashyap, DDIT (Inv.)-2, Jaipur

Mr. Sanjiv, Addl. DIT (Inv.), Jaipur

Mr. Sunil Mathur, DIT (Inv.), Jaipur

DETECTION OF BOGUS CLAIMS OF EXPENDITURE USING PROFESSIONAL ENTRY OPERATORS HAVING A CLUSTER OF COMPANIES FOR THE PURPOSE

Company in business of selling land – huge claim of land development expenses – no evidence adduced – search reveals bogus claim – made through entry operators – hundreds of such companies detected – no real development work

PACL claims itself to be in the business of taking advances from the public, in return for assured allotment of plots of various sizes of 100,150, 200, 250 sq. yards etc., developed out of agricultural land. It has purchased large patches of agricultural land in various states like Rajasthan, Madhya Pradesh, Tamil Nadu, Andhra Pradesh, Haryana etc. It claimed that the agricultural land so purchased had been developed by performing various land development activities. Out of such developed land, plots were given to the customers. It was noted from an STR that PACL has made payments of ₹ 300 crore for land development work to a Pune based company. Pre-search intelligence revealed that the Pune based company had further siphoned off the said amount by making payments to a number of Kolkata based bogus paper/shell companies.

2. In order to examine the genuineness of the land development expenses and other issues, a search and seizure action u/s 132 was undertaken on 20.06.2013. During the search/post search, some of the entities which have acted as contractor (identified from the TDS data u/s 194C of PACL) were also covered (23 contractors based at 10 stations).

2.1 During the search on PACL no evidence for the execution of land development work upon its various sites of Agricultural land was found. No details could be produced during the post search investigation also. No details were found about specific site addresses, nature of work done site wise, other details showing physical execution of work, etc.

3. PACL had claimed an amount of ₹11737 crore on account of land development expenses in its P & L account from F.Y. 2007-08 till 2012-13. The genuineness of such exposes was investigated

extensively from the information gathered during the search and post search enquiries. The results of investigation are summarized as under:

3.1 PACL had claimed to have got done land development work through one cluster of paper companies operated by one entry operator Charted Accountant at Kolkata, namely Mr. Praveen Aggarwal. It was found that he was running around 256 shell companies from his office at Kolkata. These paper companies did not have any expertise/infrastructure/experience to carry out land development work. These companies did not have any fixed assets/equipments or physical infrastructure to carry out such work. The entire arrangement was found to be in the nature of manipulation through flow of funds and no real execution of work. PACL had obtained bogus billing for land development expenditure of ₹ 3657.76 crore through these shell companies from F.Y. 2007-08 to 2012-13. Admission of modus operandi in the statement of Mr. Praveen Aggarwal, his employees (dummy Directors), investigation of the documents showing commission @ 0.5% in lieu of accommodation entries of bogus billing (found and seized from him), financial flow through the web of bank accounts fund not being used for land development activities, rather diverted as share capital/advances to other companies, are evidences of this arrangement.

3.2 Tracing of 5 companies acquired by PACL group from Mr. Parveen Aggarwal group of companies by transfer of shares in the name of employees of PACL Group, [these companies were initially in the control of Mr. Praveen Aggarwal and employees of Mr. Parveen Aggarwal were directors in these companies]. These companies are having share capital of ₹ 13.02 crore and security premium of ₹ 186.46 crore. These companies were acquired by PACL group in F.Y. 2012-13.

4. Limited surveys u/s 133A of the Income-tax Act, 1961 were carried out in the cases of certain contractors to examine the genuineness of land development work done by them for PACL. It was found that these companies have further sub-contracted the work to other entities. The entire process has been found to be manipulated. There has been only flow of funds with no real execution of work. In the land development contracts, even specific location/address of sites were not available. In some cases, it was admitted that all the transactions of contract/subcontract were accommodated/managed by middlemen or agents. The work was

found outsourced to various paper companies of Kolkata with no physical existence. No contractor/sub-contractors ever visited the site to make the quantification of work and to make financial budgeting before the award of contracts. The scope of work was found almost similar in all the contracts examined, irrespective of location. On verifying certain sites of PACL as in villages of Jodhpur/Bikaner in Rajasthan, it was found that no land development work has been done. Certain land in Kot and Padora villages of Ron Tehsil of Bhind District in Madhya Pradesh, claimed by PACL, was found to be belonging to the Government.

5. Sample data of 50 transactions of payment made to different Parveen Aggarwal companies by PACL under the land development head was analysed to trace the money trail. It was found that after two or three layers, the money had been invested in different outside companies as share capital or loan.

6. Letters have been written to the AOs under intimation to range heads and CsIT having jurisdiction over persons who have received land development charges from PACL. The AOs have been requested to remain in touch with Central Circle, Delhi, where the main case is assessed so that uniform/consistent stand is taken by the department in the cases of contractor and PACL.

7. PACL is debiting huge commission expenses in its P & L account on account of commission paid to the agents working in multilayer structure system, used for mobilization of the deposits. The amount of such expenses in the last six financial years is in the range of ₹ 6000 crore. Rate of commission is as high as 27% of deposits. It has been found that various persons to whom such sum has been paid, have claimed substantial expenditure and suppressed their income. They have claimed refund of large percentage of TDS deducted in their cases. The income declared in such cases is in the range of 10 % to 50%. It has been found that most of the commission agents book a large proportion of expenses in cash. The data analysis in respect of top 500 persons who have received commission for F.Y. 2009-10, 2010-11 and 2011-12 has been made part of the Appraisal Report.

8. The various findings, having interdepartmental implications, have been referred to the forum of the Regional Economic Intelligence Council, Chandigarh to be shared with SEBI, RBI, ROC, Service Tax, and the ROC at Delhi and Kolkata sharing information about paper companies that have been used as a conduit by PACL group, for follow up action under their purview.

9. On detailed examination of transactions of PACL with the public, it has been found that these are in the nature of deposits as against fixed sum of installment/lumsum payment, the customers are receiving fixed amount after a specified period of time which is predetermined at the time of taking initial amount itself. Such transactions have been found in the nature of collective Investment Scheme.

10. The group has so far paid ₹ 62 crore as taxes on a surrendered income of ₹ 275 crore.

Names of the Officers :

Mr. Partinder Malik, ITI, Faridabad

Mr. Ajay Kumar, ITI, Faridabad

Mr. Kumar Avikal Manu, DDIT-1, Gurgaon

Mr. Krishan Kumar Mittal, Addl. DIT (Inv.), Faridabad

Mr. P. S. Puniha, DIT (Inv.), Chandigarh.

Mr. S. T. Ahmad, DGIT (Inv.), Chandigarh

CENTRAL REVENUE BUILDING - BENGALURU

SURVEYS

SURVEYS

DETECTION OF INFLATION OF EXPENSES BY EFFECTIVE USE OF STRS AND VERIFICATION OF SAP SYSTEM

Taxpayer a major industrial group – commission paid to men of no means – entry providers – detailed verification of SAP systems reveals bogus purchases and commission payments

The Kirloskar group of companies of Pune is one of the pioneer industrial groups which has made a mark in the engineering industry in India. The group produces pumps, engines, centrifugal chillers and electrical equipments like electric motors, transformers and generators. Established in 1888 and incorporated in 1920, Kirloskar Brothers Limited (KBL) is the flagship company of the Kirloskar group. The core businesses of KBL are pump and engine manufacturing for large infrastructure projects for water supply and irrigation.

2. While enquiring into certain STRs, the Directorate of Income-tax (Inv.), Pune, unearthed an entry providing racket operated from Sangli, a small town located near Pune. Following the trail of bank details it was seen that these entry providers had received payments from the companies of Kirloskar group. The TDS returns for various years were also verified wherein it was seen that taxpayer has made huge commission payments to various entities, mostly individuals and HUFs. It became clear that the taxpayer and its group concerns were indulging in the practice of inflating expenditure by taking accommodation entries from bogus concerns and from the individuals who were in no position to render any services to the taxpayer. Meanwhile, the taxpayer and group concerns voluntarily disclosed an amount of ₹ 84.90 crore as additional income against accommodation entries taken from bogus billers operating from Sangli. However, on verification of the income disclosed, it was observed that only the purchases from Sangli parties were disclosed by the taxpayer group companies. It was decided to conduct a survey u/s 133A in the cases of Kirloskar Group, as it was seen in the searches conducted in the past, that non-genuine expenses booked by various taxpayers were generally more than the expenses as per the available information.

3. Surveys u/s 133A were carried out on 09.01.2013 at various business premises belonging to the Kirloskar group companies. During survey, the flow of material i.e. movement of raw material,

from requisition to issue of material, and production of the final products was understood. The steps involved were identified, and the documents and records maintained were verified. It was found that the company was using ERP Software, SAP (Systems, Applications and Products in data processing) to maintain a central database for all the departments and accounting.

4. On verification of the SAP system it was found that the purchase requisitions (PR) for the purchases from certain parties have been raised manually in the system (SAP), and the said requisitions were assigned with cost centers. Normally all PRs are raised through SAP and are assigned to Sales Order or to Inventory. All these PRs were generated using code "RVM". On looking at the documents maintained at the office, it was observed that no Reference number or project definition number was mentioned and most importantly, no material description was mentioned on the Bill Passing Purchase Memo. This was the common pattern observed in all these purchases. The deficient markings on these bills and documents suggested that no material was received against these purchases, as confirmed from the factory stores. On being confronted with these findings, the taxpayer disclosed an amount of ₹ 34.85 crore, over and above the voluntary disclosure made by them.

5. Details of commission paid were also verified, party-wise for all the years. The documentary proof in support of such commission payments like invoices, correspondence etc. was verified. Most of the commission agents were belonging to Sangli and adjoining area and were proprietary concerns of individuals and HUFs. Further, except for invoices, there was no documentary proof whatsoever in support of commission payments made to such agents. During the survey cross-verifications it was seen that no services were rendered by these commission agents. On being confronted, the taxpayer group admitted additional income of ₹ 58.74 crore against the disallowance of commission for various years.

6. Post-survey enquiries were conducted in the case of one Mr. Suresh Parekh, who was a king-pin in bogus billing racket. It was found that he and his brother were also arranging accommodation entries of commission, for the Kirloskar group. This group has disclosed an additional income of ₹ 96.17 crore, which is over and above ₹ 84.90 crore disclosed voluntarily earlier. Thus the total cash generated by way of accommodation entries on account of bogus purchases and commission by the group is

₹ 181.07 crore. The group has disclosed the same as additional income in various years and has since paid tax of ₹ 60.51 crore, out of which ₹ 32.16 crore was paid consequent to survey.

Names of the Officers :

Mr. Nitin Waghmode, DDIT (Inv.), Unit 1(3), Pune.

Mr. Sangram Gaikwad, Addl. DIT (Inv.), Unit 1, Pune.

Mr. M. K. Dubey, DIT (Inv.), Pune.

Mr. D. P. Sharma, DGIT (Inv.), Pune.

UTILISATION OF NON-INTRUSIVE TECHNIQUES AND DATABASES TO UNEARTH HUGE UN-DISCLOSED INCOME

Taxpayer not filing returns for last six years - examination of OLTAS, ITS, TRACES show huge income – Survey establishes undisclosed income and also receipt of compensation – fully disclosed after survey.

While browsing the advance tax payments of an individual, Mr. Subhash Chand Jain in OLTAS, it was found that he was paying good amount of taxes in earlier years but he had not filed the returns of income for the last six years. This information was corroborated with ITS details of the taxpayer and also with the information provided by TRACES. The TRACES information has shown that this taxpayer is having income of more than ₹ 3 crore for the last three years.

2. During pre-survey enquiry, it came to be known that part of the business activities of this taxpayer had been shifted to Chennai. Hence, it was decided to take the help of Investigation Wing of Chennai. The CIT, Trichy requested the DIT (Investigation), Chennai, to provide manpower to cover the premises in Chennai simultaneously, when the Trichy officers were conducting the survey in Trichy.

3. During the Survey, on 05.08.2013 it was noticed that this taxpayer had received a huge compensation of ₹ 32 crore from SRM group of institutions after the judgement from Supreme Court in a real estate transaction during A.Y. 2011-12. This money was deposited in bank partly as a fixed deposit and part of the money was utilized for purchasing various properties in Chennai and Trichy, and also partly towards money lending business. It also came to light that the taxpayer has been receiving share income and interest on capital from the firm and the taxpayer has not filed the returns of income for the last six years.

4. After being confronted with these evidences and also the information retrieved from TRACES, OLTAS and ITS, the taxpayer filed returns of income for the last five years admitting a huge income of ₹ 35,91,39,702/- and paid full taxes on the same.

5. This case is unique as information was utilized fully from components which made the taxpayer to file return of income for the last five years admitting a huge income of ₹ 35.91 crore and pay full taxes in October, 2013, amounting to ₹ 9.31 crore; and Prosecution proceedings were initiated in this case for non-filing of returns despite having huge taxable income.

Names of the Officers :

Ms. Uma Maheshwari, Income tax Officer, Ward-3(1), Trichy.

Mr. Omkareshwar Chidra, CIT, Trichy.

EXTENSIVE INVESTIGATION REVEALS NON-GENUINE MERGER AND BOOKING OF BOGUS CAPITAL LOSS TO OFFSET INCOME FROM CAPITAL GAINS

Taxpayer sells shares and declares nominal capital gains – main shareholding company merges with a dubious Kolkata company which had huge share premium in its books received from several Kolkata companies and declared huge capital loss on sale of its shares – taxpayer reduces its capital gains by amalgating with this company – entire sham busted in survey.

A STR was received highlighting that an amount of ₹ 152 crores had been credited in the bank account of Zawar Sales Ltd ("ZSL") from Jaypee Development Corporation Ltd. It was informed that this account has never transacted in such huge amounts in the past.

2. Through discrete enquiries it was gathered that the taxpayer company belongs to the Zawar Group of Pune, which is manufacturing cement. This manufacturing facility was held in the name of Zawar Cements Pvt. Ltd. (ZCPL).The shares of ZCPL were held by ZSL and Zawar Brothers Ltd. ("ZBL") at 76.82% and 23.18%, respectively. Such shares of ZCPL have been sold by ZSL and ZBL to Jaypee Development Corporation Ltd. for a total consideration of ₹ 221 crore.

3. Subsequently, ZBL was merged with ZSL; hence, the income from LTCG was shown only by ZSL. In the returns filed for A.Y. 2011-12, ZSL declared the income from capital gains to the tune of only ₹ 32.87 crore on this transaction, debiting ₹ 189 crore. Further, through discrete enquiries it was revealed that in the same period, ZSL amalgamated with a Kolkata based company, Piyush Mercantile Pvt. Ltd. (PMPL) which had about ₹ 193 crore in its balance sheet as share premium. Through discrete enquiries and data downloaded from www.mca.gov.in, it was found that PMPL is a company whose credentials are highly doubtful and it has no tangible assets to attract a share premium of ₹ 193 crore. Moreover, it was found that such share premium was received from about 16 Kolkata based companies having the same address and same Directors. This strengthened the suspicion on the merger of

PMPL with ZSL. Therefore, in order to verify the correctness of income shown by the taxpayer from long term capital gains, a survey action u/s 133A of the Act was carried out on 18.07.2013.

4. It was found during survey that ZSL has sold its shareholding to Jaypee Development Corporation Ltd. vide a share holders agreement dated 17.04.2010. On the total consideration of ₹ 221.40 crore, it has computed Income from Long Term Capital Gains by reducing the same by indexed cost of acquisition (₹ 17,55,24,209), long term capital loss from sale of investments of PMPL (₹ 170,17,90,726), long term capital loss of sale of shares of Jaypee Infratech (₹ 24,511), thus coming to LTCG of ₹ 32,87,23,167.

5. Thus, the income from LTCG was considerably reduced by setting off the same with capital loss incurred by PMPL. Such capital loss was incurred by PMPL from sale of its investments (shares in various companies) through three Kolkata based brokers. This required further investigation.

6. During these investigations, a number of bank statements pertaining to all the group companies of PMPL with the movement of funds were requested from Axis Bank and Standard Chartered Bank, Kolkata. Such companies are about 38, having two bank accounts each in these two bank branches in Kolkata. PMPL and group companies numbering 38 are controlled and managed by one Mr. S. M. Nahata, a Kolkata based Chartered Accountant. This group was searched u/s 132 on 03.03.2010, along with Bhushan Group of Delhi, by the Investigation Directorate, New Delhi, and was examined for F.Y. 2007-08 to 2009-10 to find out the movement of funds.

7. Through this process of extensive investigations and analysis, it was proved that the entire transactions of merger of PMPL with ZSL, and booking of capital loss by PMPL, which was used to set off the income from capital gains of ZSL, are non-genuine, false and a sham. The detailed modus operandi of the ZSL was as under:-

7.1 It was found that ZSL has acquired PMPL through a Share Swap agreement dated 01.04.2010, entered with the following eight companies: Baba Marketing Private Limited; Anubhav Dealers Private Limited; Baba Suppliers Private Limited; Flexo Merchants Private Limited; NP Fiscal Private Limited; Nitesh Vyapaar Private Limited; South City Medi Marketing and Utsav Commercial Private Limited.

7.2. On behalf of these eight companies, only three persons have signed this swap agreement without mentioning their names. Through enquiries, it was found out that these three persons are: Mr. Nitesh Kumar Singh, Mr. Pancham Kumar and Mr. Alok Ranjan and all of them are based in Kolkata. During the course of survey, Mr. Zawar named Mr. S. M. Nahata as the main person who was instrumental in this deal. Later in the course of enquiries it was revealed that Mr. S. M. Nahata is in no way connected with these companies on paper.

8. The Share Swap Agreement mentions that these eight companies hold 100% shares of PMPL as on 31.03.2010. From the perusal of the financial statements of these eight companies it is revealed that each of these eight companies are having their aggregate investments totaling to about ₹1,00,000 or less and have never held the shares of PMPL in their balance sheets, and hence could not have sold the shares of PMPL to ZSL. On verification of the addresses of the persons who have signed the share swap agreement, none of them could be found.

9. PMPL, as on 31.03.2008, has received share capital and premium of ₹ 193,57,01,566. The same amount was further shown as investment in various companies in the balance sheet by PMPL. It was further established that all the companies which have invested in PMPL are of the same group having common directors and common addresses. These transactions are done through two bank accounts of PMPL, one in Axis Bank, Kolkata and another in Standard Chartered Bank, Kolkata. It is seen that the receipts and payments of the amounts in PMPL is through a circuitous route. The source and the destination of the money are the same and these companies are only the intermediary channels and accommodation providers. This proves that the purchase of shares by PMPL of its group companies by paying a huge premium is not a real transaction but a sham transaction. This also proves that the purchase of shares of various group companies by PMPL itself is not genuine.

10. The taxpayer was claiming that PMPL has incurred capital loss of ₹ 170.17 crores by way of sale of its investments. It is seen that such investments are sold through three Kolkata based brokers, Fix Fit Securities Pvt. Ltd., Mr. P L Roy and Mr. S. B. Bhutra. During survey, the taxpayer was asked to produce contract notes with all its supporting documents related to sale of investments of PMPL. Interestingly there were no contract notes and the taxpayer failed

to submit any kind of the documents in support of such claim of sale of investments which may show that these shares were sold by PMPL through these three brokers. During the course of survey itself, one of the brokers, Fix Fit Securities Pvt. Ltd. was traced and questioned; and he has agreed that these transactions of sale of the shares by PMPL are not genuine. It is a case of off-market transactions and broker had only given bills without actual transactions. Other two brokers could not be traced at that time. On close scrutiny of the balance sheets of a few companies, it is revealed that some of the investments which are claimed to be sold by PMPL were never held by it.

11. The taxpayer has finally paid taxes amounting to ₹ 43,07,29,974, which includes interest u/s 234B/C of ₹ 8,94,87,369 for A Y 2011-12. The taxpayer has preferred an application before Settlement Commission, Mumbai.

Names of the Officers :

Mr. Kailash Gaikward, DDIT (Inv.), Pune

Mr. Manoj Kumar, Addl DIT (Inv.), Pune

Mr. M. K. Dubey, DIT (Inv.), Pune

Mr. R. C. Mishra, DGIT (Inv.), Pune

SUPPRESSION OF PROFESSIONAL RECEIPTS AND ON-MONEY PAYMENTS ESTABLISHED IN MEDICAL PROFESSION

Detection of on-money payments on purchase of lands - established through covering the sellers and the taxpayer simultaneously - survey leads to admission of ₹ 13.06 crore.

The taxpayer, Dr. K. Kathiravan, is a doctor by profession, and his wife, Ms. Latha, is also a Shareholder in the company floated by them in the name and style of Gastro Medical Care Pvt Ltd, Trichy.

2. From the market and the third party information, it was gathered that huge unaccounted cash transactions were being carried out by the taxpayer, while purchasing plots/lands from different parties. On verification of returns of income, it was seen that the taxpayer was not offering incomes commensurate with his medical profession. Considering these facts, survey was initiated simultaneously on 03.01.2013 at 5 premises, consisting of two premises of the taxpayer and three premises of the sellers of plot/land.

3. A total of 5 teams were formed and the team members assembled at the office where the location and details of the premises were given. After detailed briefing, it was decided that each team would strike at their respective premises at 11.30 am, to establish the on-money payments; receipts and their subsequent investments from the taxpayer as well as the sellers.

4. During the course of surveys, crucial documents containing details of financial transactions related to sale of properties and suppression of receipts in the hands of taxpayer, which had not been reflected in the regular books of accounts, were found and impounded. The same were collected, collated and linked by the survey team chronologically with special reference to on-money transactions and suppression of receipts.

5. Statements were recorded wherein the taxpayer agreed that substantial on-money payments of ₹ 5.06 crore were made to three parties namely, Mr. N. V. Murali (₹ 2.26 crore), Mr. Kanagamoorthy (₹ 1.80 crore) and Mr. J. Kannan (₹ 1 crore), out of his unaccounted professional receipts from Gastro Medical Care Pvt Ltd, Trichy, in which the taxpayer was Managing

Director. Further, the taxpayer also received ₹ 0.76 crore as unaccounted receipts during the current year. The sellers of the properties were the receivers of on–money from the taxpayer and agreed to pay tax on the unaccounted receipts for the relevant assessment years. The statements of these persons (sellers) were duly confirmed by the taxpayer Dr. K. Kathiravan, who agreed to pay the tax on ₹ 5.82 crore as his 'personal income', as unaccounted professional receipts from Gastro Care Medical Pvt. Ltd. There was also suppression of receipts during the current year in the case of Gastro Care Medical Pvt. Ltd, to the tune of ₹ 2.18 crore which has been brought to tax for the current year. The total admission in the instant case for various assessment years is ₹ 8 crore and another ₹ 5.06 crore from three sellers. Hence, the total undisclosed income is ₹ 13.06 crore.

6. The importance of the case lies in the following aspects: (a) Information was properly gathered before the survey about the taxpayer doctor's excellent practice; (b) The undisclosed income was retrieved from the computer maintained by the doctor; (c) The undisclosed income was tied up with unaccounted assets; (d) The unaccounted investment, i.e., on money paid became undisclosed income of a real estate dealer who was also covered on the same day and he has also admitted the additional income and thus it became a fool-proof case; (e) The survey was successful because the generation point and destination of undisclosed income were unearthed and (f) The due taxes on the above admissions following the survey have been fully paid up.

Names of the Officers :

M. T. Ramalingam, DCIT. Company Circle-1 (1), Trichy.

Mr. R. S. Naik, JCIT. Range-1, Trichy.

Mr. Omkareshwar Chidra, CIT-1. Trichy.

DISCRETE ENQUIRIES OF BULK SALES BY AN INCONSPICUOUS SHOP REVEALS SUBSTANTIAL UNDISCLOSED INCOME.

Secret enquiry in neighborhood of saree shop – information that sales are huge – low profits disclosed - godowns located – detailed inventory taken – discrepancy in stocks established – undisclosed investments also found – surrendered by the taxpayer.

The taxpayer, Mr. Devender Reddy, Prop. Reddy Brothers, along with his two brothers, Mr. D. Prakash Reddy and Mr. D. Ramakrishna Reddy, is engaged in the business of sale of sarees. A taxpayer's relative, Mr. P. Ramana Reddy has been carrying on separate business activity from one of the godowns of the above taxpayer. The taxpayers are filing returns of income in the proprietory capacity declaring nominal turnover / profits for the A.Y. 2011-12, the details of which are as follows: Mr. D. Ramakrishna (Turnover ₹ 1.81 crore, Returned income ₹ 5.43 lakh), Mr. D. Devender Reddy (Turnover ₹ 6.08 crore, Returned Income ₹ 10.10 lakh), and Mr. D. Prakash Reddy (Turnover ₹ 9.98 crore, Returned Income ₹ 12.12 lakh).

2. The sale of sarees is being carried out from a very remote area of Saroornagar Mandal. From out side, it does not have even the appearance of a show-room. During reconnaissance, it was observed that even though the shop is located in a remote area, the turnover is huge as at any point of time, around 80-100 customers will be available in the shop. During secret enquiries in the neighborhood; it was learnt that this shop caters to the demand of all middle-class people staying in the vicinity and is mainly visited for bulk purchase of sarees for marriages, festivals, etc., because of the good bargain offered.

3. After intensive secret enquiries, four godowns were identified which were found to be running from rented premises. All the four godowns, though adjacent to the main premises, were not at all conspicuous. The Income Tax Officer / Inspector made extensive enquiries for nearly 10-15 days by acting as a customer who wanted to make bulk purchases, so as to obtain details of the godowns. It was otherwise very difficult to detect the secret godowns, as they did not bear any name plate, sign board etc., and the stock was also kept in the nearby residential houses. Further, it was learnt that the taxpayer has been ordering huge stock, for the impending sale

on the occasion of Dassera festival. Since, huge unaccounted stock was likely to be detected and the taxpayer was showing nominal profit / turnover in the returns of income, a survey operation u/s 133A of the Income-tax Act, 1961, was conducted in three shops and four godowns, on 11.10.2012.

3.1 Arduous physical inventory of stock was carried out by deploying 20 members of the Range, in methodical and systematic manner, in the presence of the taxpayer and their representatives. The stock taking was completed in a record time and the stock available as per the books was also worked out on the basis of opening stock, purchases/sales made by the taxpayer, till the date of survey. As per the books of accounts, the stock in the three propietory concerns of the brothers was ₹ 4.58 crore whereas the stock as per physical inventory worked out to ₹ 9.64 crore, thus, excess stock of ₹ 5.06 crore was unearthed, which was admitted by the taxpayer.

4. In addition, loose papers were found and impounded as per which, the taxpayer had made investment in immovable properties, totaling to ₹ 52.7 lakh, which was also admitted as unexplained investment. In the case of the taxpayer's relative, Mr. P. Ramana Reddy, who was carrying on sale of men's wear, in the name of Sri Tirumala Textiles, from one of the godowns, excess stock of ₹ 58.67 lakh was detected, which was also admitted as unexplained investment. He had also made contributions towards chits of ₹ 6.5 lakh, which was also admitted as unexplained income.

Names of the Officers :

Mr. M. A. K. Satish, ITO, 9(3), Hyderabad.

Ms. Maya Maheshwari, Addl. CIT, Range-9, Hyderabad

Mr. P. V. Rao, CIT-6, Hyderabad

THOROUGH VERIFICATION DURING SURVEY PROVES BOGUS PURCHASES, PAYMENT OF COMMISSION AND OVER INVOICING

Listed public limited company – procurement registers examined during survey – bogus purchases detected – payment of commission in lieu of no services – higher invoices made for sub contract works – admitted by the taxpayer Thorough verification during Survey proves bogus purchases, payment of Commission and over invoicing

The flagship company of the Thermax Group is a listed public limited company having turnover of ₹ 4600 crore in F.Y. 2012-13. Discrete enquiries carried out in the case of this company established that it was debiting bogus purchases as well as bogus commission in its books of accounts.

2. Survey u/s 133A was conducted with main focus on verification of purchases. When the established practices of the taxpayer company were verified, it came to be known that some of the material procured by the taxpayer, was directly sent to the site office, where it was executing turn-key projects. The Register maintained at this Central Warehouse was examined in detail. The verification of physical bills was also carried out simultaneously and those bills having stamp of Central Warehouse were segregated. These bills were then cross-checked with the Inward register maintained at Central warehouse, which did not show any receipt of the material from certain parties even though the stamps of inward entry were made on the physical copies of bills. Simultaneously, the Inward Registers from the site office were also examined and they too showed that no material from the aforementioned parties had ever reached that site. These findings from the site offices were then cross-checked with the Daily Book Registers (DBR) maintained in the corporate office by the concerned Project Manager in order to have an idea about the actual consumption of the material. The examination of the DBR also reconfirmed the finding of the Department that no material was ever received from the aforementioned parties. Similar modus operandi was also found in respect of one more Turnkey Project. Based on these findings, the taxpayer admitted to withdraw the claim of purchase expenses of ₹ 42.76 crore.

3. During this verification, another issue of commission payment was also noticed. The Sub-Business Unit Heads (SBU Heads) of various divisions were not even aware of the commission payments made to some of the parties by the taxpayer company. These SBU Heads squarely admitted that no services had been rendered by those parties to the taxpayer company. Accordingly, all such commission expenses amounting to ₹ 32.55 crore booked in the name of the concerned parties were agreed to be withdrawn as claim of expenses.

4. Further, during the examination of various documents at the time of survey, one more basic document, viz. "Project-cum-Cost Review Report" (CRR), maintained at the corporate office was verified. This is maintained by each Project Manager to have an idea about the costing of the Project and to check whether the cost allotted to each project is not overrunning. This CRR is prepared every month and it is a snapshot of budgeted expenses allotted for the project vis-à-vis the actual expenses incurred and the profitability of the said project. When the CRRs of all the projects were examined in detail, it emerged that in one project, the actual cost had exceptionally exceeded the budgeted cost. This over-running of cost was attributed to only one factor, i.e. the sub-contract work awarded to one particular company. When the bills of this company were examined in detail, it emerged that some of those bills were not approved by the site-in charge and those bills bear merely the approval of respective SBU Head. The original drawings of this sub-contract work were called and the budgeted costing of the work was computed, which was then cross-checked with the actual sub-contract expenses allotted to that party. It emerged that in this sub-contract, the actual sub-contract work was worth ₹ 15,93,67,878 where as it was over invoiced by about ₹ 19,26,60,122 at the time of awarding of sub-contract to that particular company. This issue was also admitted by the taxpayer company and an amount of ₹19.26 crore was declared as additional undisclosed income for the F.Y. 2010-11.

5. The taxpayer group subsequently paid tax amounting to ₹ 29,47,10,000 as a result of survey and filed the application before the Settlement Commission. While filing application before the Settlement Commission, the taxpayer group not only adhered to the declaration already made at the time of survey, but also declared an additional income of ₹ 10.36 crore over and above the declaration of ₹ 94.60 crore made during the course of survey proceedings.

Names of the Officers :

Mr. Harshad Vangurlekar, DDIT (Inv.), Unit 1(1), Pune

Mr. Manoj Kumar, Addl. DIT (Inv.), Pune

Mr. M. K. Dube, DIT (Inv.), Pune

Mr. R. C. Mishra, DGIT (Inv.), Pune

ASSESSMENT PROCEEDINGS SUPPLEMENTED BY SURVEY ESTABLISH REVENUE RECOGNITION AS PER CONVENIENCE

Taxpayer in construction business – disclosing income by adopting project completion method – short payment of advance tax – survey also reveals on money payments – tax on undisclosed income fully paid by taxpayer after survey

Asha Deep Group is engaged in the business of construction and sale of multi-storied buildings in the state of Rajasthan.

2. During the course of scrutiny assessment proceedings in one of the companies of the taxpayer group, the Assessing Officer came across the taxpayer's business of deferring the revenue recognition by way of adopting Project Completion Method as against the Percentage Completion Method for declaring income for the purpose of recognition of taxable income. In the case of Renaissance Buildhome Pvt. Ltd., the taxpayer has shown current liabilities of ₹ 78.75 crore in A.Y. 2011-12, ₹ 25.52 crore in A.Y. 2012-13 and ₹ 67.11 crore in A.Y. 2013-14. Most of these liabilities were in the name of advance booking amount. Moreover, the taxpayer group was not paying advance tax commensurate with its income.

3. Discrete enquiries conducted about the taxpayer's non business activities revealed that the taxpayer group was accumulating huge land bank and substantial on-money in cash was paid to the sellers, mainly farmers.

4. A survey u/s 133 A was conducted on the taxpayer group on 11.12.2013, covering its head office as well as site offices. During the course of survey, incriminating documents showing payments of on-money on purchase of agriculture lands were found and impounded. These papers revealed undisclosed cash payments in purchase of agricultural land to the tune of ₹ 10.95 crore by Royal Enterprises, a partnership firm of the group, which was admitted by the partners. Two different estimates of current year's income of group companies prepared on 12.09.2013 and on 07.12.2013 were found from the head office. The net profit of all the three concerns for the entire period of F.Y. 2013-14 was estimated at ₹ 1142.50 lakh as on 12.09.2013 and at ₹ 2040 lakh as on 07.12.2013 for the same period. These estimates, coupled with the taxpayer non-

disclosure of income on the basis of Percentage Completion Method, led to the conclusion that the taxpayer is booking income as per his convenience with the motive to defer the recognition of revenue. The incriminating documents were confronted to the Directors of the group companies who admitted additional income of ₹ 9 crore on this account for the current year.

5. This case highlights as to how the scrutiny assessment proceedings can lead to preparation of a good survey case and discrete enquiries conducted by the AOs can lead to detection of huge unaccounted payments in purchase of agriculture land. The two sets of final accounts showing different estimates of income for the same period substantiated the allegation that the taxpayer modus-operandi of disclosing income as per Project Completion Method was just to defer the revenue recognition according to its convenience. The total undisclosed income detected due to survey proceedings for the F.Y. 2013-14 was of ₹ 19.96 crore, resulting in additional tax of more than ₹ 8 crore. The entire additional tax has been collected upto 31.03.2014.

Names of the Officers :

Ms. Kavita Yadav, ITO, Ward-6(1), Jaipur

Mr. G. K. Sharma, ITO, Ward-6(2), Jaipur

Mr. Raghuveer Singh Dagur, Addl. CIT, Range-6, Jaipur

Mr. D. D. Goel, CIT, Jaipur-2, Jaipur

CLUE FROM STUDY OF ADVANCE TAX PAYMENT LEADS TO ESTABLISHING NON DISCLOSURE OF TRUE INCOME BY USING INCORRECT METHOD OF ACCOUNTING.

Leading builder – paying low advance tax compared to turnover – income shown as booking advances – decoy used to negotiate payment of cash component in buying property – conversation recorded and confronted – taxpayer admits and pays tax

Manglam Build Developers Limited is a leading builder and developer of Jaipur. The case was developed as the taxpayer's advance tax payments were not commensurate with the scale of operations of the taxpayer. As compared to the sale turnover of ₹. 65.95 crore and ₹ 127.32 crore for F.Y. 2010-11 and FY 2011-12, the taxpayer paid only advance tax of ₹ 1.4 crore and ₹ 2.25 crore, respectively. Further, it was found from the assessment records that the taxpayer was showing huge advances in the balance sheet as booking advances. In FYs 2010-11 and 2011-12, the taxpayer showed huge booking advances of ₹ 60.55 crore and ₹ 87.05 crore, respectively. Thus, it was prima-facie evident that the taxpayer finalizes its books of accounts at the end of the year and does not correctly follow the percentage completion method.

2. Extensive pre-survey enquiries were made. There were around 25 sites on which construction/booking of flats was going on. The ACIT impersonated as a software engineer for ascertaining as to how much money can be taken as cash if a flat bought from them or land bought by them. It was found that the cash component is easily accommodated by the builder in penthouses, facilities, parking fees etc. It was also ascertained that the taxpayer was ready to pay cash for purchase of agricultural land over and above the DLC / registration value. A story was cooked up that the sale of property of father in law will generate a cash of around ₹1 to 1.50 crore. The question of accommodating this cash was posed to various personnel at the different sites. The conversation wherein the site-office personnel very vocally revealed the entire modus-operandi of the taxpayer and said that cash of any amount can be accommodated by the taxpayer, was audio recorded with a high-quality Sony digital recorder (ICD-UX533F/B) which has an intelligent noise cut and a high quality sound playback.

3. Survey operation u/s 133A was carried out on 03.09.2013 at the head office of the taxpayer and five site-offices of the taxpayer. During the survey, the MD of the company was confronted with the various audio recordings. Simultaneously, a number of incriminating documents were found evidencing cash payments of ₹ 1.69 crore to building contractors, unaccounted cash expenses in construction of ₹ 7.88 crore, difference in sale consideration mentioned in registered sale documents and sale agreement between the farmers and the taxpayer, which was admitted by the MD at ₹ 8.07 crore. It was also detected that the taxpayer was not taking into account the huge amount received through sale of properties while recognizing the revenue under the Percentage Completion Method followed by it. Such amount was shown in the Balance Sheet as liability under the head "Loan and Advances". During the survey the taxpayer admitted its mistake in the method of accounting, which resulted in surrender of ₹ 42 crore on this account, and offered to pay additional tax thereon.

4. The survey resulted in detection of additional income of ₹ 95.14 crore for A.Ys 2013-14 and 2014-15. The taxpayer tendered cheques of ₹ 40 crore against its additional tax liability during the survey itself, against which taxes to the tune of ₹ 24 crore have already been collected.

Names of the Officers :

Mr. Vikram Pagaria, ACIT, Circle 6, Jaipur

Mr. Raghuveer Singh Dagur, Addl. CIT, Range 6, Jaipur

Mr. D. D. Goel, CIT, Jaipur – 2, Jaipur

SURVEY REVEALS RESTRUCTURING OF BUSINESS TO SHIFT PROJECTS TO FOREIGN PARENT COMPANY

Big handset maker restructures its business – shifts projects to its foreign parent company – pays huge royalty for use of brand name - No TDS deducted - shown as payment for software purchase – survey unveils the entire model – huge tax collected by the Department

Nokia India Pvt. Ltd. (NIPL) designs, manufactures and markets mobile handsets (phones) and communication network devices. Its parent company is Nokia Corporation, Finland. NIPL set up its manufacturing facility during 2006 at Sriperumbudur, near Chennai.

2. The Directorate of Income tax (Investigation), Chennai came to know about an application made by NIPL before the Department of Industries, Government of Tamil Nadu, seeking approval for its proposed new business model. It was gathered that NIPL was in the process of restructuring its business into a triangular trade model. As per the model, it would start another company by name Nokia India Sales Pvt. Ltd. (NISPL) to market its production in India. The whole production of NIPL would be sold / invoiced to Nokia Corporation, Finland, which in turn would sell /invoice part of the production to NISPL with a price mark up for marketing it in India. The remaining production would be exported to 130 different countries by Nokia Corporation, Finland as it was happening earlier. Thus, NIPL restructured its new business model with a view to shift its profit to its parent company, through the process of raising sale invoices at desired values.

3. It was decided to find out whether NIPL was resorting to shifting its profit to its parent company in its existing business model, if so, how the same was being carried out. The officers of the wing found out the manufacturing and the accounting processes involved. On an analysis of the processes it was broadly identified that huge amount was being paid to parent company year after year for purchase of software. Moreover, NIPL was using the brand name 'NOKIA' requiring it to pay substantial amounts to Nokia Corporation, Finland towards royalty for the software purchases and for using its brand name. But, verification of the ITDMS showed that NIPL hardly paid any amount to the Government u/s 195 of the Income-tax Act, 1961, evidencing large scale tax evasion by NIPL by not deducting tax on royalty payments.

4. Hence, a survey u/s. 133A of the Act, 1961 was carried out by the Investigation wing, Chennai on 08.01.2013, at the factory premises of NIPL in Chennai.

5. During the survey it was found that:

5.1 NIPL paid a sum of ₹15,012 crore during the financial years from 2006-07 to 2011-12 as payment for software supply to its parent company without making TDS u/s.195 r.w.s. 9(1)(vi) of the Act. While doing this, the payments made for software supplied were camouflaged by grouping them under payments made for supply of 'raw materials' in the financial statements and audit reports in Form 3CD and Form 3CEB to keep it away from the notice of any Government authority.

5.2 The survey revealed that the payments for availing the IPR related services, utilization of brand name and trade mark have been made under the single head of payments for supply of 'software'.

5.3 From the evidence gathered, it was revealed that NIPL devised an idea of import of software license keys (giving an impression that software loaded in each mobile handset is unique and possesses a key i.e individual identity) instead of software, since the financial year 2009-10, to avoid the TDS u/s. 195 of the Act on account of royalty. However, the concept of software key was disproved through a verification and analysis of the process of manufacturing and the handsets by an expert from CFSL (Central Forensic Sciences laboratory), Hyderabad. As per Explanation 4 to the Section 9(1)(vi) of the Act, payments made to a non-resident for software supply shall fall within the scope of the definition of 'Royalty'. As such, NIPL became liable to pay tax u/s 195 of the Act on the amount of ₹15,012 crore remitted to its parent company towards 'Royalty' and also became liable to tax consequent to disallowance of ₹ 15,012 crore for AYs 2007-08 to 2012-13 u/s 40a(i) of the Act.

5.4 It was found that the software pricing was done manually at the end of every month and there was no basis or underlying documents for arriving at the software cost. NIPL was using the software cost as an adjustable figure to determine the 'desirable' profit calling for substantial adjustments in terms of arm's length price under Section 92 E of the Income-tax Act, 1961.

5.5 It was found that as per the new model, NIPL raised invoices on Nokia Corporation on the sale of finished goods for the period of 29.12.2012 to 01.02.2013, to the tune of ₹ 366 crore, whereas the

same goods were resold by Nokia corporation to NISPL at ₹ 482 crore capturing a profit of ₹ 116 crores. But, all the transactions were reversed after the survey.

5.6 Evidence showed that NIPL acted as a Permanent Establishment (PE) of Nokia Corporation, attracting section 9(1)(i) of the Act.

6. Based on the findings of the survey, orders u/s 201 of the Act were passed on 15.03.2013 by the International Tax Division, New Delhi raising a demand of ₹ 2,080 crore. The orders were confirmed by the CIT(A), New Delhi, vide order dated 31.05.2013. So far, demand of ₹ 700 crore has been collected. The assessments for the relevant years were reopened by the Assessing Officer on the basis of evidence gathered during the survey.

Names of the Officers :

Mr. S. Senthil Kumaran, DDIT (Inv.), Unit 1(1), Chennai

Mr. S. Murali Mohan, Addl. DIT (Inv.), Unit 1, Chennai

Mr. V. Nagaprasad, DIT (Inv.), Chennai

PROMPT ACTION DURING ELECTIONS LEADS TO SEIZURE OF CASH MEANT FOR ILLEGAL DISTRIBUTION

Information received regarding illegal movement of cash – prompt survey – cash found with full details of candidate – CCTV footage used to identify key persons – examination establishes department's case – election countermanded

During the Municipal Elections in Ranchi, a toll free number was made operational by Investigation wing for the public to provide information about illegal movement of cash during the election process. Information was received on 07.04.2013 (Sunday) about suspicious activities and distribution of cash from a room located in Hotel City Palace, Ranchi. The hotel was immediately covered by a survey operation u/s 133A of the Income-tax Act, 1961.

2. During the course of survey, cash of ₹ 22.31 lakh was found from one room. Importantly, certain documents like envelopes containing details of booth numbers, details of bundles in which cash was kept etc. were also found and impounded. The survey team also impounded CCTV footage to get information about the suspect persons who visited that room. Subsequently, statements of all important persons, such as owner of the hotel, manager and staff of the hotel who witnessed the accused persons entering the hotel premises and person in whose room cash was found, were taken. These statements, the impounded documents and cash which was found, led to the conclusion that the cash was brought for illegal distribution by a candidate contesting in the election of Mayor. The information was passed on to the police who seized the cash Subsequently, the cash was requisitioned by the Income-tax department u/s 132A of the Income-tax Act, 1961.

3. The State Election Commissioner, Jharkhand countermanded the Mayor's election as a result of the above action. It also issued an appreciation letter to the concerned DDIT (Inv.), Additional DIT (Inv.) and other members of the team for prompt and effective action.

Names of the Officers :

Mr. Amresh Tiwari, DDIT (Inv.), Unit – 2, Ranchi

Mr. Sandeep Raj, Addl. DIT (Inv.), Ranchi

SURVEY ESTABLISHES SUPPRESSION OF SALES AND INFLATION OF PURCHASES THROUGH HAWALA BILLS

Taxpayer manufacturing imitation jewellery – not disclosing income commensurate with turnover – survey reveals suppression of turnover of whole sale business and inflation of purchases. Survey establishes suppression of sales and inflation of purchases through hawala bills

The taxpayer, Selva Gold Covering Private Limited is one of the leading Manufacturers and Traders in Imitation Jewellery and is having many branches in and around South India. This case was selected because of the uniqueness in the nature of business and no action was carried out in this field in the recent past. Considering the potential involved in this business and also to create deterrence among the taxpayers, a survey u/s 133A of the Income-tax Act, 1961 was mounted on this taxpayer.

2. The information gathered, during discreet enquiry, about the large network, number of branches and volume of the business of the company, did not match with the stature and status of the taxpayer. Further, the taxpayer has a monopoly in this line of business in South India and the entire business is carried out in an unorganized manner where there are no proper invoices for the purchases and the sales.

3. It was also gathered that the business of this company has grown rapidly, but on analysis of the return of income, it was noticed that the income shown to the department was not commensurate with the increase in the volume of sales. Based on such information discreetly gathered, survey was carried out on 06.08.2013.

4. During the course of survey, it was found that the taxpayer group is using specialized software for business transactions and stored important incriminating information in the Computer system. The survey team, with high level of expertise and sustained effort, recovered the information pertaining to actual sales, actual closing stock kept in the computer system and confronted the taxpayer with these discrepancies. The incriminating documents were impounded and analysed, and this revealed that the taxpayer did not account for approximately 50% of its business turnover. The information gathered during the course of discreet enquiry, was

evidenced and confirmed from the result of the survey action and materials impounded. Based on the evidences and materials impounded, the taxpayer group admitted ₹ 50.04 crore as unaccounted income for various assessment years.

5. Post survey, the taxpayer filed revised / original returns of income for the AYs 2009-10 to 2013-14 by including the unaccounted income, as under:

A.Y.	Original Return		Revised Return		Additional income returned as a result of the survey (₹)
	Date	Income returned in ₹	Date	Income returned in ₹	
2009-10	24/09/09	42,71,000	13/9/13	5,62,71,000	5,20,00,000
2010-11	28/09/10	80,15,000	2/9/13	6,00,15,000	5,20,00,000
2011-12	28/09/11	2,49,80,000	13/9/13	17,51,98,62	15,02,18,620
2012-13	28/09/12	5,09,20,000	12/9/13	15,93,50,625	10,84,30,625
2013-14	28/09/13	16,67,40,000	--	--	10,80,82,614
2014-15	--	--	--	--	2,96,71,823 (Till the date of survey)
				Total	₹ 50,04,03,682

6. In the light of the above action, considerable deterrence has been created among taxpayers. Tax of ₹17.18 crore has been collected till date.

Names of the Officers :

Mr. S. R. Karuppusamy, DCIT, Company Circle 1(3), Coimbatore

Mr. V. S. Kumar, Addl. CIT, Range - 1, Coimbatore

Mr. D. B. Manival Raju, CIT- 1, Coimbatore

AAYAKAR BHAWAN - BHOPAL

TDS ORDERS / SURVEY & MISCELLANEOUS ORDERS

TDS ORDERS / TDS SURVEY & MISCELLANEOUS ORDERS

TDS ORDERS / SURVEY & MISCELLANEOUS ORDERS

INCORRECT ALLOWANCE OF CLAIM OF COMPENSATION ON RETIREMENT OF A PARTNER

Revaluation of the land carried out on admission of a new partner- subsequently the taxpayer entered into the retirement deed- lump sum consideration received by the taxpayer against negligible initial capital contribution- order U/S 143(3) passed by the AO- the AO accepted the loss as shown in the return of income- accepted the contention of the taxpayer that the amount was not taxable- Mumbai High Court decision holding amount received by a retiring partner over and above capital contribution chargeable to tax as capital gains in the hands of the retiring partner followed by the Commissioner - the Commissioner invoked section 263 of the Income-tax Act, 1961- subjected the receipt to capital gains in the hands of the retiring partner.

The taxpayer Nisha Capital Services Ltd, Mumbai was a partner in Fine Developers with 12.5% capital contribution and 10% share of profit. This firm had purchased a piece of land from Bhandari Metallurgical Corporation for a consideration of ₹ 28 crore. Similarly, the taxpayer was also a partner in Mahul Construction Corporation with 10% share of profit and this firm had purchased a plot of land from Bharat Developers Pvt Ltd for ₹ 4.67 crore.

2. On 06.07.2007, HDIL became a partner in Fine Developers with 50% profit and in Mahul Construction Corporation with 45% profit. On 01.04.2008, the plot of land acquired by Fine developers was revalued at ₹ 268 crore and the plot acquired by Mahul Construction Corporation was revalued at ₹ 67.91 crore and thereafter the taxpayer company retired from both the partnership firms and received ₹ 22,90,59,118/- and ₹ 6,31,20,000/- from Fine developers and Mahul Construction respectively towards retirement compensation.

3. In the order u/s 143(3) for A.Y. 2009-10, the AO accepted the loss as shown in the return of income at (-) ₹ 11,468/- and accepted the contention of the taxpayer that the amount of ₹ 22,90,59,118/- and ₹ 6,31,20,000/- was not taxable and accordingly, completed the assessment u/s143(3) at a loss of (-) ₹ 11,468/-.

4. In view of the decisions of Hon'ble Mumbai High Court where any amount received by a retiring partner over and above his capital contribution was held to be chargeable to tax as capital gains, the Commissioner issued a show cause notice u/s 263 of the Income-tax Act. On examination of the records as well as the details filed by the taxpayer, the following facts came to light:

4.1 The taxpayer received retirement compensation of ₹ 22,90,59,118/- from Fine Developers as against NIL initial capital contribution. It received retirement compensation from Mahul Construction Company of ₹ 6,31,20,000/- as against the initial contribution of ₹ 5,000/- only. In both the cases lump sum consideration was received as compensation on retirement.

4.2 In both the cases, a revaluation of the land was carried out on admission of a new partner and subsequently the taxpayer entered into the retirement deed on 27.05.2008 as per which a lump sum consideration had been received by the Taxpayer.

4.3 In both the cases, the retirement deed stated clearly that the retiring partners shall relinquish any interest and assets of the firm and also share, right, title etc. in favour of the continuing partners. Thus, it was clear that the lump sum consideration received by the taxpayer was on account of the relinquishment of interest in the business assets of Fine Developers and Mahul Construction Company.

4.4 In both the cases, the retirement deed stated that assets of the partnership firm have been revalued for settling the account of the retiring partners. Thus, it was clear that revaluation of land was only a mode of settlement to settle the accounts and did not amount to revaluation per se.

4.5 The Hon'ble ITAT, Mumbai held in the case of Fine Developers that if a capital gain has to be taxed, it should be done in the hands of the retiring partners and not the in case of Fine Developers.

4.6 Applying the test of substance over form, it was clear that the taxpayer had ceased to have any interest in business and assets of the firms Fine Developers & Mahul Construction Company for which the lump sum consideration was received by the taxpayer company.

5. In view of the above, the Commissioner held that section 263 of the Income-tax Act, 1961, was applicable and ₹ 22,90,59,118/-, ₹ 6,31,20,000/- received by the taxpayer was on account of transfer of assets as defined in section 2(47) of the Income-tax Act, 1961 and was taxable as capital gains and added to the total income of the taxpayer.

Name of the Officer :

Mr. A. C. Shukla, CIT –7, Mumbai

REJECTION OF PETITION U/S 264 BY THE CIT IN A CASE WHERE THE TAXPAYER WAS OFFERING WAVERING EXPLANATION FOR UNACCOUNTED MONEY TO TAX UNACCOUNTED MONEY

Unaccounted money claimed to have been received as advance for sale of agricultural land taxed as unexplained added to the income of the taxpayer- the ITAT remanded back the matter- appeal filed before the CIT appeal against the set-aside assessment order withdrawn and petition U/S 264 filed by the taxpayer- wavering stand taken by the Taxpayer during the 264 proceeding- petition rejected by the CIT- Writ Petition against the rejection dismissed by the High Court.

The taxpayer, Late L. Saravanan represented by his wife and legal heir S. Thilagam was a bus transport operator at Karaikudi carrying on business along with his other three brothers. The taxpayer and his brothers were also engaged in the business of hiring JCBs and tipper lorries. A search action u/s 132 of the Income-tax Act, 1961 (Act) was conducted at the residential and business premises of the taxpayers and his brothers on 18.09.2003.

2. Consequent to the search, assessment proceedings were initiated by the Assessing Officer (AO) and an assessment order was passed on 24.03.2006, determining total income at ₹ 35,15,660/- for A.Y. 2003-04. The taxpayer filed an appeal before the CIT (Appeals),where the addition of ₹ 29,10,000/- was deleted. Appeal was filed by the Department against the order of the CIT(A) before the Income-tax Appellate Tribunal (ITAT) the Tribunal remanded the matter back to the Assessing Officer who in turn passed the order again disallowing ₹ 29,10,000/- claimed to have been received as advance for sale of agricultural land, as the claim was not supported by cogent documentary evidence.

3. Against the order, the taxpayer simultaneously filed an appeal before the CIT (A) as well as revision petition before the CIT u/s 264 of the Act. In order to enable the revision, the appeal was withdrawn.

4. In the original assessment proceedings, the taxpayer claimed that an amount of ₹ 29,10,000/- was received by him as advance for sale

of agricultural land and it was shown as a liability. To support this contention, confirmation letters from three persons namely Mr. V. Subbu, Mr. A. Arumugam and, Mr. K. Saravanan were produced before the AO for amounts of ₹ 12,10,000/-, ₹ 5,00,000/- and ₹ 12,00,000/- respectively.

5. However, in the course of proceedings before the AO, for set aside order the taxpayer took a different stand and argued that the land actually belonged to the Hindu Undivided Family (HUF). The taxpayer had filed a return in the capacity of HUF on 24.07.2009 and a copy of the same was filed before the AO. The return of the HUF revealed a receipt of ₹ 29,00,000/- on account of sale of agricultural land and the same was claimed as exempt from capital gains. The AO rejected the existence of HUF and brought the sum of ₹ 29,10,000/- to tax in the hands of the taxpayer in individual capacity, as unexplained income.

6. During the course of revision proceedings before the CIT, it was claimed that the land actually belonged to the HUF by way of inheritance and since it was an agricultural land no capital gains tax was leviable on its transfer. In view of the divergent stands taken by the taxpayer the CIT declined to interfere with the order of the AO for the following reasons:

6.1 The addition of ₹ 29,10,000/- was made because the confirmations were found to be unreliable.

6.2 As per the sale deed dated 09.10.2006, it was found that the land was ultimately purchased by Mr. P. K. Selvaraj and not by the three persons whose confirmations were produced. Moreover, the land was sold for an amount of ₹ 1,39,855/- which was much less than the advance money of ₹ 29,10,000/-.

6.3 If the payers of the advance money did not purchase the land for any reason, the advance money should have been returned. But there was no evidence of any such payback.

6.4 There was no reason for final sale of land at a much lower value as compared to the quantum of advance claimed to have been received.

6.5 If the land belonged to the HUF as claimed by the taxpayer, then the transaction pertaining to the land should be reflected in the return of the concerned HUF taxpayer and not in the return filed by taxpayer in individual capacity.

7. The order passed u/s 264 of the Act was challenged before the Hon'ble High Court by way of Writ Petition which was not entertained. The decision taken by the Commissioner led to passing of orders u/s 263 of the Act for other Assessment Years as well. The same were challenged before the ITAT. However the challenge to the orders u/s 263 was dismissed by the Tribunal. On similar issue, in the case of one of the brothers, the Commissioner declined relief in the order u/s 264.In the case of yet another brother, the taxpayer withdrew the revision petition filed u/s 264 of the Act. A total income of ₹ 1,16,09,000/- was brought to tax on account of the above actions.

Name of the Officer :

Mr. M. Krishnasamy, C IT-1, Madurai

RECEIPTS FROM FOREIGN DONATIONS TREATED AS TAXABLE INCOME AS THE SAME WERE NOT SPENT IN ACCORDANCE WITH THE OBJECTS OF SOCIETY

The funds of Public Charitable Society diverted to Religious and Partly Religious and Partly Charitable institutions being Channel Partners- the circular no. 1132 dated 05-01-1978 and No. 1582 dated 19-10-1984 of CBDT envisaging availability of exemption U/S 11 only where both the donor and donee possess charitable objects invoked- on the basis of evidence gathered, the receipts mostly from foreign donations treated as taxable income- at the first appellate stage, the findings of the AO were upheld in principle.

The taxpayer society, Caruna Bal Vikas, was registered u/s 12AA on 23-09-2002 as a Public Charitable Society. The objects of the society were directed towards the charitable purpose of 'Welfare of Children'. The society had attained a special status in this field of charitable activity and thus was able to garner large amounts of foreign contributions running into several crore. The Return of Income for the A.Y. 2010-11 was under scrutiny and during the year, the gross receipts of the society, in the form of foreign contributions was ₹ 82,59,21,867/-. Substantial part of this funding came from Compassion International, Colorado Springs, USA and the purpose of receipt was towards fostering the objects of society being 'Welfare of Children'.

2. It was claimed by the organization that the receipt of donation being of such high magnitude, it was not in a position to undertake the charity and reach the beneficiaries directly. Hence, the society had chosen 129 Channel Partners, through whom the contributions were routed. All the 129 Channel Partners were registered u/s 12AA and spread across the length and breadth of the country. The circular of CBDT bearing No. 1132 dated 05-01-1978 and No. 1582 dated 19-10-1984 makes it clear that for availing exemption u/s 11, both the donor and donee should possess charitable objects, it was impossible to examine the nature and purpose of all the 129 recipients.

3. The Assessing Officer used the official website of the Ministry of Home Affairs, Government of India. As per Foreign Contribution (Regulation) Act, 1976. The present Act of 2010, the recipient of foreign contributions at every stage are required to be registered

under the Act and are required to necessarily file Form No. FC-3 (FC-6 under FCR Act, 2010) before the Ministry of Home Affairs. The entire particulars of the recipient of foreign contribution including the nature of the association are exhibited in the official website of the Ministry.

4. On careful verification, it was found that only 51 of the 129 Channel Partners were "wholly Charitable" and the amount donated to them was ₹ 22.89 crores. While the purpose of receipt, as expressed in Form No. FC-3 filed by the society was "Welfare of Children", the funds were diverted to other institutions of which 19 were "Wholly Religious" and 59 were "partly Religious and Partly Charitable". Placing reliance on the landmark decision of the Hon'ble Supreme Court in the case of Yogiraj Charity Trust (1976)(103 ITR 777), the funds to the extent of ₹ 58,48,05,020/-, which were diverted to the Channel Partners or recipients who were not "wholly Charitable", was treated as taxable income and taxed accordingly, since they defeated the objects of the society.

5. At the first appellate stage, the findings of the AO were upheld in principle and an addition of ₹ 55,74,99,460/- was confirmed. In this case investigation was conducted by utilizing the data available in the official website of the Ministry of Home Affairs in order to examine the nature, purpose and characteristics of the recipient institutions and thereby distinguish the character of donations made by the Society.

Names of the Officers :

Mr. K. N. Dhandapani, DDIT (Exemptions)-2, Chennai

Mr. Alamelu Lakshminarayan, JDIT (Exemptions), Chennai

Mr. D. N. Kar, DIT (Exemptions), Chennai

REGISTRATION U/S 12AA DENIED BASED ON FINDINGS ABOUT FURNISHING OF INCORRECT FACTUAL PARTICULARS, INVOLVEMENT IN FRAUDULENT ACTIVITIES AND QUESTIONABLE ACCOUNTING PRACTICES

The taxpayer an Educational Trust- application for registration lodged in earlier years as the same did not accompany the mandatory financials- registration application filed again with petition for condonation of delay of about 7 years- application rejected invoking provisions of section 12A(2) and second proviso to section 12A(1A)- for subsequent years also application rejected based on findings about furnishing of incorrect factual particulars, involvement in fraudulent activities and questionable accounting practices

The taxpayer, Parivallal Educational Trust, Chennai filed an application on 04.06.2013, seeking registration u/s 12AA of the Income-tax Act, 1961. Along with the application, it sought condonation of delay of about 6805 days. The request was to seek registration retrospectively with effect from 13.06.2007, the date on which its earlier application was filed. The Commissioner found that its earlier application dated 11.6.2007 had been lodged since the application was not accompanied by the audited accounts of previous 3 years, which was a mandatory requirement u/s Rule 17A of I.T. Rules. It was also found that one of the clauses of the Trust Deed provided that the books were required to be audited every year by a Chartered Accountant. Since no audited accounts were furnished by the taxpayer, the application was lodged. The applicant did not file any appeal against the earlier order of the DIT (Exemptions) Chennai, whereby its earlier application was rejected. Therefore, it was held that having allowed the earlier order to reach a finality, the applicant could not now seek indirect review of that order by seeking fresh Registration but with retrospective effect from the date of earlier application. The Commissioner also invoked provision of section 12A(2) and second proviso to section 12A(1A) to hold that CIT's power to condone delay had been specifically withdrawn with effect from 1.6.2007.

2. The applicant placed reliance on the recent decision of Madras High Court in the case of DIT (Exemptions) Vs Anjuman-E-Khyrkhan-E-Aam (2011) 237CTR 509(Mad)., whereby it was held that once an application was filed before the CIT, he should either accept it or reject it. There could not be an order in between like lodging the application. However the facts of Anjuman-E-Khyrkhan-E-Aam's case were found to be materially different. Accordingly, the Commissioner rejected the petition for condonation of delay of 7 years sought by the taxpayer, through a speaking order.

3. The Commissioner also adjudicated upon the issue as to whether Registration should be granted to applicant from the date of its present application, i.e. 4.6.2013. The enquiries were conducted by calling for the Returns of Income filed so far by the taxpayer Trust. As per the Trust Deed, the Trust had actually been formed on 19.11.1993. It was also found that a trust by the same name, i.e. Parivallal Educational Trust, had been constituted on 14.2.1974, which was claiming exemption u/s 10(22) of the I.T. Act because it was running an educational institution. Since institutions exempt u/s 10(22) of the I.T. Act were allowed to seek exemption u/s 80G, that Trust had obtained such 80G approval on 29.10.1991. But, surprisingly, it was found that the present applicant, constituted vide Trust Deed 19.11.1993, had been filing its return of income by using the 80G Registration Number of the earlier Trust as the Registration Number u/s 12A and had been wrongly claiming exemption u/s 11 & 12 of the Act. This fraudulent claim was clearly brought out in the order u/s 12AA by the Commissioner. Since Section 10(22) was withdrawn with effect from 1.4.1999 and in its place Section 10(23C)(iiiad) was introduced, the taxpayer's claim of exemption under that Section was also examined. Upon further enquiries, the Commissioner found that the taxpayer had engaged in questionable accounting practices in order to bring down its receipts below ₹ One Crore so as to enjoy the status of exempt entity u/s 10(23C)(iiiad) for F.Y. 2010-11 and 2011-12. Accordingly, the assessments of the Trust were reopened u/s 147/148 of the Income-tax Act, 1961 after recording reasons. Registration was granted only w.e.f. 04.06.2013 which is applicable only for Asst. Year 2014-15 onward.

Names of the Officers :

Mr. R. V. Arun Prasad, DDIT, (Exemption), Chennai

Mr. D. N. Kar, CIT (Exemption), Chennai

LEVY OF INTEREST, PENALTY AND LAUNCHING OF PROSECUTION IN THE CASE OF HABITUAL DEFAULTER OF LATE AND NON-DEPOSIT OF TDS

The taxpayer habitual defaulter on account of late deposit and non-deposit of TDS- spot verification carried out- taxpayer found to deduct TDS on account of payments to contractor, brokerage and commission, professional services, rent, salary and interest and not deposit the same for long period- held to be "taxpayer in default"- penalty levied U/S 271C – prosecution also launched

The taxpayer, Phoenix Infra Estate International Private Limited was engaged in the business of purchasing land, converting it into plots, developing and selling those plots. It was also engaged in the construction and selling of flats and shops. From the data available on system, it was noticed that the taxpayer had a tendency to delay the deposit of Tax Deducted at Source (TDS) with the Government account, after its deduction and such a pattern existed for the last 4-5 years.

2. The taxpayer used to retain the amount of TDS so deducted for periods of time sometimes exceeding 12 months. To ascertain the reasons for late payments and to examine if the taxpayer was deducting TDS as per the provision of Income-tax Act, 1961, a spot verification was carried out at the Business Premise of the taxpayer on 30.07.2013. After spot verification necessary enquires were made and following defaults were noticed:

2.1 The taxpayer had deducted TDS amounting to ₹ 1,49,55,317/- under the heads of payments to contractor, brokerage and commission, professional services, rent, salary and interest during the F.Y. 2012-13 but had not deposited the same till date of spot verification.

2.2 The taxpayer did not file TDS return for the F.Y. 2012-13 and first quarter of the F.Y. 2013-14.

2.3 Non-deduction of TDS amounting to ₹ 2,64,627/- was also noticed under the heads of travelling expenses and professional fees.

2.4 It was also found that the taxpayer did not issue the TDS certificates to the parties from whom TDS was deducted for F.Y. 2012-13.

3. Accordingly, order u/s 201(1) & 201(1A) was passed by the officer treating the taxpayer as "taxpayer in default" and raised a demand amounting to ₹ 1,59,18,960/-. The penalty was also levied by the JCIT for the above default. Since the taxpayer was a habitual defaulter for late deposit of TDS, the sanction for prosecution was obtained from the CIT and criminal complaints were lodged in the appropriate Court. Recovery of ₹ 45.93/- lakh was also made in this case.

Names of the Officers :

Mr. Raghunath, DCIT (TDS) Circle-1, Nagpur

Ms. Ridhi Mishra, JCIT (TDS) Range-1, Nagpur

LATE NON-DEDUCTION OF TDS IN THE CASE OF BOT CONTRACTOR TREATED AS "DEFAULT" FOR THE PURPOSE OF PAYMENT OF INTEREST U/S 201(1A)

The taxpayer, engaged in Contract Business carrying out the activity of construction of road (BOT) defaulter on account of late deposit of TDS- spot verification carried out - taxpayer found deducting TDS on account of payments to sub-contractors but not depositing the same in time and also making advance payments to its contractors without deducting tax at source - held to be "taxpayer in default"- the default confronted to the taxpayer which accepted the same and paid interest U/S 201(1A)

The deductors, Warora Chandrapur Ballarpur Toll Road Limited (NGPV00462A) and Vishwasraj Infrastructure Limited (NGPV02665F) bagged Build Operate Transfer (BOT) contract from Maharashtra State Road Development Corporation for road.

2. The TDS statements of the Company suggested that the road was being laid through subcontractors, Vishwasraj infrastructure Limited and IL & FS Transportations Network Limited, a Mumbai based Company. The TDS statement of the Company, did show that company had made contractual payments to the above two parties amounting to ₹ 120 Crores in the last three months of the F.Y. 2010-12. The tax deducted on such payments was deposited late in the Government account resulting in levy of interest u/s 201(1A). Similarly TDS statement of Vishwasraj Infrastructure Limited, indicated that it made payments to the tune of ₹ 180 Crores in the last quarter of the F.Y. 2010-12 and had also defaulted on the payments resulting in levy of interest u/s 201(1A).

3. The deductors, Warora Chandrapur Ballarpur Tollroad Limited, has deposited ₹ 3 to 5 crore in the F.Y. 2010-12 in the first quarter of 2012-13 but had deposited ₹ 1.46 crore only in the first quarter of the financial year 2013-14. Hence, spot verification was conducted to verify following issues:

3.1 Reasons for the lower amount of TDS in the first quarter of the current financial year as compared to the last two financial years.

3.2 Whether the company was really debiting the expenses in the last quarter of the financial year or it was just a method to circumvent the TDS provisions.

3.3 The inconsistency of TDS payment was also verified.

4. During spot verification, the Assessing Officer noticed that the deductor was making advance payments to its contractors without deducting tax at source. The tax was being deducted at the time of debiting the expenses but not at the time of crediting of account of the contractor (advance payments) as required under the provisions of the Act. The default was brought to the notice of the deductors, during the course of spot verification. It was readily accepted by the taxpayer and interest u/s 201 (lA) for late deposit of TDS/late deduction of tax was deposited into the Central Government account.

5. The deductor and its Sister Concerns paid interest u/s 201(1A) amounting to ₹ 2.75 Crores as a result of survey/spot verification.

Names of the Officers :

Mr. Anil Kumar Meena, Inspector, Nagpur

Mr. Pankaj Deshmukh, ITO, Nagpur

Mr. Waseem Ur Rehman, DCIT, Nagpur

DEFAULT IN COMPLYING WITH PROVISIONS OF SECTION 194J/195 BY DISGUISING PAYMENT FOR TECHNICAL AND MANAGERIAL SERVICES AS SALARY PAYMENTS

The taxpayer, an international consortium engaged in contract for construction of Airport terminal of India- survey conducted in the premises of the taxpayer- huge payments shown to have been made under the head 'Salaries' to the foreign company being member of consortium- the taxpayer unable to establish employer-employee relationship- on verification the nature of payment found to be technical and managerial services, disguised as "salary payments"- the taxpayer held to commit TDS default- provisions of section 194J/195 invoked- on appeal, the CIT(A) upheld the findings.

The taxpayer, ITD ITDCEM JV is a consortium of ITD Cementation India Limited and ITD Thailand and it was awarded a contract for construction of the new Airport terminal at Netaji Subhash Chandra Bose International Airport, Kolkata by Airport Authority of India. In order to verify the compliance to Tax Deducted at Source (TDS) provisions, a survey was conducted u/s 133A of the I.T. Act (Act) on 18.01.2013.

2. During the course of survey, several TDS defaults were detected but the major issue which was identified related to payments made by the taxpayer to ITD Thailand and ITD Cementation India Limited for technical and managerial services, disguised as "salary payments".

3. It was observed that the taxpayer made payment of ₹ 6,67,91,677/- to IDS Cementation India Limited and ₹ 35,25,25,550/- to ITD Thailand under the head of "Salary".

4. For any payment to be categorised as Salary, it is imperative that the relationship between the payer and payee must be that of an employer and an employee. By taxpayer's own admission the payment was made to the staff of its co-venturers with which it had no employer-employee relationship.

5. In the instant case, the taxpayer wanted to take expertise of its associate companies i.e. ITD Thailand and ITD Cementation India

Limited, because these companies were already in the construction business and had the technical knowhow/expertise in executing major projects. These companies shared their technical expertise with the taxpayer, the JV- by deploying their expert/skilled professionals to the taxpayer company. Upon detailed analysis and of facts and law. This payment was treated by the taxpayer as payment under the head 'Salaries" It was held that the employees of associate companies could not be treated as the employees of the taxpayer because the respective companies expatriating the personnel remained the employers of the deputed employees. Such associate companies had the ultimate right over these employees as they controlled all the postings, transfers, disciplinary matters etc of the employees concerned. In this case the "deputed" employees were held to remain the employees of the respective companies which had temporarily directed them to work at the taxpayer's site. Thus, as no employer-employee relationship was established by the taxpayer its contention was rejected and the payments made to the associated companies were treated as payments for technical and managerial services / FTS which are covered u/s 194J/195 of the Act.

6. Being aggrieved by the order, the taxpayer filed an appeal before the CIT(A) who held that the employees of co-venturers have been deployed only for specific purpose of executing and completing the contract for construction of the Airport Terminal by utilising technical and managerial expertise of the deployed persons. It was also held that overall purpose, in the case was not regular or permanent employment but only utilising the technical expertise of the deputies for the specific project work.

7. The TDS survey resulted in detection of TDS defaults of more than 10 crores for only one financial year i.e. F.Y. 2010-11. The order has already been passed for F.Y. 2011-12 in which similar demands have been raised.

Names of the Officers :

Mr. Sobhan Sutradhar, ITO (TDS), Ward-58(1), Kolkata

Mr. Rajesh Kumar, JCIT, Range-58 (TDS), Kolkata

Mr. Sumant Sinha, Commissioner of Income-tax (TDS), Kolkata

CANCELLATION OF REGISTRATION OF APPROVED VALUER OF JEWELLERY NOT IN THE HABIT OF INCLUDING MAKING CHARGES OF JEWELLERY IN THE VALUATION REPORT

The person, an Approved Valuer of jewellery under the Wealth-tax Act, 1961- Chief Commissioner of Income-tax verified the Valuation Report prepared by him- observed that the Valuer did not include the Making Charges in any of the Valuation Reports for jewelleries prepared by him even during Search and Survey proceedings- based on the finding that Making Charges of jewellery constitutes 10% to 15% of the total value of the jewellery and its non inclusion resulted in under assessment to that extent, the CCIT cancelled the Registration after according an opportunity to him

As per the provision of section 34AD(3) of the Wealth Tax Act, the Chief Commissioner can review the performance of the Registered Valuers and may remove the name from the Register of Valuers if he is satisfied that the Valuer's performance is such that his name should not remain on the Register of Valuers, after giving an opportunity of being heard to him.

2. Normally after the grant of a certificate of registration as a Registered Valuer, hardly any review is done. The review is necessary in the case of valuers of jewellery as they directly affect the collection of Wealth Tax as also detection of concealed income during the course of search and survey actions under the Income-tax Act, 1961.

3. A review was carried out in the case of Mr. Hareram Roy, an Approved Valuer of jewellery under the WT Act by the Chief Commissioner of Income Tax. The Valuation Reports prepared by him were called upon and during scrutiny of the Reports, a number of violations were observed by the officer. Among other discrepancies, it was observed that the Valuer while making valuation of jewelleries did not include the making charges in any of the Valuation Reports prepared by him. Even the Valuation Reports prepared during the course of search and survey actions (against jewellers etc) did not include the amount of making charges. Making Charges for making jewellery constitutes approx.

10% to 15% of the total value of the jewellery and the same forms part of the cost. While making assessments, the Assessing Officers (AO) adopted the figure of valuation of the jewelleries as submitted by the Approved Valuer. In other words, the AOs while taxing the quantum of unexplained investment in the jewelleries, failed to include the amount of making charges and consequently this resulted in under assessment of income.

4. Accordingly, the officer issued a detailed show -cause to the Valuer and after considering his explanation, reasons and facts rejection, passed a detailed order removing his name from the Register of Valuers.

Name of the Officer :

Mr. B. P. Jain, CCIT-11, Kolkata

REJECTION OF PETITION SEEKING APPROVAL U/S 10(23C)(vi) IN CASE OF A TRUST ENGAGED IN DIVERTING OF FUNDS FOR THE USE OF CHAIRMAN AND THE DIRECTOR OF THE TRUST

The taxpayer, a Trust filed petition seeking approval U/S 10(23C)(vi) before the CCIT- on detailed scrutiny found to engage in diverting funds through various ledger accounts like "Reserve Fund Account", "Reserve Fund Account-2", "Salary Reserve Fund Account", "Salary Disbursement Fund Account" etc.- the Trust also found not to be engaged solely for the purpose of education as it had Objectives of running Mahila Samiti and to adopt socio- economic programmes and scheme- petition rejected by the CCIT.

The taxpayer, a Trust in the name of Gopsai Avinandan Sangh, filed a petition seeking exemption u/s 10(23C)(vi) claiming that it existed solely for educational purposes and not for the purposes of profit. The petition was analyzed in detail by the Chief Commissioner of Income Tax (CCIT).

2. Upon examination of the books of accounts, it was observed by the CCIT that in the F.Y. 2010-11, the Trust created two ledger accounts under the heading "Reserve Fund Account" and "Reserve Fund Account-2" and these two accounts were utilized to siphon out cash for personal purposes. The corresponding entries in the cash book showed that cash was paid against personal use. In this manner, a total sum of ₹ 24,00,554/- in cash was withdrawn by the Chairman and the Director of the Trust.

3. It was further observed that in the F.Y. 2011-12, the Trust created two ledger accounts in the name of " Salary Reserve Fund Account" and "Salary Disbursement Fund Account" and from these two accounts, cash amounting to ₹ 4,30,09,686/- , was withdrawn in the name of payment of salary. No details could be provided by the Trust as to whom such salary was paid. The above amount of ₹ 4,30,09,686/- was not even claimed as a deduction by the Trust in the Income and Expenditure Account.

4. The Trust received donations which have been treated by it as corpus donations. The officer found several discrepancies upon analysis of the donation receipts. It was discovered that these

donations were essentially Capitation Fee charged by the Trust from the students at the time of admission. The total quantum of donations received by the Trust in the F.Y. 2008-09 to 2011-12 was ₹ 10.48 Crores.

5. Apart from the above, it was also found that withdrawals in cash were made by the Chairman and Director of the Trust for personal purposes, mainly for construction of their bungalows. The funds of the Trust were also utilized for providing loans to private parties. Large amounts were also spent on payments to political parties and Police Station. The Officer also found from examination of the vouchers that cash payments were made for which no entries were found recorded in the cash book. It was further found that funds of the Trust were spent on Air Travel of the relatives of the Chairman and the Director. Suppression of gross receipts to the extent of ₹ 5,89,500/- was also found in the F.Y. 2010-11.

6. The objectives as mentioned in the Memorandum of Association were analysed and it was found that the Trust, besides providing education, also had Objectives of running Mahila Samiti, to adopt socio-economic programmes and scheme for the betterment of the needy, destitute, physically handicapped women, scheduled caste and scheduled tribes women, to help the aged etc. Such objectives did not relate to education.

7. The petition filed by the taxpayer u/s 10(23C) was rejected on the basis of the above mentioned discrepancies identified by the officer, after carrying out detailed investigation.

Name of the Officer :

Mr. B. P. Jain, CCIT-11, Kolkata

DEDUCTOR HELD TO BE IN DEFAULT FOR NON DEDUCTION OF TAX U/S 194LA ON LAND ACQUISITION FOR INFRASTRUCTURAL DEVELOPMENT

Bruhut Bangalore Mahanagara Palike (BBMP) a Local Authority over seeing the development of Bangalore City- acquires land for the purpose of infrastructural development- while acquiring the land the BBMP either pays the consideration of the land acquired in cash or by the issue of DRC's (Development Right's Certificate)- ascertained by the ITO, TDS that BBMP not making TDS on value of the DRC's issued- ITO invoked provision of section 194LA of the IT Act- taxpayer held to be in default U/S 201(1) of the Income tax Act

Bruhut Bangalore Mahanagara Palike (BBMP) is a Local Authority overseeing the development of Bangalore City. It provides civic amenities to the city of Bangalore. The BBMP acquires land for the purpose of infrastructural development such as widening of roads, construction of parks etc; while acquiring the land the BBMP either pays the consideration of the land acquired in cash or by the issue of DRC's (Development Right's Certificate). It was ascertained by the ITO, TDS that BBMP is not making TDS on value of the DRC's issued as required U/s 194LA of the IT Act. Consequently a notice U/s 201 of the IT Act was issued to the deductor on 31/01/2013 to explain why it should not be held to be an assessee in default u/s 201(1) of the Income tax Act for its failure to deduct tax from DRC's issued on the compulsory acquisition of land for various infrastructural requirements. The taxpayer was asked to furnish the details of land acquired and DRC's issued during the year 2010-11 along with the valuation done for the purpose of issuing DRC's.

2. The tax U/s 194LA being 10% of the valuation done on the property acquired was calculated to be 10% of Rs. 187,89,10,186/- which worked out to Rs. 18,78,91,019/-. The taxpayer was held to be in default for the same amount.

Names of the Officers :

Mr. Shaji Verghese, ITO TDS, Bangalore

Ms. V. Shanthi, ITI TDS, Bangalore

DEDUCTOR HELD TO BE IN DEFAULT FOR NON DEDUCTION OF TAX ON STAKE MONEY PAID TO OWNERS OF HORSES PARTICIPATING IN RACES

Bangalore Turf Club (BTC)- an entity registered under the companies Act- conducting Horse Races and facilitating betting on horses for the races conducted- found to not deduct tax at sources on payment of Stake Money to horse owners- provisions of section 194B invoked holding Horse Race to be a game- company treated as "assessee in default" under section 201(1) of the IT Act.

The Bangalore Turf Club (BTC) is an entity registered under the Companies Act. The BTC is conducting Horse Races in Bangalore and facilitating the Punters to bet on the horses for the races conducted in Bangalore as well as the races conducted by other race courses located in other parts of the country. The BTC is collecting the entry fee and betting money from punters and it keeps certain portion of the betting amount collected from punters and the same is utilized for payment of Stake Money to horse owners, Administrative Cost and Other Expenses. It was ascertained that the BTC is not making TDS on payments of stake money disbursed among the winning horse owners. These details were ascertained from the BTC after a reference to this effect was received from ITO, Ward-1(1), Mysore.

2. The ITO TDS held that the scope of section 194B had been widened by the insertion of words [or card game and other game of any sort] with effect from 1-6-2001, and accordingly Horse Race was held to be a game by him after according due opportunity to the Company. The taxpayer was held to be a taxpayer in default u/s 201(1) of the Income tax Act for its failure to deduct tax amounting to Rs. 5,86,87,400/- and Rs. 7,65,77,416/- from the stake money prizes paid to horse owners for the F.Y. 2006-07 and F.Y. 2009-10 respectively.

Names of the Officers :

Mr. Shaji Verghese, ITO TDS, Bangalore

Ms. V. Shanthi, ITI TDS, Bangalore

AAYKAR BHAWAN - BHUBANESHWAR

REPRESENTATION BEFORE TRIBUNALS, COURTS ETC.

REPRESENTATION BEFORE TRIBUNALS, COURTS ETC.

REPRESENTATION ON THE ISSUE OF WHETHER FEE RECEIVED BY NON-RESIDENT FOR USE OF SOFTWARE IS ROYALTY

The fee received by company incorporated in USA from affiliates companies in India, for use of software is royalty u/s 9(1)(vi) of the IT Act and taxable in India-It is also taxable under article 12(3) of DTAA between India and USA-attempt at semantic hair splitting defeated.

The taxpayer, Cummins Inc. incorporated in USA, had received consideration for facilitating grant of user rights in software from its group companies CIL (Cummins India Ltd.) and CDSS (Cummins Diesel Sales & Services, India Ltd.) amounting to ₹ 7.75 crore in A.Y. 2004-05 and 6.5 crore in A.Y. 2006-07.

2. The taxpayer had entered into an agreement with CIL and CDSS for grant of user rights in certain software. The software provided are third party software which has been procured by the taxpayer company from 'Oracle'. The taxpayer claimed that it has transferred the "user right in the copyrighted software" and not "the use of copyright". It was claimed that the fees have been paid by the CIL and CDSSS to acquire the right to internal use and operate the software program. The taxpayer took a stand that the payments have been made for 'use of the right to use of' or 'the right to use a copyrighted software'. It was contended that fees received from CIL and CDSS cannot be treated as royalty nor it can be treated as fee for technical services. The taxpayer treated the said income as business profit under article 7 of the DTAA between India and USA and the same was claimed as exempt by claiming that the taxpayer has no PE in India.

3. The A.O, noted that the taxpayer was paid license fee by these two subsidiaries for use of certain software license and sub license rights granted to them by the taxpayer, which is covered under the definition of royalty as per section 9(1)(vi) of the Act. The A.O also observed that the said payments partake the character of royalty within the meaning of article 12(3) of DTAA between India and USA and it is taxable in the source country, India.

4. The DRP confirmed the action of A.O stating that the said amount is taxable in India in its fiscal jurisdiction as royalty under article 12 of DTAA between India and USA as well as under the normal provisions of section9(1)(vi) of the Act.

5. Before ITAT, CIT-DR argued that in view of amendment in sec. 9(1)(vi)by the insertion of explanation (4) with retrospective effect from 01/06/1976,consideration or fees paid for 'the transfer of all or any right' for the 'use or right to use the computer software' is covered under the definition of 'royalty' and hence, under the normal provisions of the Income-tax Act, the fees / consideration received by the taxpayer foreign company from two of its affiliates companies in India is taxable. Arguing on the provisions of DTAA, the DR raised the basic issue that the software acquired by the taxpayer company cannot be said to be the off-the-shelf software, as claimed by the taxpayer, but in fact it is customized software. It was submitted that as per the Website of the taxpayer-company, the taxpayer has obtained customized software from Oracle and hence, the claim of taxpayer that the software in which user rights have been transferred or allowed to be used by the two affiliates company in India are in respect of off the shelf-software is not correct. On detailed examination of the terms of the contract between "Oracle" and the taxpayer, it was demonstrated by the DR that the taxpayer has full right to allow the use or transfer the right to use of the software in six regions of the world including India to any of its group companies of affiliates. It cannot be said that the consideration received in the nature of license fee from the Indian affiliate for the use of software is for the copy righted article. Reliance was placed on the decision of Karnataka High Court in the case of Samsung Electronics Co Ud.345 ITR 494(KAR)(HC).

6. ITAT held that the license fee received by the taxpayer from CIL and CDSS is in the nature of royalty under section 9(1)(vi) of the Act. Further relying on the judgment of Hon'ble Karnataka High Court in Samsung Electronics Co. Ud, it was held that such fee is taxable under article 12(3) of DTAA between India and USA and no immunity is exemption under DTAA' Thus it was concluded that A.O. rightly assessed such income in the hands of taxpayer.

Name of the Officer :

Mr. Mukesh Verma CIT(DR)

REPRESENTATION IN CASE OF A COMPLEX SETTLEMENT CASE: ZF STEERING GEAR (INDIA) LTD.

Fact of bogus purchases established by copious evidence of different aspects of the taxpayer's purchase management system as well as investigation into the background of the suppliers.

The taxpayer is engaged in the manufacture of steering gear. A search operation carried out on 13.10.2011 revealed that the taxpayer has debited bogus purchases of ball bearings amounting ₹ 157.99 Crores in its books of account. A surrender of ₹ 45 Crores was made, which was retracted later on, as the Department continued with the investigations.

2. Subsequently, a Settlement Application u/s 245C(1)was filed, declaring additional income of ₹ 21.27 crore as against the bogus purchases of ₹ 97.51 crore for the period. The SOF stated that second hand machineries from Germany required frequent repairs and thus scrap was procured from kabadies /unorganized sector against bogus purchase bills and finally the scrap was converted into spare parts of these imported machineries.

3. The 245D(2C) order was challenged on the issue of true and full disclosure of income before the Hon'ble Bombay High Court and was quashed. The fresh order of ITSC declaring the application as valid was again challenged and the Hon'ble Bombay High Court directed the ITSC to consider the pending request of the CIT for conducting investigation u/s 245D(3).

4. The Applicant for the purpose of booking bogus purchases manipulated its ERP system by installing a separate software module called the 'SPO System'. The bogus purchases had a default code of '99', as against the code of ' 13' for genuine purchases. The 'SPO System' was not linked to the 'Purchase Department,' as there was no intention to make genuine purchases and generate the 'Purchase Orders' / 'Good Inward Note' (GIN). Further, the 'SPO System' was not connected to the 'Stores Department', as no physical goods were to be received. Also, the 'SPO System' was not linked with the 'Quality Control Department', as no rejection was required. The 'SPO System' was linked only to 'Accounts Module' for making payments for bogus purchases.

5. The confessional statement of the key employees of production or maintenance department revealed that the 'Series 99' items (Ball bearings) were neither requisitioned nor utilized by them. Further, none of the employee corroborated the Applicant's scrap theory. It is not conceivable that the shop floor level employees didn't have any knowledge about the scrap, but still they were able to convert it into spare parts. The fact that the 'Series 99' purchases were never used for maintenance was also evident from the fact that these ball bearings were not appearing in the 'Cardex List', (list of spare parts).
6. Further, investigations revealed that the rigorous 'Standard Operating Procedure' followed for a genuine purchase was not followed for 'Series 99' purchases. Also, there were critical differences between the set of documents maintained for genuine and bogus purchases. The theory of existence of a temporary "Stack Room" and "Tool Room" for scrap contained in the SOF was neither confirmed by any of the Key employee nor were such rooms actually found during search.
7. In nut shell, the theory of receiving scrap against the bogus bills of the Ball Bearings had crucial missing links. The Applicant didn't have any documentary evidence in the form of purchase bills of scrap, delivery challans for scrap, truck no., transportation charges, loading / unloading charges, identity name and address of the scrap dealers, evidence for payment to the scrap dealers etc. to substantiate the scrap theory.
8. The fact of supplying bogus bills to the Applicant was duly confirmed by Mr. Daxesh R. Patel, in his statement before the VAT authorities. Further, he has stated that he has charged a commission of 2% for providing the bogus bills and the balance cash was handed over to the applicant company.
9. The 18 bogus 'First Layer Parties' have in turn shown purchases from around 108 'Second Layer of Parties'. The investigations revealed that most of these parties were non-existent and their sales tax registrations have been cancelled. The Maharashtra VAT Authorities declared them as 'Suspicious Dealers', after an independent investigation in December 2009. The sworn affidavits and statements of these parties, accepting hawala transactions were placed on the record of ITSC.
10. The ITSC instead of authorizing the CIT U/S 245D(3) ordered an inspection of the factory premises by its own Investigation Wing. The Report of the DIT (Inv.) merely endorsed the contents of the

SOF, without adducing any credible evidence. In the case of CIT Vs. Godwin Steels P Ltd. (2012) 206 TAXMAN 96(Delhi) it was held that where there are copious material and evidence collected by the income tax authorities, the ITSC is not expected to merely endorse the report of the officers assisting them.

11. In the regular books, the bogus purchases were debited under the head 'Purchase of Raw Materials' and not under 'Repairs - Plant & Machinery'. Ananalysis revealed that for the upkeep of the old machineries worth ₹ 12.88 Crores, the applicant incurred an exorbitant expense of ₹ 158 Crores (1226 %).

12. In the 245D(4) order, the ITSC held that there will be unutilized scrap of more than ₹ 10.50 lakhs disclosed by the taxpayer in the SOF and made a further addition of ₹ 40.72 Crores on this account. The ITSC granted immunity from both penalty and prosecution by holding that the applicant has made true and full disclosure. This observation is contradictory to its own conclusion on availability of scrap of ₹ 40.72 Crores as against just ₹ 10.5 lakh disclosed in SOF.

13. The Department has put before the ITSC all the facts, documents, evidences, statements etc. duly supported by relevant judicial pronouncements, which led to an addition of ₹ 40.72 Crores over and above the amount disclosed by the taxpayer. Further, filing of Writ Petition has been recommended against the 245D(4) order, for accepting the theory of scrap being converted into spare parts of imported machinery, non-granting of enquiry u/s245D(3), adding only part of bogus purchases and giving immunity from penalty and prosecution.

14. This is a case where efforts put into collection and marshalling of evidence resulted in substantial gain to revenue.

Name of the Officer :

Mr. Rajeshwar Yadav, CIT(DR), ITSC, Addl. Bench-1, Mumbai

IMPOSITION OF CONCEALMENT PENALTY IN SEARCH CASE: REPRESENTATION BEFORE ITAT

Penalty u/s 271(1)(c) for concealment of income is leviable even when returned income was accepted

In this group of cases there was search action and subsequently assessments were completed u/s 153A and 153C. Penalty of about ₹ 4 crores was levied in the hands of various group members u/s 271(1)(c) and 271AAA. The taxpayers argued that no addition was made by the A.O. to the returned income and hence there is no concealment by the taxpayer. The CIT(A) accepted the plea and cancelled all these penalty orders on the reasoning that A.O. accepted the returns filed by the taxpayer (without realizing that such returns were filed subsequent to search). Hence Department filed appeals before ITAT.

2. This is a case where Explanation. 5A of sec. 271(l)(c) is applicable. Hence Paper book containing copies of panchnama and its annexures as well as copies of relevant seized materials were filed to demonstrate that search has resulted in unearthing of assets and incriminating documents establishing earning of unaccounted income during the past years. Thus the first condition in Explanation5A was proved as satisfied. The second condition is that such assets and income pertain to A.Y. for which taxpayer already filed return without disclosing the same or did not file any return though the due date of filing return expired before the search. Copies of original return furnished by the taxpayers were also filed before ITAT to prove the second condition.

3. After satisfying the Tribunal about these two conditions, it was pleaded that in accordance with the provisions of Explanation5A, even if taxpayer discloses such unaccounted assets I income in the return filed pursuant to search, taxpayer will not get any immunity from penalty u/s271(1)(c). It was demonstrated that CIT(A) deleted the penalty without considering the provisions of Explanation5A which is very much relevant to decide the issue.

4. On the applicability of penalty u/s 271AAA, it was demonstrated that taxpayer did not admit such undisclosed income in the statement recorded u/s 132(4) and specify the manner in which such income was derived : hence the taxpayer cannot be covered by S 271AAA. Though the taxpayer claimed that it declared

undisclosed income in a statement before ADIT, the argument was countered by presenting a copy of such statement which was recorded U/S 131 much after closure of search and argued that such statement cannot be equated with statement uls132(4).

5. Thus it was demonstrated that only because of the search action and subsequent issue of notices, these assesses filed returns disclosing hitherto undisclosed income which calls for penalty u/s 271(1)(c). A detailed written submission bringing forth these arguments as well as various decisions of the Apex court and jurisdictional high Court was filed during the course of hearing before the Tribunal. Considering the same, ITAT reversed the order of CIT(A) and upheld penalty order with quantum of approximately ₹ 4 crores.

Name of the Officer :

Mr. Shaji P. Jacob Addl CIT (DR)

NEW C.R. BUILDING - JAIPUR

THE ROAD AHEAD

THE ROAD AHEAD

Ever since 'Let Us Share' was first published, a system of selecting cases for inclusion therein as also their time frame within which such submissions are to be obtained is being followed. However, it has been noticed that entries are usually not forthcoming as per the schedule laid out, nor are all the quality cases reported. In view of this situation, the Editorial Board has considered certain modifications in the system of seeking entries for inclusion in the editions of 'Let Us Share' to be published hereafter.

Of late, the Central Board of Direct Taxes has been placing a lot of emphasis on the quality of assessments. A strategy for quality assessments has also been enumerated in the Central Action Plan for Financial Year 2013-14 and 2014-15. All the CCsI T/DGsIT were requested to ensure compilation of at least 50 quality assessments passed in their respective charges out of scrutiny assessments completed during Financial Year 2013-14 & 2014-15 clearly bringing out the quality of work done and the resultant revenue impact. All CCsIT / DGsIT were also requested to send the compilation along with assessment orders to their respective Zonal Member and copy of only compilation to Member (IT) as per Central Action Plan 2013-14 [page 48 (7(e)] and 2014-15 [page 47 6(e)]. Further, a copy of the compilation along with assessment orders was also to be sent to respective Appraisal Committees constituted for 'Let us Share'.

The compilation would form good source material for Group I (Assessment orders) and Group II International Taxation assessment orders). The assessments may therefore be examined by the respective Regional Evaluation Committees with reference to the criteria for evaluation of best assessment orders and cases fulfilling the criteria be processed for selection from now on.

The time schedule to be followed has been amended as the limitation period for completion of assessment has since been changed from 31st December to 31st March. In the table showing the time lines suitable modifications are accordingly made for being followed w.e.f. the present financial year.

The time lines to ensure the release of the compilation in time would be as follows:

S. No.	Action Points	Proposed Dates
1	Initiation of Process through an OM by DIT (PR, PP & OL)	15.01.2015
2	Formation of RECs	By 28.01.2015
3	Intimation to DIT (PR,PP&OL) regarding the formation of RECs mentioning the names & designations of all the members and Member Secretary and contact details (phone numbers - mobile &land line and email id) (within 5 days in case of change in constitution)	By 06.02.2015
4	Formation of NECs	By 10.04.2015
5	Submission of orders / practices by officers / officials to the REC	15th April for orders passed during the period from 01.01.2013 to 31.03.2015
6	Evaluation by RECs	By 30.04.2015
7	Formation of Editorial Board	By 30.04.2015
8	Forwarding of the selected entries by RECs to DIT (PR, PP & OL)	By 15.05.2015
9	Forwarding of selected entries by DIT(PR,PP&OL) to NECs	By 20.05.2015
10	Evaluation by NECs and submission of selected cases/practices to DIT (PR, PP & OL)	By 30.05.2015
11	Forwarding of the selected cases by DIT (PR, PP & OL) to the Editorial Board	By 05.06.2015
12	Finalization of the content by the Editorial Board	By 30.06.2015
13	Finalization of cover design, technical specification by Editorial Board	By 15.07.2015
14	Compilation ready for printing handed over to approved printer	By 15.07.2015

AAYAKAR BHAWAN - NAGPUR

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CREDITS

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