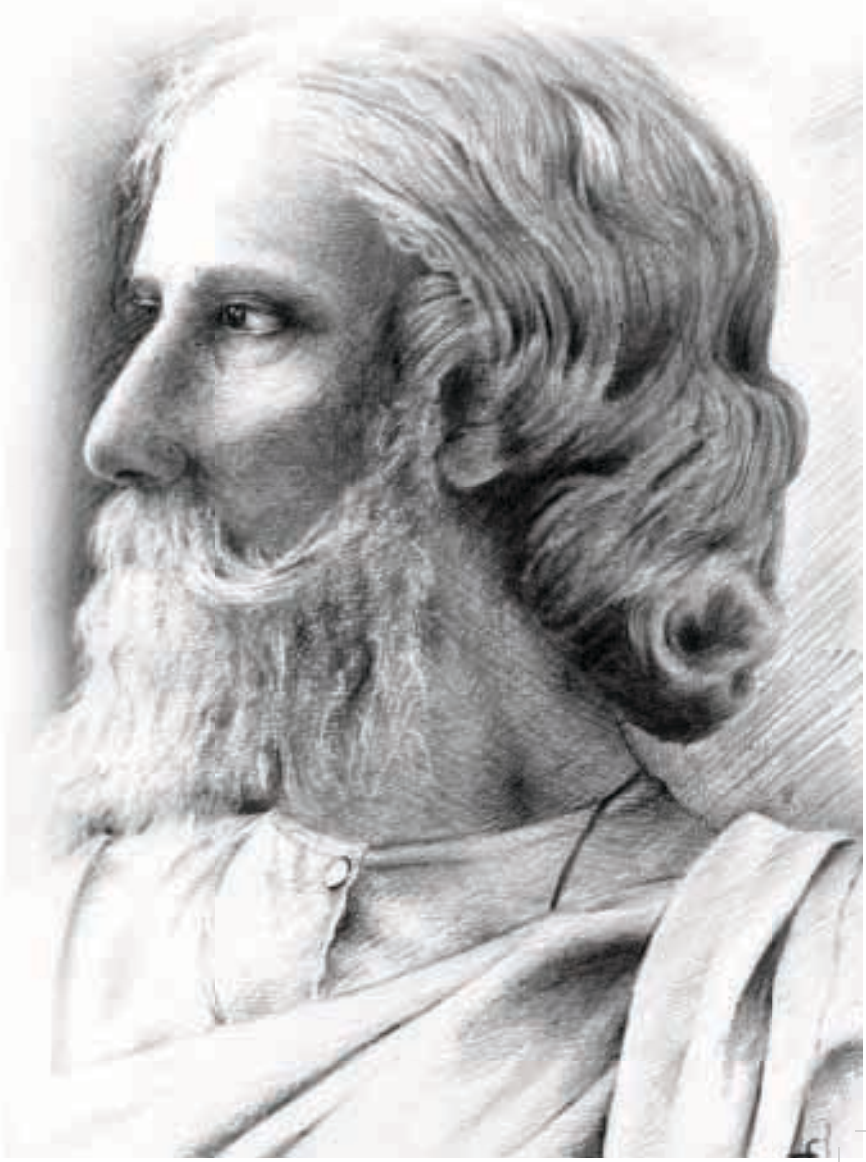
"A teacher can never truly teach unless he is still learning himself. A lamp can never light another lamp unless it continues to burn its own flame."

Rabindranath Tagore



For Departmental Use Only

LET US SHARE

A Compilation of Best Practices & Orders
of Income Tax Department

Vol. VIII 2016

Published by
Directorate of Income tax (PR, PP & OL)
New Delhi

अरूण जेटली
वित्त एवं कार्पोरेट कार्य मंत्री
भारत

Arun Jaitley
Minister of Finance and Corporate Affairs
India

27 September, 2016

MESSAGE

Taxation is a major tool for removing poverty and inequality from the society. Each rupee of tax pays for better infrastructure, rural revival and social well-being. The focus areas for the tax administration set by this Government includes facilities for small tax payers, reducing litigation, simplification and rationalization of taxation and use of Technology for creating accountability. In each of these focus areas, I perceive a role for knowledge management as envisaged by the concept of **'LET US SHARE'**.

"आ नो भद्राः क्रतवो यन्तु विश्वतः" (Aano bhadrah krtawo yantu vishwatah - Let Noble thoughts come from all directions). This dictum comes to us from the RIG VEDA itself. Such has been the credo of sharing knowledge in the ancient Indian scriptures. The initiative of **'LET US SHARE'** in the Income Tax Department has been validating this concept, ever since its inception in 2008, through its latest Volume-VIII, now before us.

I find that the knowledge assets and collective wisdom of the Department are being systematically honed, documented and archived for reference by succeeding generations of revenue administrators. The result is evidently sharper tools, fairer processes, standardized systems and well defined structures to build a valid professional culture of creation, use and sharing of knowledge for decision making.

We have a desire to provide socio-economic security to every Indian, especially, the poor and the vulnerable. We have a dream to see a more prosperous India. I trust that the efforts of the creators, curators, contributors and editors of **'LET US SHARE'** Vol. VIII will go a substantial way towards this effort. I wish the Income Tax Department all success, for ensuring a just, fair, friendly and transparent revenue administration.

(Arun Jaitley)

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संतोष कुमार गंगवार
SANTOSH KUMAR GANGWAR

वित्त राज्य मंत्री
भारत सरकार
नई दिल्ली – 110 001
Minister of State for Finance
Government of India
New Delhi - 110 001

30 September, 2016

MESSAGE

Institutions are known to exceed the capabilities of individuals for many reasons, one major factor being that they gather memory and wisdom of several generations and use the combined excellence to grow larger than individuals by this advantage. An effort like **'LET US SHARE'** is a very well conceived step towards this advantage, which can be leveraged to bring about the goals of "Vision 2020" of the Income Tax Department to translate into reality and to service the taxpayers more meaningfully as promised in the Citizen's Charter.

The Income Tax Department has to make a meaningful tryst with its vision to be a partner in the nation building process-through progressive tax policy, efficient and effective administration and improved voluntary compliance. For this, we need to formulate progressive tax policies, make compliance easier, enforce tax laws with fairness, deliver quality services, continuously upgrade skills and build a professional and motivated work force. One right step towards this daunting task is **'LET US SHARE'** of which the Volume-VIII is before you.

I trust that this effort will contribute to motivate and inspire present and future tax administrators.

New Delhi

(Santosh Kumar Gangwar)

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डा. हसमुख अढिया, भा.प्र.से.
राजस्व सचिव
Dr. Hasmukh Adhia, IAS
Revenue Secretary

सत्यमेव जयते

भारत सरकार
वित्त मंत्रालय
राजस्व विभाग
Government of India
Ministry of Finance
Department of Revenue

MESSAGE

Scientific analysis of the past is a time tested tool to ensure that only the validated methods of history are repeated for better gains in future and the invalid ones are eliminated from the system. **'LET US SHARE'** has proved its worth as a credible method of chronicling validated excellence and innovation in the Income Tax Department since its inception in 2008.

Over the years, the Department has brought in single-window solutions for taxpayers by way of Aaykar Sewa Kendras (ASK) under SEVOTTAM initiative, mass scale return processing methods for speedy and online refunds in Central Processing Centre (CPC), effective help lines and well maintained websites for taxpayer services.

Initiatives like NMS for monitoring of non-filers with potential tax liabilities, setting up in- house Computer Forensic Lab and systematic coordinated action carried out by officers to combat "Shell Structures" in tax havens as included in Vol. VIII of **'LET US SHARE'** will go a long way in collecting tax, from the deep pockets of tax evaders.

I trust that sharing of past experiences has been pivotal in this process of technology driven modernization of business practices in the Department. **'LET US SHARE'** evidently has become a permanent platform of this annual exercise of knowledge sharing in the Department. My wishes are with the Department in this exemplary effort.

(Hasmukh Adhia)

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सत्यमेव जयते

RANI SINGH NAIR
Chairperson, CBDT &
Special Secretary to the Govt. of India

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GOVERNMENT OF INDIA
(वित्त-मंत्रालय)/राजस्व विभाग
Ministry of Finance / Department of Revenue
केन्द्रीय प्रत्यक्ष कर बोर्ड
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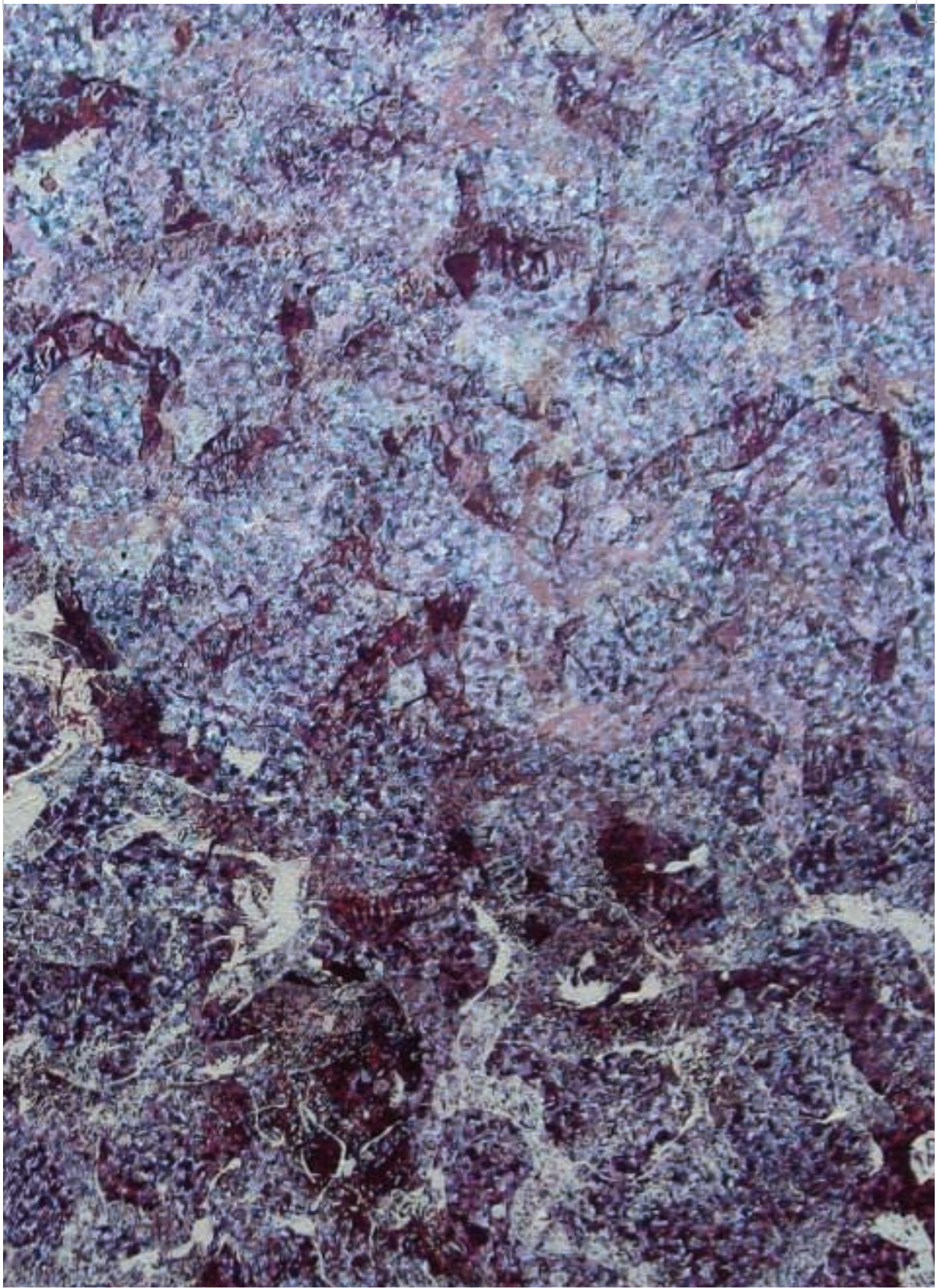
MESSAGE

'LET US SHARE' - Vol. VIII is just a sampling of the bedrock of excellence of the Income Tax Department, The volume shows only the tip of the knowledge iceberg which indicates that more is in store. Therefore, I commend the contributors to this Volume, as much as I commend all those officers and staff whose work could not be a part of this volume for reasons of limitations and not of merit.

I know for certain that extra-ordinary effort has been made by the officers to demolish layered structures created by tax evaders. The Member (R) & (TPS) and the present team behind this project may explore the possibilities further by pushing the envelope and include so far unreported excellence in the ensuing volumes.

I urge all the officers and officials of the Department to emulate the excellence displayed, for exceeding the threshold set in this Volume of 'LET US SHARE'.

(Rani Singh Nair)



48 Lines of Light
Sangeeta Gupta ‘IRS 1984’

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GOPAL MUKHERJEE, IRS
Member, CBDT &
Special Secretary to the Govt. of India

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21st September 2016

FOREWORD

In a world of rapidly changing business models the phenomenon of borderless e-commerce allows seamless movement of revenue across tax jurisdictions, making the task of the Income Tax Department increasingly challenging and complex In this scenario, sharing of all pest experiences, practices, standard operating procedures and best case dossiers, is a need more than a choice which comes to you as **'LET US SHARE'**-Vol.VIII.

The task of coping with growing challenges of taxation is daunting and 'Let us Share' Vol.VIII is a successful collation of the efforts made for meeting the same. I congratulate the Team - Let us Share' under the aegis of Principal DG (Admn. & TPS) for this endeavour. The present time warrants a deep rooted sense of commitment coupled with the spirit of team work and knowledge sharing. I have no doubt about the capabilities of the officers of the Department, who, inspired by the contributors of this volume, I am sure, will come out In their own innovative way to combat the menace of tax evasion.

(Gopal Mukherjee)

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28th September 2016

ACKNOWLEDGEMENTS

"There is no wealth like knowledge and no poverty like ignorance". Keeping in mind this quote of Buddha I am pleased to present the Eighth volume of the publication "Let Us Share" in your hands.

I express my sincere gratitude to the members of the Regional Evaluation Committees (RECs) for their objective assessment of the entries. I am also extremely thankful to the members of the National Evaluation Committees (NECs) for their meticulous evaluation of various entries by the officers.

The Editorial Board headed by Smt. Shabri Bhattasali, CCIT, Pune and all members of the Editorial Board have done an excellent job of editing and compiling the entire volume, working against a tight time schedule without compromising on the quality of the publication. The cover design, cohesiveness and layout of the book, presentation and selection of the entries have been done with precision.

I take this opportunity to convey my sincere thanks to all the artists of the Department whose paintings have been used as separators between various sections of the book. These paintings have greatly enhanced the aesthetic value of this publication.

I would like to thank Smt. Surabhi Ahluwalia, ADG (PR, PP & OL) for piloting and bringing out this excellent compilation. I would also like to thank the team of Printing & Publicity Wing for assisting and providing secretarial assistance to the editorial team.

I would like to place on record a special note of gratitude to Smt. Rani S. Nair, Chairperson, CBDT who has been the main guiding spirit for the publication and a constant source of inspiration for the entire team.

(Aditya Vikram)
Pr. Director General of Income-tax (Admn. & TPS)
New Delhi

शबरी भट्टसाली
Shabri Bhattasali

Chief Commissioner of Income-Tax,
Pune & Chairperson, Editorial Board

Dated: 26.09.2016

From The Editor's Desk

During the journey of more than a century and a half, the Income Tax Department in India has crossed many milestones, as have the taxpayers and the nation itself. Be it the concept of taxation or the basis of charge, the tax base itself or the tax statute, the methodology of working, the human resource factor, the role of technology in taxation or the structure of control mechanism, take any aspect of the picture and we can't ignore the sheer dynamics of this changing phenomenon nor the velocity of change that it has witnessed.

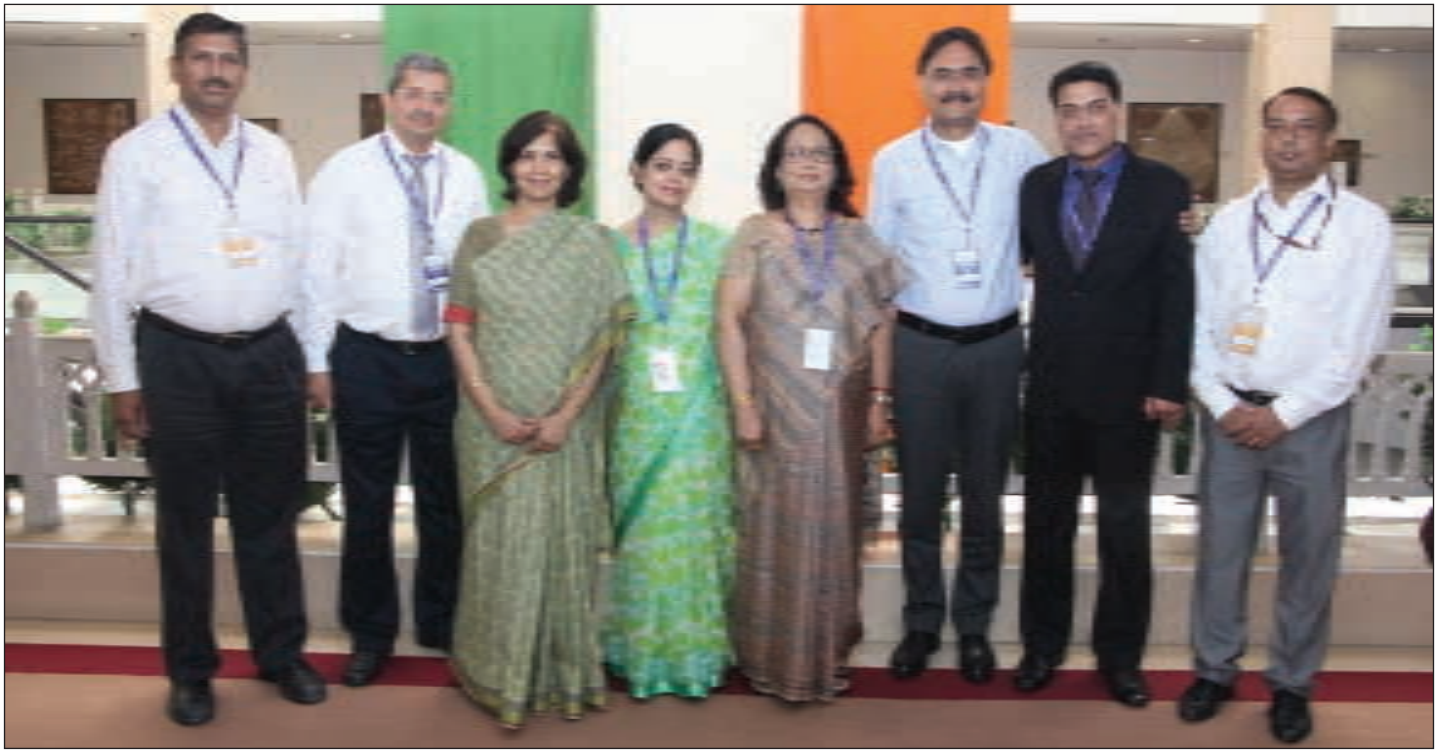
Our officers and staff, day in and day out, have been doing outstanding work in assessments, searches and seizures, surveys, appellate functions, representation before judicial authorities, international taxation, transfer pricing, day to day working, judicial and administrative work and other areas mainly inspired by personal ingenuity, incisive use of legal provisions, available web-based information, sundry data bases, using market information and mostly plain diligence. The only time tested method of using such vast reservoir of knowledge and experience is to carefully curate it, stock it and share it with the current and successive generations of tax administrators. I firmly believe that the platform of "LET US SHARE", through its past seven volumes, has been a resounding success in this endeavor. I do hope and trust that the Eighth Volume in your hands will carry forward the tradition of sharing of best practices.

On my own behalf and on behalf of the entire team of the Editorial Board, I place my sincere gratitude to the Chairperson, CBDT and Member (R & TPS), CBDT for their inspirations, Pr. DGIT (Admn & TPS) and the officers and staff of the Directorate of PR, PP & OL for all support and to each and every contributor whose work we could or could not include in this volume for the value they lent to this effort.

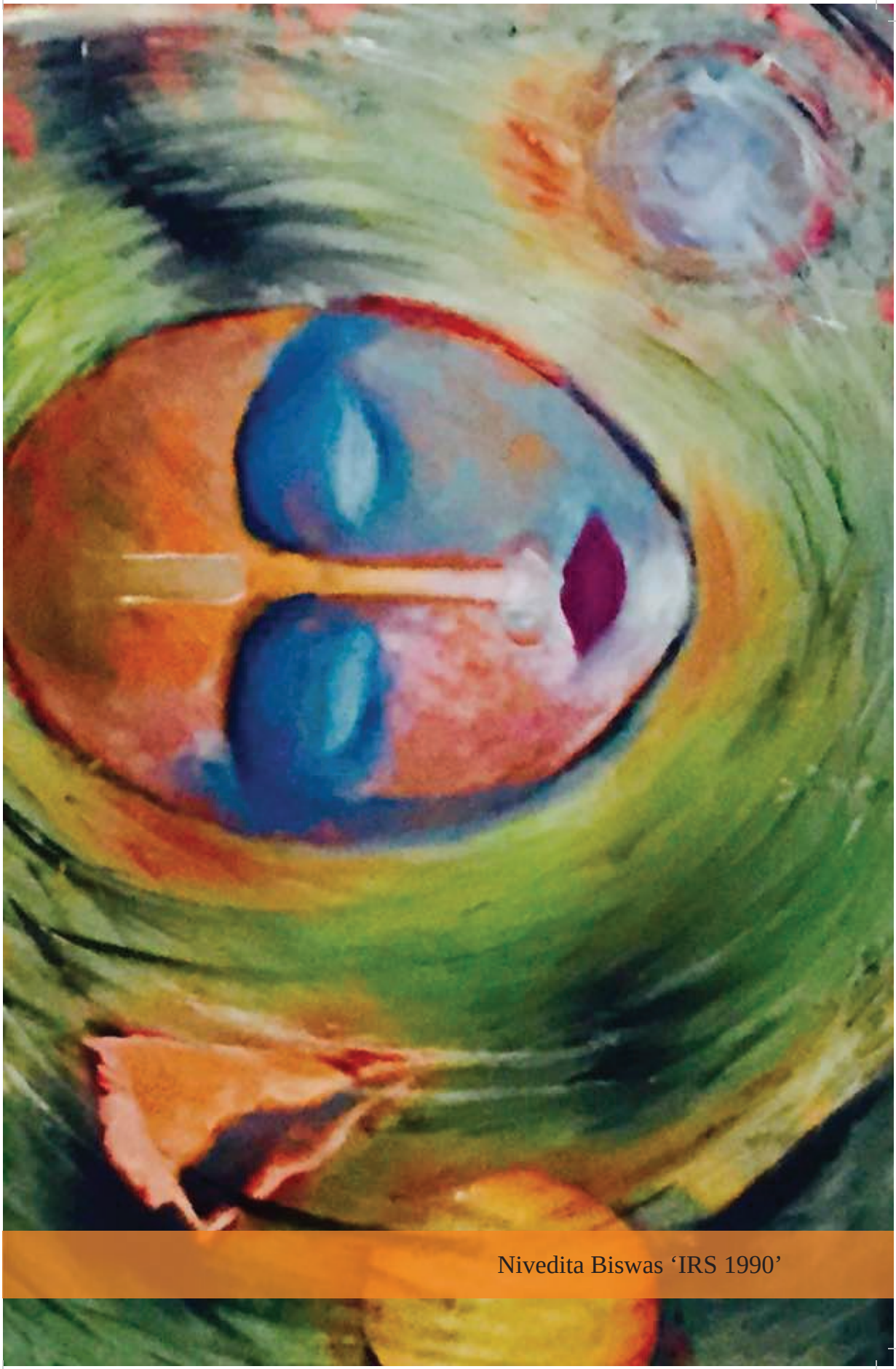
The Editorial Board is especially thankful to our own artists who, at a short notice, have contributed beautiful pieces to decorate this volume. We are sure that our officers will find this volume worthy of reference and with the inspiration drawn from the contributions, their work will find place in future volumes.

Sbhattasali
26.09.2016

(Shabri Bhattasali)
Chairperson, Editorial Board



Left to Right : Mr. R.K. Meena, Dy. DIT (P&P), New Delhi, Mr. S.K. Gupta, PCIT-1, Thane & Member of Editorial Board, Ms. Kavita Pandey, CIT (AAR), New Delhi & Member of Editorial Board, Ms. Anuja Sarangi, Pr. CIT-4, Bengaluru, & Member of Editorial Board, Ms. Shabri Bhattasali, CCIT Pune & Chairperson of Editorial Board, Mr. P. S. Puniha, DIT(Inv.)-I, Mumbai & Member of Editorial Board, Mr. Hemant Sarangi, Pr. CIT-5, Bengaluru & Member of Editorial Board, Mr. Sanjay Tripathi, Addl. CIT(R)-18, (Earlier Addl. DIT (P&P).



Nivedita Biswas ‘IRS 1990’

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 was 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 (b) other returns	 6 months 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 ti 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

Sl. No.	Key Services	Timelines (From the end of the month in which return/ application is received/ cause of action arises)
11.	Decision on application for registration of charitable or religious trust or institution	4 months
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 taxed 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 to 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 detail of public grievance officers are available on the website **www.incometaxindia.gov.in**

R. K. Mishra ‘IRS 1991’

BEST PRACTICES/ INITIATIVES

BEST PRACTICES & INITIATIVES

COMMON ERRORS NOTICED IN AUDIT

CBDT's Instruction No.15/16 of 2013 pertaining to IAP/ RAP stipulates that the CIT (Audit) shall submit a report to the CCIT (CCA) in respect of repeated / common mistakes and errors noticed by the Audit Wing. This is in line with the intent that the jurisdictional CCsIT can use this input to alert & educate the field officers so that these errors / mistakes do not recur. Keeping in view the above instruction, a novel experiment was made by the O/o CIT (Audit), Chennai to come up with a booklet containing several common mistakes found during the course of Internal Audit. This booklet has been highly appreciated by the officers of the Tamil Nadu and Puducherry region. It can be circulated in other regions to pass error free assessment orders.

Background

It is a common knowledge that the number of audit objections raised by Revenue Audit Party is increasing every year as evident from the Report on Direct Taxes placed before the Parliament by the C & AG. Similarly our Internal Audit parties also raise large number of audit objections every year against the orders passed by the Assessing Officers. Needless to say, there is a need to train/educate our officers on passing assessment orders with zero errors.

Approach Adopted

With an objective to learn from past mistakes, a study of all the audit objections raised by Revenue Audit Party as well as Internal Audit Party in the whole of Tamil Nadu & Puducherry region during the calendar years 2012, 2013 & 2014 was made. The same were cross-checked with the relevant assessment records. It was noticed that majority of the objections were repetitive in nature.

A Compendium of such repetitive and common errors was prepared on the basis of audit objections raised in these years. This was intended to make our officers to learn from the mistakes committed by their

predecessors. The type and nature of objections were illustrated with live examples and they were classified chapter-wise for easy reference and understanding . Decisions of Courts / Tribunals in support of the principle involved in such issues were also incorporated. The compilation was brought out in a book format.

CCIT (CCA), Chennai released the Compendium on 31.10.2014 and exhorted all the CCsIT and CsIT in the region to alert and educate the field officers so that these errors / mistakes do not recur. Seminars were also conducted for all the field Officers in Chennai & Coimbatore.

A copy of the compendium was sent to DIT (Audit), New Delhi. Subsequently DGIT (Admn), New Delhi circulated this compendium to all the Commissioners in the country so as to prepare and enable their Officers to pass error free assessment orders.

This is definitely an idea worth replicating in other regions so that the department improves its performance in terms of zero error assessments, thereby saving the precious time wasted in taking remedial action on such audit objections.

Name of the Officers:

Mr. Shaji P. Jacob, Addl. CIT (Audit), Chennai

Mr. Pramod Nangia, Pr. CIT (Audit), Chennai

SETTING UP OF STATE-OF-THE-ART COMPUTER FORENSIC LAB

Computer Forensic Labs were initially set up in 2009 in some Investigation Directorates. However, over the last 7 years, the use of the lab has decreased and external service providers were mainly used for handling of data during search operations. Ahmedabad Directorate of Investigation has taken the initiative of developing digital forensic capabilities by purchasing commercial off the shelf products (COTS) and development of in-house expertise. Additionally, trained manpower was also hired on contract basis to ensure scalability and sustainability of operations. This approach can be replicated by other Investigation Directorates to augment their digital forensic capabilities.

Background

The focus of investigation was slowly but steadily shifting towards digital data. This necessitated development of in-house expertise and augmentation of capabilities to handle electronic data.

Approach Adopted

A comprehensive need analysis was conducted keeping in view the present and future requirements of the department. A technical committee was set up to identify specifications of required software and hardware.

Setting up of the Lab

Based on the recommendations of the technical committee, tenders were floated for purchase of (i) Tableau TD2 Forensics Hardware Imaging Duplicator, (ii) Write blocker devices, (iii) EnCaseForensics Edition, (iv) Encase Portable Software, (v) Internet Evidence Finder, (vi) PasswareForensics Kit, (vii) High End Forensics Server, (viii) 4 computers and as such the software, hardware and kits were acquired through transparent process. A dedicated local network was set-up to leverage the processing capacity of the multiple computers.

The lab is equipped with wi-fi facility, discussion table, storage facilities and other modern facilities.

Security Features

The lab has adequate security features and is accessible strictly on a need-to-know basis. The lab is equipped with CCTV cameras which can be seen online by senior officers of the Department. Other features like portable fire extinguisher, sealed windows, password based access for computers etc. have been provided.

Capacity Building

One week training program was organized for officers and staff of the investigation wing on data acquisition and analysis. The training program included sessions for theoretical inputs as well as practical sessions on data handling. The topics covered in the training were:

(i) Basics of computer operations

(ii) Securing computer systems & digital media

(iii) Forensic tools and analysis

(iv) Financial Analysis

(v) Ethical Hacking

The training has proved very useful in building the capacity of officers/officials in respect of computer forensics. 2 Inspectors were specifically posted to attend work of CFL. In all the searches conducted in Gujarat Charge, the inspectors carried out the task of imaging of digital data. This reduced dependence on outsourcing for imaging of digital data, and also having control over crucial data. The inspectors have also been able to independently analyze seized digital data.

Scalability and Sustainability

With a view to ensure that full potential of the CFL is realized, a separate tender was floated for supply of trained manpower to CFL on contract basis. Thus, in addition to 2 inspectors of the department, 2 external resources are also available, taking the total availability to 4.

In order to ensure that departmental resources are optimally used and a talent pool is created in the department over a period of time, it

has been decided that the inspectors posted in CFL would be rotated every year. Coupled with the deployment of qualified personnel through outsourcing, these steps have ensured that the CFL apparatus is institutionalized and is available to the Department on a sustained basis.

Advantages

The CFL has ensured that dependence on high-cost external resources has declined substantially during the year. As departmental manpower is available, secrecy of operations are assured even while maintaining swift response to any requirements on site. A general awareness has also percolated along the organization about the importance of digital data and the methods of preserving them.

Success Stories

The CFL has been at the forefront in extraction of incriminating deleted data from the images taken of various Laptops, Computers and other electronic devices found during the search/survey proceedings. It has helped in identifying entries of unaccounted cash transactions. Analysis of the meta-data of the recovered files and emails have helped in cross-referencing and corroborating evidences found in multiple premises of the group.

Name of the Officers:

Mr. Amit Kumar, ITI, CFL, Ahmedabad

Mr. Samay Singh Meena, ITI, CFL, Ahmedabad

Mr. G. D. Sharma, ADIT (Inv)-2(1), Ahmedabad

Mr. T. Sankar, JDIT (Inv)-2, Ahmedabad

Mr. Sanjay Dhariwal, Addl DIT (Inv)-2, Ahmedabad

Mr. Harish Kumar, Pr. DIT (Inv), Ahmedabad

IDENTIFICATION AND MONITORING OF NON-FILERS WITH POTENTIAL TAX LIABILITIES (NMS PILOT PROJECT)

Directorate of Systems conceptualised and implemented the NMS pilot project to identify and monitor non-filers with potential tax liabilities. The use of data analytics for identification and prioritisation of actionable cases can be replicated to manage risk in other areas of non-compliance in tax administration. The experience of using online platforms for capturing taxpayer response and activities of field formations can be used to design effective and efficient processes in the proposed Compliance Management CPC.

Background

Presently, out of nearly 24 crore PAN holders, around 4.5 crore taxpayers submit return of income every year. To a significant extent, this difference is due to the use of PAN card as a proof of identity for various stipulated economic functions which does not result in obligation to file return of income. However, information (such as TDS, AIR, CIB etc.) about PAN holders, not filing return of income, is received by the Income tax Department from different sources, based on which the potential non filers have been identified.

Objective

The objective of Non-filers Monitoring System (NMS) is effective identification and monitoring of non-filers with potential tax liabilities.

Approach Adopted

While earlier NMS cycles targeted multiple financial years, NMS cycle 3 and 4 targeted a single AY (AY 2013-14 and AY 2014-15 respectively). The approach adopted in these cycles are as under:

i. Use of data analysis for identification and prioritisation of actionable cases

ii. Use of bulk communication and compliance portal for promoting voluntary compliance

iii. Use of Actionable Information Monitoring System (AIMS) for effective monitoring of action taken by field formations

Identification of Potential Cases

Data analysis was carried out to identify non-filers about whom specific information was available in AIR, CIB data, TDS/TCS Statements and other information sources. The broad category of information sources assessed in NMS Cycle 3 is as under:

Category	Category Description	Number of info. sources
AIR data	PAN holders having AIR transactions	8
CIB data	PAN holders having CIB transactions	42
TDS Return	PAN holders having receipts of more than 5 lakh in TDS returns	24
TCS Return	PAN holders having collection of more than 5 lakh in TCS returns	9
Lower TDS	PAN holders with certificate u/s 197 for TDS at lower/nil rate for amount more than 5 lakh	15
Lower TCS	PAN holders with certificate for TCS at nil rate for amount more than 5 lakh	7
15CA data	PAN holders sending foreign remittance of ₹1 lakh or more	1
STT Return*	PAN holders reported in Security Tax Transaction (STT) returns	5
Data Exchange*	PAN holders who have filed Service Tax Returns (received from CBEC under bilateral exchange)	1
Total		**112**

*These sources were used for the first time in NMS cycle 3

Prioritisation of Potential Cases

Priority for TDS/TCS return information was assigned on the basis of computed Transaction Tax Gap (TTG) for each PAN holder as under:

> Transaction Tax Gap for a PAN holder = (Gross receipts/ collection shown in TDS/TCS return x Conversion factor x Effective tax rate) – Tax deducted – Tax paid
>
> Where,
>
> i. Transaction tax gap is a notional figure computed on the basis of transactions reported in TDS/TCS return. This amount is used for prioritization of cases.
>
> ii. Conversion factor is used to estimate income from gross amount shown in the TDS/TCS return
>
> iii. Effective tax rate is used to estimate payable taxes from estimated income. This is taken at 20%.

In NMS cycle 3, the third party information other than TDS (AIR, CIB, 15CA, Service Tax, STT etc.) have been categorised in six categories - Type A to Type F on basis of nature and value of transactions reported. Priority for third party information is computed on the basis of total value of transactions relating to a PAN holder based on a threshold matrix.

The priority wise distribution of non-filers with potential tax liabilities identified in NMS cycle 3 and 4 are as under:

Priority	NMS Cycle 3 (AY 2013-14)	NMS Cycle 4 (AY 2014-15)
P1	3,68,039	3,80,883
P2	6,58,600	7,72,438
P3	4,76,723	6,53,038
P4	10,89,156	12,91,529
P5	18,14,675	27,97,942
Total	**44,07,193**	**58,95,830**

Use of Bulk Communication and Compliance Portal for Promoting Voluntary Compliance

Bulk letters were sent to PAN holders communicating the information summary and seeking to know the submission details of Income tax return and capturing structure response from the non-filers. SMS and email were sent to the taxpayers registered on e-filing portal asking them to access e-filing portal. 'Compliance' module was developed on the e-filing portal and information related to non-filers was made available to the specific PAN holder after login. Taxpayers were requested to submit the response on the e-filing website following the steps below:

Step 1: Login to e-filing portal	Login to e-filing portal at https://incometaxindiaefilling.gov.in and click on "Compliance Tab".
Step 2: View Non-filers information	Non-filers Information and Information summary can be viewed under Compliance tab.
Step 3: Submit online response	Submit online response.

A detailed Step by Step Guide was published on the e-filing portal to assist the taxpayer in submitting response. The PAN holder is able to provide details electronically and keep a printout of the submitted response for record purposes.

Figure: Screen for capturing response of taxpayer on third party information

Use of Online Monitoring System for Effective Monitoring of Action Taken by Field Formations

An online monitoring system was implemented to ensure that information related to non-filers is effectively used by the field formation. Cases under NMS cycle 3 onwards has been made available on a new functionality "Actionable Information Monitoring System (AIMS)" to enable verification and monitoring of actionable information in a secure manner. The salient features of the functionality are:

i. Display actionable information to the jurisdictional assessing officer
ii. Enable assessing officer to issue system generated letters
iii. Enable assessing officer to update status of enquiry
iv. Provide online MIS to the assessing officer and supervisory hierarchy

Results

As a result of this initiative, a large number of taxpayers have submitted their Income tax returns and significant amount of self-assessment tax has been collected. Some salient features related to the implementation of NMS cycle 3 and cycle 4 are as under:

i. 52+ lakh emails sent
ii. 20+ lakh SMS sent
iii. 4.5 lakh bulk letters sent centrally
iv. 54+ lakh letters generated by field formations using online platform
v. 57+ lakh returns filed by the target segment
vi. 6,000+ crore self-assessment tax paid by the target segment

Name of the Officers:

Mr. Pradeep Kumar, AD (Systems), New Delhi
Mr. Ajay Kumar, DD (Systems), New Delhi
Mr. Vipul Agrawal, JDIT (Systems), New Delhi
Mr. Rajesh Chandra, JDIT (Systems), New Delhi
Mr. Sushil Kumar, Addl. DIT (Systems), New Delhi
Mr. Sanjeev Singh, ADG (Systems), New Delhi
Ms. Nishi Singh, Pr. DGIT (Systems), New Delhi
Ms. Rani S. Nair, Pr. DGIT (Systems)/Member (L&C), CBDT, New Delhi

INFRASTRUCTURE MANAGEMENT

Management of assets countrywide is an important challenge for Income Tax Department (ITD). With several offices in stations all over the country, ITD has various assets, lands, buildings, furniture, fixtures, having varying degrees of infrastructural requirements. Moreover, there are several proposals for creation of new assets at different stages in the pipeline. The Directorate of Infrastructure is the nodal body for ITD's infrastructure and for all capital spending of the ITD/department.

The Directorate has undertaken Digitization of records and adopted a Data Management Module for effective management of existing Infrastructure, identification of gap-areas and for creation of new infrastructure. This has been a key requirement for a long time especially in the e-environment that we live and work in, in the present times. The model is replicable at the local level. The regional offices need to digitize their infrastructure records and link up with the Directorate for synchronized management of Infrastructure.

The Directorate of Infrastructure processes the infrastructure proposals received from the field formations for the consideration and approval of the Competent Authority. Infrastructure proposals have a long gestation period and involve processing at multiple stages, right from identifying Infrastructure requirement, conceptualization of proposal to the final approval of the proposal. The records tend to be voluminous and need diligent maintenance.

2. Therefore an Infrastructure Data Management Module comprising of a Digital Archive and Data Management System was conceptualized and implemented by the Directorate as an effective tool to manage Infrastructure needs of the Department. The task involved scanning, cleansing, cropping, page numbering and organizing the records to be digitized and also finding a suitable and eligible party as per GFR to whom the work could be assigned. Customized software was prepared for retrieval of the scanned documents. The software not only facilitates

retrieval but also facilitates proper organization and record keeping. It has the functionality of organizing the records as per the administrative setup in the Directorate as well as the Field Formation. Other key features are that it provides facilities for uploading multiple documents to a project and also provides the facility for editing and deletion of records with the approval of the Systems Administrator. Software has the facility to upload file numbers, linked file numbers, description and keywords. Simultaneously, to take care of the hardware requirements, all the officers/officials of Infrastructure Directorate are linked to a local area network which in turn connects to a dedicated server put in place for storing the digitized records as well as hosting the software for retrieval of the digitized records.

3. The scanned records uploaded in the customized software have been placed under the concerned jurisdiction within the Directorate and also the jurisdiction of the field formation. The file numbers, linked file numbers, description and keywords have also been uploaded corresponding to each file. In all 5320 files having 25000 pages have been uploaded in the system. In the month of March 2015 the data on the server through the software has been uploaded on the web portal www.irsofficersonline.gov.in for authentication by field formations. This initiative has resulted in a software that is an authentic reference source to the old records of the Directorate of Infrastructure for all stake holders. The possibility of damage, loss or misplacement of records is NIL. The records have been scanned in the PDF format. The platform is web enabled and hence the digital archive is available to all the stake holders in the field formations. For the higher authorities the digital archive is a quick and easy reference source to monitor the progress of infrastructure matters.

4. The Directorate has also implemented a Data Management Module to facilitate not only retrieval but also facilitate proper organization and presentation. The software provides the facility for filtering, summarizing the data for better utilization. In its present form, the master data has been complied and organized for 18 Pr.CCsIT Regions and can be viewed CCsIT/CsIT wise and station wise also. The compilation has been organized so as to provide a bird's eye view of the entire Infrastructure scenario

of the concerned CCA Region. The following set of data has been finally compiled:

- Office space (station wise)
- Residential quarters (station wise)
- Guest house (station wise)
- Land
- Vehicles sanctioned
- Blackberry mobile
- Broadband connections
- Data cards
- Landline connections
- Mobile Connections

5. In addition to collation and management of above data, the Data Management Module also acts as a training tool for preparation of correct infrastructure proposals by the Field.

Name of the Officers:

Mr. Sudhanshu Dhar Mishra, DDIT (Infra)-II, New Delhi

Mr. U.S. Dhyani, DDIT (Infra)-I, New Delhi

Mr. Vivek Sharma, JDIT (Infra)-IV, New Delhi

Mr. Ram Mohan Singh, Addl. DIT (Infra)-II, New Delhi

Ms. Shefali Shah, DIT (Infra)-II, New Delhi

Mr. Anup Kumar Dubey, DIT (Infra)-I, New Delhi

Mr. K. C. Jain DGIT (Logistics), New Delhi

SOFTWARE FOR ONLINE APPROVAL OF APPLICATION FOR LOWER DEDUCTION OF TDS

TDS Charge in Ahmedabad has replaced the manual system of approval of the Certificate of Lower/Non Deduction of TDS by an online system. It has resulted in greater transparency and effective monitoring of this aspect of work. TDS charge in Bangalore has also taken initiative in this aspect of work. The experience of these charges can be used to develop a centralised end – to end system for online submission, approval and issue of Certificate of Lower/Non Deduction of TDS.

Background

Applications are filed by the taxpayers in Form No. 13 in accordance with the Rule 28AA of the I.T. Rules, 1962 before the Assessing Officer of TDS Range. Before issue of the Certificate of Lower/Non Deduction of TDS, the Assessing Officer seeks approval from the Addl. CIT, TDS Range or CIT (TDS) depending on the specified monetary limits.

Approach Adopted

A study was conducted to analyse the efficiency of the manual system followed at the TDS Range Ahmedabad. It was noticed that separate registers were being maintained at the Tapal Receipt Counter, at the Assessing Officer level, the office of the Addl. CIT and the office of the CIT (TDS). Those Registers contained the details of the names of the applicants, nature of business, amount of receipts liable to TDS, actual rate of deduction, rate of lower deduction sought etc. Thus there was repetition of the same work at various levels and the maintenance of those registers at various levels involved huge wastage of man-hours. Further, the taxpayers needed to attach various documents along with their application. When the application was forwarded up to various levels, the entire bundle of files and the documents, which occupied huge space, had also to be forwarded.

In addition, separate forwarding letters have to be typed and sent both for forward and backward movement of the files. Because of these inherent procedural complications, there was a huge time gap between the dates of application by the taxpayer and that of the issue of certificate by the Assessing Officer, after obtaining the approval from the Addl. CIT/CIT.

After discussions with the staff and officers of the TDS Range, Ahmedabad, a strategy was devised to minimize the procedural delay in the entire process.

Software Development and Implementation

A software programme was developed with the help of a software vendor for online approval by the Addl. CIT/CIT introduced in the TDS Range, Ahmedabad from the month of November, 2013. The entire office of the TDS Range, Ahmedabad was connected by LAN with 15 nodes including Receipt Counter, the assessing officers and the Addl. CIT. Separate Login-IDs were allotted to each officer/official and a new process flow was developed.

The applications are now received centrally and the applicants are provided with the Bar Coded Receipt Stamps. The TAs at Receipt Counter fill up the basic details such as names, nature of business, TAN/PAN etc. The system automatically identifies the jurisdictional Assessing Officer based on the TAN/PAN. Every day Officer-wise receipt of applications is generated and the physical applications are sent to the concerned Officer. The Assessing Officer opens the system using his login ID. A computation sheet is filled-up by the Officer with the details provided as per the physical application. The system then computes the estimated tax liability and the rate at which the lower deduction certificate could be issued. The Assessing Officer then forwards the application along with the computation sheet online to the Addl. CIT. The Addl. CIT opens the application using his login ID. After perusing the application and the computation sheet, the rate for lower deduction as proposed by the Assessing Officer, the Addl. CIT approves/modifies/rejects/recommends the case. The Assessing Officer can see the rates approved by the Addl. CIT and can issue the certificate through ITD. After issuing certificate, the same is entered in the software. Sample screenshot for status report is as under:

Advantages

In view of the adoption of above IT-aided process flow, the maintenance of manual Registers by each counter at Tapal, by each Assessing Officer, by Addl. CIT and by the office of CIT (TDS) has been done away with. This has saved huge wastage of man-hours. The Officials/Inspectors of the Range can be used for other productive purposes like surveys etc. The computation has been made easy and error free. The system shows the date of receipt of applications and tracks the movement of the application at various levels. With this, the monitoring and tracking of the pendency at various levels become easy. The time lag between the date of receipt of application and issue of certificate has been considerably reduced. On an average, the period has come down from 15-20 days in the manual systems to 2-3 days with the computerized system.

Name of the Officers:

Mr. M. Mathivanan, Addl. CIT (TDS), Ahmedabad
Mr. Anand Mohan, Addl. CIT (TDS), Ahmedabad
Mr. Y. K. Batra, Pr. CIT (TDS), Ahmedabad

Confluence
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ASSESSMENT ORDERS

ASSESSMENT ORDERS

TDS LIABILITY U/S. 195 ON MANAGEMENT FEE PAID ABROAD

TDS Liability u/s. 195 on management fee paid abroad – section 195 TDS – genuineness of payment – commercial expediency – capitalisation of share issue expenses – section 14a – disallowance of interest expenses as not for business purpose – commercial expediency.

The taxpayer company filed its return of income for the A.Y. 2010-11 admitting total income of ₹4,66,55,60,940/-. On examination of the details filed by the taxpayer, a draft order on the proposed assessment u/s 143(3) r.w.s. 92C of the Income Tax Act, 1961 dated 31.03.2014 was made. Aggrieved by the draft order, the taxpayer filed an application seeking direction u/s 144C(5) of the Income Tax Act, 1961 from the Dispute Resolution Panel, Chennai. After careful consideration of the objections filed by the taxpayer company and issues raised by the Assessing Officer, the Dispute Resolution Panel disposed of the taxpayers application and the assessment was finalized. Some of the important issues are discussed here.

2. Management fees Paid to India Offshore Inc:

From the materials submitted by the taxpayer to the investigation wing that during A.Y. 2010-11, the company had paid ₹28,15,18,658/- as Management fees to India Offshore Inc and deducted ₹4,45,82,998/- as withholding tax by applying a rate of 15% plus 2.5% surcharge and 2% EC. However during the assessment proceeding it was submitted by the taxpayer that they had deducted tax of only ₹1,13,95,369/- @ 4.478% as per sec 44AB. The Assessing officer and DRP noted the above mismatch in the TDS information submitted by the taxpayer before two different authorities. They further found that the taxpayer company could not provide evidence on the residential status of India Offshore Inc, even though India Offshore Inc was one of the promoter group holding 19.3% share and had entered into collaboration agreement in the year 1986. This showed that the transaction of the taxpayer company with India Offshore Inc.

lacked genuineness. In view of this reason the DRP held that the genuineness and commercial expediency of the payment made to India Offshore Inc. was not proved by the taxpayer. Hence, the entire expenses of ₹28,15,18,658/- was disallowed and added back to the total income of the taxpayer.

3. Claim of Preference Share Issue Expenses of ₹3.75 crores:

It was seen that the taxpayer had claimed an expenditure of ₹3.75 crores as preference share issue expenses. As the expenditure was related to share capital being capital in nature, the same was not allowable as revenue expenditure following the decision. The Hon'ble Supreme Court in the case of Brooke Bond India Limited vs. CIT (225 ITR 798) and in the case of Punjab State Industrial Development Corporation Ltd. vs. CIT (225 ITR 792) had held that expenditure on issue of shares is not an allowable deduction in computing the taxable income. In the said cases, the Hon'ble Supreme Court had held in both the cases that expenditure incurred in connection with issue of shares are directly related to the expansion of the capital base of the company and is therefore a capital expenditure even though it may incidentally help in the business of the company and in the profit making. The DRP upheld the disallowance of ₹3.75 crores.

4. Disallowance u/s 14A:

The taxpayer accounted an amount of ₹2,19,07,377/- as dividend from Mutual Funds/ shares during the year and claimed the same as exempt u/s 10(34). As per the provisions of section 14A of the Income-tax Act, 1961, no deduction shall be allowed in respect of expenditure incurred in relation to such income which does not from part of the total income. The taxpayer had disallowed an amount of ₹64,23,045/- being ½% of average investment as per 3rd limb of Rule 8D.

The AO and DRP held that a company cannot earn divided without its existence and management Investment decision are very complex in nature. They require substantial market research, day-to-day analysis of market trends and decision

with regard to acquisition, retention and sale of share/units of mutual funds at the most appropriate time. They require huge investment in shares/mutual funds and consequential blocking of funds. It is well known that capital has cost and that element of cost is represented by interest. Besides, investment decisions are generally taken in the meetings of the Board of Directors for which administrative expenses are incurred. It is therefore not correct to say that dividend income can be earned by incurring no or nominal expenditure. Therefore, the AO and the DRP concluded that a portion of routine expenditure to maintain its establishment and administration was attributable towards the activity of making investments to earn dividend and the managerial staff and the Directors were involved in making decision on investments. Hence, a portion of this managerial remuneration and Directors remuneration definitely was attributable towards earning such exempt income. The AO & DRP worked out the disallowance u/s 14A read with rule 80D at ₹1,44,50,789/- mainly for the reason that the taxpayer had incurred an approximate expenditure of ₹3,37,14,23,057/- on interest on its borrowed capital and the taxpayer could not establish that only interest free funds were used for earring tax free dividend income.

5. Disallowance of Interest Expenses:

During the last F.Y., the taxpayer company had taken loan from the bank in India to give loan to its subsidiary Aban Holding Pvt. Ltd. (AHPL). During the year, AHPL allotted share against the outstanding loan to the taxpayer. The taxpayer was asked to quantify the interest expenses towards the loan which was converted to shares. The taxpayer submitted working whereby ₹57,46,43,700/- was shown as interest expenses paid to the bank loan in India for the loan portion which got converted to investments. As the investments in Singapore made were in the nature of capital, the taxpayer was asked to explain why these expenses should not be disallowed. The taxpayer submitted its reply and in nutshell argued that the investments were made towards the commercial expediency and business prospects of the taxpayer and the dividend earned

would be taxable in India. As such, the taxpayer requested to allow the entire expenses.

The AO held that the taxpayer's reply was considered and it was not acceptable for the fact that the investments made in Singapore would aid the taxpayer's subsidiary's business interest rather than the business interest of the taxpayer thereby there was no commercial expediency for the taxpayer in its business carried in India against which the interest expenses were claimed. Further, no dividend income was received by the taxpayer in the F.Y. and the dividend income from the foreign investments was taxable only on the receipt basis. So, the taxpayer cannot claim the interest expenses to the tune of ₹57,46,43,700/- as there was no dividend income earned during the year. The interest expenses towards investment in shares are to be capitalized if the taxpayer is not doing share trading expenses. The Hon'ble jurisdictional High Court in the case of CIT vs Trishul Investments Ltd., (20058) 305 ITR 434(MAD) held that the "Interest paid for acquisition of shares would partake character of cost of share and therefore the same was rightly capitalized along with the cost of acquisition of shares." Hence, the interest expenses claimed was disallowed and allowed to be capitalized to the cost of the investments. The DRP upheld the disallowance of interest of ₹57,46,43,700/-.

Name of the Officer:

Ms. Hemalatha, DCIT, Corporate Circle-1(1), Chennai

CANCELLATION OF REGISTRATION U/S 12AA OF A COMPANY ENGAGED IN RELIGIOUS ACTIVITY

The company sought registration u/s. 12AA professing to be a charitable institution - Was found to be supporting religious activity - Not found to be eligible u/s. 11.

The taxpayer, Angel Christian Foundation of India is a charitable company registered u/s. 12AA of the Income Tax Act, 1961. It runs a television channel named 'God TV'. During the year it filed its return of income for Asst. Year 2010-11 claiming exemption u/s. 11 of the Income Tax Act, 1961.

2. On examining the books of accounts and the conduct of affairs of the company, it was found out that it was predominantly engaged in religious activity. Even the copy of the Memorandum of Association submitted to substantiate the objectives of the company showed that it was engaged in religious activities. The copy of the Registration granted u/s. 12AA of the Income Tax Act 1961 was contradictory to the terms and conditions spelt out in the said Memorandum. The DIT (Exemption), Chennai reported that there were only 4 objects at the time of incorporation of the company on 5.12.2002. The fifth objective namely 'to sponsor television and radio programmes, sponsor contents for the worldwide web through all forms of media' was later added in Memorandum of Association. However, during the course of scrutiny proceedings, it was noted by the Assessing Officer that the fifth object had been modified in the MOA and related to 'sponsor religious television and radio programmes, sponsor contents for the worldwide web and to profess religion through all forms of media'. Therefore it was clear that the said company was not carrying out charitable activity but was set up with the object of carrying out activities which were religious in nature.

3. Since a charitable company was professing religious activity which was found to be at cross purposes with the objects of the company, the application of income was found ineligible for exemption u/s. 11 of the IT Act. Further, since the registrations

u/s. 12AA of the IT Act was obtained by the company through misrepresentation of facts, the taxpayer was not found eligible for the said registration. Accordingly, after adjusting the eligible expenditure against the gross receipts credited to the Income and Expenditure Account, the residual value of ₹1,14,49,605 was not found to be eligible for exemption and was brought to tax. Penalty proceedings were initiated separately.

4. The ITAT dismissed the appeal of the taxpayer.

Name of the Officers:

Mr. K. N. Dhandapani, DDIT (Exemp) III, Chennai

Mr. D. N. Kar, CIT (Exemptions), Chennai

PAYMENT OF MANAGEMENT FEE TO AN ASSOCIATE CONCERN HELD TO BE A COLOURABLE DEVICE

The company received Management Fee from an Associate Concern - It incurred higher expenditure for providing hospitality services which was set off against its interest income, reducing its tax liability - It was held that the transactions were a colourable device - The excess expenditure incurred over and above the Management Fees received by the company was disallowed.

The company, Chettinad Hospitals Pvt. Ltd, provided hospitality services to a hospital run by the Trust, namely Chettinad Academy of Research and Education (CARE). The said Trust is an Associate Concern of the taxpayer company.

2. During A.Y. 2010-11, the company received ₹24,00,000 as Management Fee from the Trust against which it incurred expenditure of ₹5,75,37,706 for providing hospitality services. The company had to provide services including Administration, Nursing, Paramedical services, Security, House keeping, etc. The excess expenditure incurred by the company towards services rendered to the Trust, was set off against its interest income, reducing its tax liability.

3. Similar arrangement had been made by the company for the earlier years as well, the details of which are as follows:

A.Y. **Details**	2008-09	2009-10	2010-11
Interest income	13,08,65,754	28,30,19,450	24,71,61,645
Management Fees from Trust	12,00,000	24,00,000	24,00,000
Expenses claimed (incurred towards Hospital)	5,58,53,988	9,46,68,652	5,75,37,706

4. During the course of assessment proceedings, the Assessing Officer held that the agreement entered into by the taxpayer company with CARE (Trust) was arbitrary in so far as expenditure incurred was very high in comparison to the fees charged from the Trust. No evidence was provided in terms of any market research or comparative study undertaken before fixing the Management Fee charged from the Trust. The taxpayer did not discharge its onus to prove with satisfactory evidence that the consideration between the Company and its Associate Concern was fixed at Arms Length Price. The contention of the taxpayer that "the fee charged is only an experimental measure to enter into the hospital management with a view to gain exposure and therefore, the fees charged cannot be compared with others" was not found to be in order in view of a comparative case of Apollo Sindhuri Hotels Ltd, wherein the company charges rates which varied from 15 to 25 % over and above the cost incurred, for providing house keeping services to Apollo Group of Hospitals.
5. It was held that the transactions were a colourable device so that the expenses in the books of the Trust could be booked in the hands of the Company which could be further offset against the interest income earned by the company during the year. Accordingly, the excess expenditure incurred over and above the Management Fees received by the company was disallowed in A.Ys. 2008-09, 2009-10 & 2010-11 amounting to ₹20,20,60,346.
6. The said disallowances were confirmed by CIT(Appeals)

Name of the Officers:

Ms. M. Subashri, DCIT, Coy. Circle 1(3), Chennai.

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

Mr. K. K. Arugmugan, CIT-1, Chennai.

DISALLOWANCE OF CLAIM OF DEDUCTION U/S.10A AND TRANSFER PRICE ADJUSTMENTS

Claim of Deduction Under Section 10A – STPI Approval Expired – Claim Disallowed - TP Adjustment on International Transactions.

The taxpayer company filed the Return of income for the A.Y. 2011-12 declaring a current loss of ₹12,63,23,752/-. The case was selected for scrutiny under CASS (for the reason that AO should examine the various aspects applicable in contracting business and also to examine the reasons and genuineness for high claim of refund out of TDS). As per the Form 3CEB submitted by the taxpayer, the company had international transaction with associated enterprises for a total sum of ₹232,31,96,004/-. Therefore, reference was made u/s. 92CA to the Transfer Pricing to determine the Arm's length price of the international transactions.

2. The taxpayer company was originally registered in the name of M/s. Slash Software.Com Pvt. Ltd., on 22.03.2000 and the taxpayer had obtained approval from STPI on 30.03.2000. Subsequently, the company changed its name to M/s. Slash Support India Pvt. Ltd., on 11.01.2001 and to M/s. CSS Corp Pvt. Ltd., on 14.05.2007. Subsequent to the initial approval, the taxpayer obtained approval from STPI for five other units Viz., East Wing, North Wing, Oliver Road, South Wing and West Wing. The approval had been granted as "Extension of bonded ware housing". During the year, the taxpayer company claimed deduction u/s.10A for a total sum of ₹8,79,36,465/-. The deduction was claimed in respect of all the five units. The taxpayer filed consolidated Form 56F giving in annexure the computation of deduction u/s.10A for each of the units.

3. These units (East Wing, North Wing, Oliver Road, South Wing and West Wing) were eligible to claim 10A benefits only up to AY 2010-11 because it was found that since each approval

for the subsequent units (after availing the initial approval on 30-03-2000) had not approved by STPI as separate undertaking, it was held that the approval had been granted only for one unit and all other subsequent approvals were for the extension of the same unit. Since, the approval for the unit was granted in financial year 1999-2000, relevant to AY 2000-01, the period of ten years for claiming deduction u/s. 10A got completed by AY 2010-11. After which the taxpayer did not have eligibility to claim deduction u/s.10A.

4. During AY 2009-10, the taxpayer had both profit and loss in some of its units and the taxpayer had claimed deduction under section 10A only on the units with profits. However in the assessment proceedings all the units were considered as consolidated as one unit and only the net profit was allowed as deduction u/s. 10A. Hence, the same stand was taken in the AY 2010-11 and AY 2011-12, however, since the taxpayer had only profits from all the units, no netting off was made.

5. The contention of the taxpayer that "the new units claiming deduction are new and identifiable units separate and distinct from the existing unit. Further, since there is no statutory requirement that separate approval must be obtained from the STPI authorities for each new unit, the Company should be eligible to claim deduction as per the provisions of section 10A of the Act" was not accepted. In this case, the units which had obtained approval as extension or expansion of the already existing unit could not be considered as separate undertaking. The taxpayer had not obtained separate approval for each unit from STPI, and had only obtained the approval for export purpose as an extension of existing facility. The profit from all the units was taken together and the initial approval was availed in the AY 2000-01, therefore, the period of ten years got completed by AY 2010-11. So the taxpayer was not eligible to claim benefit of 10A for AY 2011-12. Therefore an amount of ₹8,79,36,465/- being ineligible deduction under section 10A claim was disallowed.

5.1 In addition to the above, a reference was made to Transfer Pricing Officer for determination of Arm's Length Price with the associated enterprises for a total sum of ₹232,31,96,004/-.

The TPO vide order dated 28.01.2015, recommended adjustment of ₹18,44,05,002/- to the Arm's Length Price. A draft order dt.27.03.2015 was issued to taxpayer by incorporating the adjustment made by the TPO. In response the taxpayer submitted its reply stating that the company had opted not to litigate on the issues before DRP thereby accepting he adjustment on account of the Arm's length pricing. In accordance with the same a sum of ₹18,44,05,002/- was added to the total income of the taxpayer.

5.2 The taxpayer did not prefer any appeal against the order and paid the tax.

Name of the Officers:

Mr. Rohan Raj, DCIT, Chennai

Mr. B. Srinivas, Addl. CIT, Chennai

Mr. K. K. Arumugan, CIT, Chennai

CLAIM OF DEDUCTION U/S 54F NOT FOUND TO BE GENUINE

The taxpayer claimed 54F deduction on sale of property claimed as residential house - Detailed inspection of the said property revealed that there was no residential house as claimed by the taxpayer but only agricultural land - Claim of 54F rejected.

The taxpayer, Harindran is a qualified Advocate and filed his return of income for the first time for the A.Y. 2011-12 on 31.07.2011. The taxpayer claimed an amount of ₹3,12,75,000 as deduction u/s. 54/54F.

2. The taxpayer received land measuring 55.21 cents with a small super structure (measuring approximately 200 sq. Ft) on the land on 19.11.2010 from his father. The taxpayer's father subdivided the land into 4 housing plots and obtained a plot approval from Chennai Metropolitan Development Authority before transfer. The taxpayer claimed the above property as residential house. He sold the property on 6.12.2010 for a sale consideration of ₹4,00,00,000.

3. It was found that the land was already subdivided into housing plots and approval was already obtained from CMDA on 12.1.2010 before transfer of property to the taxpayer.

4. The Bill statement of Electricity Board showed that the electrical connection existing in the property was only "commercial" in nature.

5. Therefore, the taxpayers' claim was rejected and it was concluded that the property sold was a land and was of the nature of Long-Term Capital Asset. Investment in residential house out of the above proceeds was only entitled for exemption u/s. 54F.

6. On examination of documents relating to investment, it was found that the taxpayer purchased an agricultural land measuring 6.95 acres along with Motor Pump shed and a well on 6.12.2010. The land was categorised as "Nanja Agricultural Land" in the

registered document. However, the taxpayer claimed the above purchase of land as investment in residential house for purpose of claiming exemption u/s. 54.

7. In order to ascertain the above facts, the property was inspected by the Assessing Officer. It was found that there was no residential house as claimed by the taxpayer but only agricultural land. The Chairman of Vadakampadi Panchayat Union explained that the tax was levied only according to the nature of construction of the building i.e., 'Thatched House, Tiled House or RCC House etc.' and did not reflect whether the building was a residential house or not. As per Revenue Record ["Chitta and Adangal"], the nature of land was shown as agricultural land. The Junior Engineer of Electricity Board inspected the said property and confirmed that "as per usage of land, the nature of land is an agricultural land and there is a well with submersible motor pump utilised for watering agricultural land where coconut trees, mango trees and small plants grow. The nature of connection given appears to be domestic single phase but my spot enquiry shows that three phase connection is given to the property".

8. Accordingly, Long Term Capital Gains of ₹3,49,33,220 was worked out and the taxpayer's claim of exemption u/s. 54/54F was rejected. Penalty proceedings were initiated u/s. 271(1)(c) for furnishing inaccurate particulars. The taxpayer paid entire demand. Penalty u/s. 271(1)(c) of ₹71,64,880 was levied. The penalty was confirmed by the CIT(A). The taxpayer paid entire penalty to get his property released.

Name of the Officers:

Mr. R. Karthikeyan, ITO Business Ward – III(3), Chennai

Mr. T. Satish Meriga, JCIT, Business Range-III, Chennai

Mr. P. R. Pruseth, CIT-10, Chennai

DISALLOWANCE OF BOGUS CLAIM OF DEDUCTION U/S. 54/54F

Claim for deduction u/s 54 – AO f *nding that the property sold was land and not a residential property-claim u/s 54 disallowed – taxpayer's alternate plea of allowing deduction 54F also considered -property records scrutinized and independent enquiries conducted – case law cited – deduction u/s 54F also disallowed – LTCG of 61,63,711/- charged to tax.*

The taxpayer filed return for A.Y. 2011-12 declaring income of ₹1,22,580/- as income from other sources. He had sold certain property and the capital gains on which was claimed fully exempt u/s 54. The AO found that the taxpayer, along with his brother, had jointly sold property inherited by them. It was also claimed that they had made certain additions/alternations to the property. After analysis of the description of the said property, as per the purchase documents and the sale documents, it was concluded that the nature of the property had undergone a change. At the time of purchase and also at the time of inheritance, the property was a residential house property which was later on dismantled and thereafter tin shed, on a small area (288 sq.ft. each) out of total 10747 sq.ft. area, was constructed on this land in the F.Y. 2008-09 and the remaining land was left vacant.

2. The claim of exemption of the taxpayer u/s 54 was disallowed after establishing that what was sold was not a residential house, as envisaged in section 54, but was a piece of land with temporary structures. The AO also applied the ratio of decision in the case of Subhash Chand Kapoor vs. ITO (2010) 46 DTR (Agra) (Trib.) 314 to make his case strong.

3. The taxpayer made an alternate claim u/s 54F. However on examination of documents the AO found that the taxpayer had claimed to have made investment in purchase of vacant plots and agriculture land and also claimed expenditure of ₹27,57,500/- on the construction of residential house on the

agricultural land measuring 86 bheegas and 4 biswas. To verify the contention of the taxpayer, the AO deputed his inspector to make spot inquiry and also asked the concerned Tehsildar to give report on the nature of construction on the agricultural land. The Tehsildar, deputed patwari of that area who reported that there was a small room having size of approximately 10 × 20 ft. which had recently been constructed on the said agriculture land. The inspector of the AO also reported the same facts and also enclosed photograph of the alleged house. The AO examined these reports and concluded that the room under construction did not fit the description of a residential house as stipulated in section 54F. The AO also found that the taxpayer did not deposit the amount of unutilized net consideration in the capital gain account scheme in any bank before the due date of filing the return u/s 139 and thus violated the provisions of section 54F(4) of the Act.

4. The taxpayer could not substantiate his claim by any evidence like, electricity bill, sanction letter of competent authority for construction of house, copy of house map, etc. Therefore, after carefully analyzing the requirements for claiming exemption u/s 54F deduction u/s 54F was also denied and the entire LTCG of ₹61,63,711/- was brought to tax. The CIT(A) confirmed the addition.

Name of the Officer:

Mr. Krishan Kumar, ITO, Ward 3(2), Jodhpur

ESTIMATION OF GROSS PROFIT AFTER REJECTION OF BOOKS OF ACCOUNTS

Rejection of Books of Accounts u/s. 145(3) – The taxpayer was unable to produce the Stock Register, Books of Accounts, Valuation of Opening and Closing Work-in-progress, supporting vouchers for payments, etc. – Advances made to suppliers not found genuine – Gross Profit estimated

The taxpayer company, Dhar Construction Company was engaged in the business of civil construction contracts for roads, village electrification, etc. Out of total gross contract received of ₹68,33,30,439, the Profit and Loss account reflected a net profit of ₹2,84,18,521, which comes to 4.15 % for the Asst. Year 2012-13.

2. The taxpayer has not maintained Stock Register. It has not produced the books of accounts, the muster rolls for verification of labour payments, the valuation of opening and closing work-in-progress as well as the quantitative details of the value of materials used with supporting vouchers for payments with regard to opening stock, purchases, material used for consumption and closing stock of major items, etc.

3. It was found by the AO after field enquiries that certain advances made to suppliers were not genuine. Some parties clarified that no such advance was given, while in some cases, the advance was not reflected in their Balance Sheets.

4. Due to these defects as detected in the books of accounts of the taxpayer and non-maintenance of Stock Register and failure to furnish books of accounts, coupled with low net profit rate as compared to the other taxpayers having similar line of business in the range of 5 to 8 %, the books of accounts were rejected by the Assessing Officer u/s. 145(3) of the I.T. Act and the income of the taxpayer was estimated at 5.5% on gross receipts of ₹68,83,33,439 which came to ₹3,78,58,339.

Name of the Officer:

Mr. K.G. Kar, Income Tax Officer, Ward-1, Shillong

SET OFF OF BROUGHT FORWARD AND UNABSORBED DEPRECIATION DISALLOWED

The taxpayer claimed set off of brought forward unabsorbed depreciation of ₹3.95 crore - Subsequently, the taxpayer admitted that it was claimed erroneously instead of ₹65.86 lakh resulting in taxable income.

The company, HMA Starware Pvt. Ltd. was engaged mainly in the business of sale and support to hardware products for Automated Teller Machines (ATM) besides realty sector.

2. It was noted that the company had a software division at the beginning the financial year 2011-12 wherein slump sale took place during the year for a sum of ₹6.5 crore resulting in Capital Gains of ₹4,95,63,465. The company claimed current year losses in the statement of income and also set off brought forward unabsorbed depreciation, arriving at a Nil taxable income.

3. During the course of scrutiny proceedings, the company was asked to file a reconciliation on the claim of brought forward unabsorbed depreciation loss of ₹3.95 crore. The company admitted that the said set off claim was erroneously worked out at ₹3.95 crore instead of ₹65.86 lakh resulting in a taxable income of ₹3.31 crore under normal Income Tax provisions and ₹3.78 crore u/s. 115JB of the Income Tax Act, 1961. The Assessment was completed with a deemed MAT income of ₹3,78,74,762.

4. The demand of ₹1,06,51,441 was collected.

Name of the Officers:

Mr. R. Raja Manohar, ITO, Corporate Ward 2(3), Chennai

Mr. B. Jayaraghavan, JCIT, Corp. Range-2, Chennai

Mr. N. Sankaran, Pr. CIT-2, Chennai

SUPPRESSION OF SALE VALUE OF FLATS AND SUPPRESSION OF SALES REINTRODUCED IN THE BOOKS THROUGH SHARE APPLICATION MONEY

Undisclosed sales introduced as share application money - Taxpayer engaged in real estate business – suppression of sales detected – undisclosed sales reintroduced in business as share application money.

The Taxpayer, Homebase Estate Pvt. Ltd. is a real estate developer and builder. It had undertaken three housing projects till the financial year 2011-12.

2. During the relevant assessment year, sales consideration amounting to ₹9.94 crores had been credited in the P & L Account, which included sale consideration of 46 flats as well as sale of land. Registered sale deeds and copies of the agreements made with the flat owners prior to the registration in respect of these flats were collected by the Assessing Officer. It was found that in almost all cases of flats sold, sale value mentioned in the agreements was much higher than the sale value quoted in the registered sale deed. However, for Income Tax purpose, the taxpayer had taken into consideration sale value from both the "agreements" and "sale deeds" depending on its suitability which varied from customer to customer. By doing so, the company managed to suppress sales in the P & L Account resulting in lesser income and also managed to introduce capital in the guise of share application money in the names of certain flat owners by using the differential amounts of sale value mentioned in the sale deeds and that mentioned in the agreements. This practice resulted in suppression of income on one hand and routing back of the said income (differential amount of deed value and agreement value) to its books as share application money.

3. Two issues emerged for the consideration of the AO. First, there was suppression of sale value of flats by the taxpayer. The AO

found that in five cases, sale value as per agreement amounted to ₹1.36 crores whereas the taxpayer had disclosed ₹1.13 crores in its P&L account as sale value in respect of the said flats. The differential amount of ₹23 lakhs was added to the total income as suppression of income.

4. Second was suppression of sales reintroduced in the books by the taxpayer through share application money. The taxpayer was found to be in the practice of suppressing sales value of flats in case of certain customers as well as diverting such differential amounts from the values mentioned in agreement deeds towards share application money in the names of the said customers. It was observed by the Assessing officer that the exact differential amount between the sale value as per agreement and the value taken to the P&L account in respect of 13 flats totaling to ₹58 lakhs was introduced by the taxpayer as receipt of share application money from the said flat owners, which could not be explained by the taxpayer. Consequently, addition of ₹58 lakhs was made by the AO towards suppression of selling price.
5. Apart from the above main findings, share application money to the extent of ₹36,00,000/- was found to be unexplained and added u/s.68.
6. After making examination of entire business transactions of the taxpayer company, total addition of ₹2,28,24,501/- was made in the returned income of ₹17,64,740/- declared by the taxpayer and a demand of ₹92,84,530/- including interest u/s. 234B & 234C was raised. No appeal was filed by the taxpayer against the assessment order.

Name of the Officer:

Mr. K. B. Mohanty, ITO, Ward-1, Bhubaneswar

LIABILITY TOWARDS LONG TERM CAPITAL GAIN ON SALE OF LAND

LTCG was claimed exempt u/s. 10(1) - The land which was sold was claimed to be agricultural land gifted to the taxpayer - Detailed verifications showed it was an open land of vacant plots - Claim was disallowed.

The taxpayer, Mrs. Jayanthi Natarajan, claimed exemption u/s. 10(1) at ₹7,49,61,500 on account of sale of agricultural land under the head Long Term Capital Gain for Asst. Year 2011-12. During the course of assessment proceedings, however, the taxpayer submitted that the land was mistakenly taken as agricultural land and hence proposed to disclose the same for taxation.

2. Subsequently, it was submitted by the taxpayer that the sold land under consideration was originally an agricultural land gifted to the taxpayer. It was stated that it was a coconut grove till the sale of land which was later cut down by the current buyer.

3. During the course of detailed enquiries, the Assessing Officer found that the land was not agricultural in nature. It was described as "vacant plots" which were classified as separate units measuring 88,478 sq. Ft. in all in the hands of the original owner. The Assessing Officer noted that the Certificate of Village Administrative Officer classified the land as "Housing Plot/Building". It was also found from 'Chitta Adangal Extract' issued by the Deputy Tahsildar that the land was a "Housing Plot/Building".

4. It was thus evident that the land in issue was not agricultural in nature and hence, not eligible for exemption u/s. 10(1) of the IT Act. The same was assessed to tax under the head Income from Capital Gains amounting to ₹7,36,15,037. A demand of ₹2,01,10,830 was raised which was paid by the taxpayer.

Name of the Officers:

Ms. D. Nithya, ACIT, Non-Corporate Circle 1, Chennai.
Mr. B. Srinivas, Addl. CIT, Non-Corporate Range 1, Chennai.
Mr. K. K. Arugmugan, CIT, Chennai 1, Chennai.

ADDITION ON ACCOUNT OF REVALUATION OF CLOSING STOCK OF JEWELERS

Cash purchase of gold – section 40A(3) – excess stock – stock valuation – lifo – average rate – claim of personal expenses.

These cases are of a Group which is a leading gold and diamond jewelry retailers. They were were taken up for scrutiny for the A.Y. 2013-14 after obtaining the approval of the DGIT (Inv.), Kochi. During the course of scrutiny Assessment, the Assessing Officer stumbled upon certain identical issues which were involved in all the major cases of the group. This was possible because of coordinated investigation in all the cases of the group.

2. Disallowance of Cash Payments Exceeding ₹20,000/- u/s. 40A(3)

The AO examined the 'old gold purchase' effected by the taxpayers and noticed that most of the purchase of old gold exceeded ₹20,000/- The taxpayers accounted this as an advance received from the customers to be adjusted against future sale of gold. However on closer examination, the AO found that old gold purchases were shown as an outgo of cash in the cashbook. The AO concluded that the transaction involved two components (a) sale of old gold by the customer and (b) deposit of money by the customer with the taxpayer. The customer did not take back the money; instead deposited the same with the taxpayer. The gold purchases by the taxpayer were therefore independent transactions from the subsequent gold ornament sale by the taxpayer. It was therefore concluded that section 40(A)(3) was attracted.

3. Method of Valuation of Closing Stock

On making in depth market enquiries, it was noticed that the valuation of closing stock of gold by the taxpayers in this group was very low compared to the prevailing market value of gold

and also the rate shown by other taxpayer in the same field. The valuation of closing stock using a very low unit value was based on the stand of the taxpayer that they were following the LIFO (Last in First Out) system. According to the taxpayer this meant that closing stock of gold with them was very old stock acquired long ago. By doing minute analysis, the AO established that the taxpayers did not have item wise inventory of closing stock to support their claim. Therefore in assessment the closing stock was revalued. The value per gram of gold was arrived at by taking the average of the value of closing stock of gold shown by major jewelers in Kerala.

4. Disallowance of Personal Expenses

Extensive enquiry during scrutiny revealed that the two individual taxpayers group had purchased apartments from DLF developers and had debited interest on housing loan to the business accounts. This claim was disallowed as a non-business/ personal expenses.

5. The Details of Additions Made are Shown Below in Tabular form:

The Nature of Taxpayer	Returned Income	u/s 40A(3)	Revaluation of Closing Stock	u/s 37	Assessed income	Tax Demanded
A	17,49,27,860	9,79,01,276	183,45,59,660	12,32,861	210,86,21,657	73,85,49,501
B	26,77,91,060	4,56,13,314	100,54,28,197	11,85,702	132,00,18,273	40,20,47,767
C	1,03,42,570	50,56,353	15,46,77,223	0	17,00,76,146	6,39,27,110
D	5,53,32,690	7,65,45,826	25,75,25,725	0	38,94,04,241	13,27,16,677
						133,72,41,055

6. The taxpayers have accepted the assessments and paid the tax demanded in installments. This is a case where careful identification of issues during and post search resulted in substantial additions and immediate realization of taxes. Despite the huge quantum of the additions made, no further appeal has been filed and assessments have become final.

Name of the Officers:

Mr. Bipin C. N., DCIT, Kochi

Mr. Sanjay Joseph, JCIT, Kochi

Ms. Tripti Biswas, CIT, Kochi

ADDITION OF PROFITS TRANSFERRED TO RELATED PARTIES

Search case – cash purchase of gold – section 40a(3) – excess stock – routing of transaction through related parties – transferring profit.

The taxpayer is the flagship company of the Kalyan Group in Kerala. A search was conducted on 21/03/2012 on the group. Return of income was filed declaring income of ₹105,40,47,432/- for the A.Y. 2012-13. During the course of search, the Managing Director had conceded an additional income of ₹115 crores representing the value of the stock difference found in the 37 business premises of the Group. Out of this, ₹42 crores belonged to the taxpayer. A GP of 6.22% was returned as against 4.97% adopted for advance tax purpose. Various issued involved are discussed here.

2. **Cash Purchase of Gold:** Thorough Scrutiny of the data seized during the search revealed that the taxpayer was purchasing old gold ornaments in cash, all below ₹20,000/-. By data analysis, it was seen that the taxpayer was splitting the purchases into multiple purchases to make it below ₹20,000/-. All such entries were culled out and it was found that the figures were manipulated. A total disallowance of ₹25,77,24,239/- was made u/s 40A(3).

3. **Excess Stock of Stone in Studded Ornaments:** During the search proceedings, there was considerable quantity of excess stock. The taxpayer came up with the explanation that, excess stock was on account of Gross Weight and Net Weight (Net Weight is after ignoring the weight of stone and semiprecious stones). But analysis of the taxpayers own stock table clearly showed that the weight of stone as per the data master table maintained by the taxpayer was far in excess of the physical stock which tallied with the data as per the individual tables like "barcode", "stksum" and "billsum" as per the physical stock of inventory. Thus, the physical stock of gold was found to be in excess of the stock as per the book by ₹27,93,65,001/-. The

taxpayer claimed that the weight as per the software was inclusive of the weight of stone and hence, unreliable. Considering that the exact weight of stones in studded ornaments could not be correctly determined, 50% of the above excess stock was added back to income. Since no convincing explanation was available, the taxpayer accepted this treatment.

4. **Routing of Transactions through Third Party:** For the A.Y. 2009-10 and 10-11, it was noticed that the taxpayer was routing transactions through a Third Party. During the analysis it was seen that substantial transactions were made through one Ganesh Associates, who purchased from one of their own concern and sold to another of their concern, and thus made profit in the transactions. It was definitely a method adopted to transfer profit out of the group. Taxpayer claimed that, this is like branch transfer and they wanted to avoid reporting as related party transition. The explanation was not convincing and moreover, if the reason was genuine, there was no need to generate profit in this fictitious transaction. The profit amounting to ₹59.41 lakhs for A.Y. 09-10 and ₹395.78 lakhs for A.Y 10-11 made was added to the income of the taxpayer and this was accepted by the Taxpayer.

Name of the Officers:

Mr. M. Muraleedharan, DCIT, Kochi

Mr. Sanjay Joseph, JCIT, Kochi

Ms. Tripti Biswas, CIT, Kochi

ADDITION OF SALES CONCEALED AND DISALLOWANCE OF EXCESS DEPRECIATION ON MACHINERY SOLD.

Concealment of sale of windmill – claim of excess depreciation on windmill sold – foreign exchange fluctuation loss – capitalisation thereof.

The taxpayer firm was engaged in job work related to Manufacture of special fasteners and generation and distribution of wind power. It filed its original return of income for the A.Y. 2012-13 admitting a total loss of ₹4,10,31,065/-. During the course of assessment proceedings, on verification of depreciation statement it was seen that the taxpayer firm had purchased wind will division-V for a consideration of ₹21,25,00,000/- and sold four wind mills for a total sale consideration of ₹9,00,00,000/-. The relevant details/ sales invoices were called for and perused, during which it was noticed that the taxpayer had actually sold four wind mill for sale consideration of ₹4,50,00,000/- each, thus totaling to ₹18,00,00,000/-. On being asked to explain the taxpayer stated that "*The taxpayer has inadvertently omitted to include the value of two wind mills, while computing the depreciation for Income Tax purpose. A copy of revised depreciation schedule for income Tax purpose and copy of the revised computation giving effect to the said change is enclosed".*

2. Thus it emerged that the taxpayer had concealed sale consideration for wind mill to the extent of ₹9,00,00,000/-. The revised depreciation schedule furnished by the authorized representative was perused. The taxpayer revised its depreciation claim to ₹1,62,46,828 from ₹5,22,46,828/- claimed in the return of income. In view of the above, excess depreciation of ₹3,60,00,000/- (₹5,22,46,828- ₹1,62,46,828) claimed was disallowed and added to the total income of the taxpayer firm.

3. Further on perusal of the books of accounts it is seen that the taxpayer had taken foreign currency term loans for acquiring new wind mills during the year and the taxpayer had claimed a sum of ₹1,49,18,535/- as expenditure towards foreign exchange

fluctuation loss. In view of the above the taxpayer was requested to show cause why the above said loss should not be capitalized as per sec 43A of the Income-tax Act, 1961. The crux of the argument of the taxpayer was that the wind mills had been purchased locally and not from a country outside India. The Assessing officer relied on the decisions in the cases of Assistant Commissioner of Income Tax, Vadodara vs. Elecon Engg. Co. Ltd. (189 taxman 83) (SC), Commissioner of Income Tax vs. South India Viscose Ltd.(120 ITR 451) (Madras), Commissioner of Income Tax vs. Bharat General & Textile Industries Ltd. (157 ITR 158 (CAL.) and Jain Tube Co. Ltd. vs. Commissioner of Income Tax (119 taxman 476) (Delhi). In view of the above the taxpayer claim of forex loss to an extent of ₹1,49,18,535/- was disallowed and the same was added to the cost of the Wind Mill as per Sec 43A of the Income-tax Act, 1961.

Name of the Officer:

Mr. K. G. Aruraj, DCIT, Circle-2, Pondicherry

DENIAL OF EXEMPTION U/S 54F FOR COMPUTATION OF LTCG

The taxpayer claimed exemption u/s. 54F which was denied after detailed investigation - Inspection showed that a major portion of said property had been let out for commercial purpose - LTCG was reworked.

The taxpayer, Damodaran sold his vacant land for a total consideration of ₹1.56 crore and claimed exemption u/s. 54F amounting to ₹1.38 crore for Asst. Year 2012-13. Long Term Capital Gains of ₹14,64,620 was declared by the taxpayer and taxes were paid accordingly. The taxpayer submitted the construction details of 7082 Sq. Ft. comprising ground, first and second floors. It was claimed that the entire 7082 Sq. Ft. Area was utilised for residential purpose.

2. Physical verification was carried out by the Assessing Officer and it was found that the two huge halls of about 2394 Sq. ft. each had been constructed on ground floor and first floor which had been let out for commercial purposes to a furniture company. On the second floor, the taxpayer had constructed a residential house with a separate entrance. Photographs of the site were taken and placed as annexures to the Assessment Order. It was therefore concluded that only the second floor was utilised for the purpose of residential accommodation of the taxpayer.
3. Taxable LTCG was reworked out to ₹1,13,97,710 instead of the admitted amount of ₹14,67,500.
4. No appeal has been filed by the taxpayer in this case.

Name of the Officers:

Mr. A. M. Vijayan Nair, ITO, NCW 22(1), Chennai.

Ms. B. Lakshmi Naranan, JCIT, No Corp. Range 22, Chennai

Dr. J. Albert, CIT-7, Chennai

EXEMPTION U/S 11 DENIED AS ONE OF THE TRUSTEES WAS A BENEFICIARY DUE TO DIVERSION OF TRUST FUNDS

A Charitable Trust claimed exemption u/s. 11 - Balance sheet showed credit balance to the Trustees - It was concluded that one of the trustees was a beneficiary - Exemption u/s. 11 denied.

The Trust, Mahalakshmi Kunjithapatham Educational and Charitable Trust is registered u/s. 12AA of the IT Act and is engaged in the field of imparting education. It filed an income of ₹Nil on a gross receipt of ₹2,04,94,732 after claim of exemption u/s. 11 for Asst. Year 2010-11. S. Kunjithapatham, his wife Mrs. K. Mahalakshmi and their three children are the trustees.

2. The Balance Sheet of the taxpayer Trust exhibited a credit balance due to the Trustees, namely, Mr. S. Kunjithapatham and Mrs. K. Mahalakshmi as on 31.03.2010. During the course of scrutiny of the books of accounts, it was found that as on 8.10.2009, the accounts of the Trust showed a debit balance of ₹20,98,480 due from Mahalakshmi Garment Exports, a proprietary concern of Mr. S. Kunjithapatham. During assessment proceedings, it was noted that one of the Trustees was a beneficiary due to diversion of trust funds. The provisions of section 13(1)(c) r.w.s. 13(2), 13(3) and 13(1)(d)/Sec. 11(5) were invoked by the Assessing Officer, thereby denying exemption u/s. 11 of the IT Act. After adjusting the eligible expenditure against gross receipts, the taxable income was determined at ₹79,15,594.

3. The Order of the Assessing Officer was upheld by ITAT, Chennai.

Name of the Officers:

Mr. K. N. Dhandapani, DDIT (Exemp) III, Chennai

Mr. D. N. Kar, CIT (Exemptions), Chennai

TAXING THE CAPITAL GAIN ON SALE OF PROPERTY CLAIMED AS NOT ACCRUED

Property received as per the will – the executor of the will was the brother of the taxpayer – mortgaged liability belonged to the brother as per the will – capital gain not shown by the taxpayer – AO held that the property came to the taxpayer without encumbrance.

As per the AIR details available on the system of the Department, the taxpayer had sold a property for ₹94,00,000/- which was registered on 19.5.2010 with the Sub Registrar, Andheri, Mumbai. In the income tax return, the taxpayer did not disclose the sale transaction of this immovable property.

2. The facts of the case in brief are that Mr. Lachhmi Narayan Bagla had purchased a Flat for a sum of ₹9,50,000/- through agreement dated 21.5.1990. Expenses of ₹4,50,000/- had been incurred on transfer of said flat. The flat was mortgaged to Punjab National Bank, as a collateral security, in respect of a loan sanctioned in the year 1996 to Ms. Mernite Polycast Ltd. which was a closely held company of the family of Mr. Lachhmi Narayan Bagla (owner of the flat) where his sons were directors.

3. Mr. Lachhmi Narayan Bagla expired on 9.2.1998 leaving his last Will and testament dt. 16.10.1997 wherein he had appointed Mr. Shiv Kumar Bagla, his eldest son, sole executor and trustee. Under the said will Mr. L.N. Bagla had bequeathed the said flat at Mumbai to his daughter Ms. Premlata Tibrewala. In the Probate the Hon'ble High Court had directed the executor (i) to make a full and true inventory of the properties and credits of the deceased within six months from the date of issue of probate (ii) to render to the High Court a true account of the said properties and credits within one year from the same date. Mr. Shiv Kumar Bagla, the Executor had submitted inventory of the properties and credits before the Hon'ble High Court on 1.12.1999.

4. As clearly mentioned in clause 7(d) of the Will, Mr. L.N. Bagla had given the flat at Mumbai to his daughter Ms. Premlata

Tibrewala, the taxpayer, and made it clear that the liability to redeem the loan against which the said flat was mortgaged to the Bank shall be of Shiv Bagla and the debts were to be repaid by him. He reiterated that his daughter Ms. Premlata Tibrewala shall not be put to any expense regarding redemption of the loan.

5. The Flat was sold by Ms. Premlata Tibrewala through sale agreement dated 19.5.2010 for a consideration of ₹94,00,000/- and the consideration was paid to PNB against its dues for which the flat was mortgaged. The taxpayer did not disclose the capital gain on the flat. The taxpayer knew that according to the Will she was not liable to redeem the loan from PNB. The taxpayer was not legally liable to redeem the loan taken from PNB. For the taxpayer the liability of PNB loan attached with the flat had ceased on the very day when the property had come into her hands by way of the Will of her father. In fact, by redeeming the mortgage loan the taxpayer had discharged the liability of her brother. Therefore, such redemption was construed as payment made to Mr. Shiv Kumar Bagla. The facts being so the redemption mortgage loan by the taxpayer could not be considered to be the cost of acquisition in the hands of the assessee.

6. The AO applied the ratio of various decisions such as the case of Ms. K. Sarla Devi vs. CIT (1996) 222 ITR 211 (Ker.) and the case of R. M. Arunachalam vs. CIT (1997) 93 Taxman 423. After detailed discussion, the AO held that the Capital Gains had accrued to the taxpayer on sale of the flat at Mumbai and computed the same at ₹72,62,167 which was added to the income and taxed as Long Term Capital Gain.

Name of the Officers:

Mr. C. P. Sharma, ITO, Ward 4(2), Jaipur

Mr. Rajesh Ozha, Jt. CIT, Range-4, Thane

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

EXAMINATION OF BANK ACCOUNT REVEALS INCOME NOT DISCLOSED AND EXPENSES CLAIMED ON WHICH TDS NOT DEDUCTED

Unaccounted cash receipts in saving bank account – deemed dividend of amounts received in this bank account from a company in which the taxpayer is director – payments of business expenses from this bank account without deducting tax at source – disallowance u/s 40(a)(ia)

The taxpayer was engaged in setting up and maintaining mobile towers on contract basis. For A.Y. 2012-13, the income returned was ₹44,27,177/-.

2. During assessment a personal saving bank account of the taxpayer with Federal Bank, Vytilla was discovered. It turned out that most of the taxpayer's unaccounted transactions were being routed through this account. This resulted in a Addition of ₹15,89,000/- on account of unexplained cash deposit. Further certain large cash receipts were noticed which were attributed by the Taxpayer to the sale of a house and land. It turned out that capital gains from this transaction had not been returned. Eventually an addition of ₹5,33,469/- was made under LTCG and ₹1,65,000/- was made under STCG.

3. Verification of the unaccounted saving bank account showed receipts from a company where the taxpayer is a director. Based on this an amount of ₹90,65,604/- was brought to tax as deemed divided. All this was possible due to meticulous examination and analysis of entries in the bank account.

4. Apart from the above additions based on credits in the personal saving account of the taxpayer, certain other additions were also made. ₹1.17 crores claimed as car hire charges was disallowed on account of non-deduction of tax at source.

5. In all, additions totaled ₹2.33 crores. Entire tax demanded (₹71,19,000) was collected. The taxpayer accepted the additions made and did not file further appeal.

6. This is a case where careful examination of books of accounts and bank accounts resulted in substantial additions. The thoroughness with which evidence was marshaled and order was drafted convinced the taxpayer of the futility of further appeal. The assessment resulted in immediate tax realization.

Name of the Officer:

Mr. Appu Joseph Jose, JCIT, Central Range, Kochi

DISALLOWANCE OF UNAPPROVED SUPERANNUATION FUND

The Superannuation Fund was found to be an unapproved fund u/s. 40A(9) of the Income Tax Act, 1961 and was disallowed.

In the course of scrutiny assessment proceedings for the A.Y. 2010-11 in the case of Tamil Nadu Maritime Board, engaged in the business of management and control of Minor ports in Tamil Nadu, it was noticed that the taxpayer's debit under the head Employees Benefit Expenses included contribution to various funds.

2. On further verification, the Superannuation Fund in respect of which the taxpayer had claimed deduction towards contribution was found to be an unapproved fund. As per the provisions of Section 40A(9) , employer's contribution to an unapproved superannuation fund is liable to be disallowed. Accordingly, the contribution to the said superannuation fund was disallowed u/s. 40A(9) by the Assessing Officer in respect of A.Y. 2010-11, raising a demand of ₹1.32 crores.

3. Subsequently, taxpayer applied for and obtained the approval of the CIT for the Superannuation Fund w.e.f 2.08.2013. The contribution to the Superannuation Fund in respect of other earlier years were hit by the provisions of Section 40A(9), being an unapproved fund during the relevant previous years. Therefore, the assessments in respect of the A.Y 2007-08, 2008-09, 2009-10 and 2011-12 (which were not subject to scrutiny earlier) were reopened by issue of notice u/s. 148 in F.Y 2013-14, while the assessment for the A.Y. 2012-13 was picked up for scrutiny under CASS.

4. Though the reopened assessments were time barring only on 31.03.2015, the Assessing Officer took up the case for completion of re-assessments much earlier and passed the orders after making disallowance of the taxpayer's contribution to the said Superannuation Fund.

5. The entire demands raised in respect of all six A.Ys. right from A.Y. 2007-08 to 2012-13 have been collected, the details of which are as under :

A.Y.	Date of Asst. Order	Addition made (₹ in crore)	Demand raised (₹in crore)	Collection made (₹in crore) incl interest	Date of payment
2007-08	23.07.2014	1.48	1.04	1.06	28.10.2014
2008-09	24.10.2014	2.37	1.39	1.42	30.12.2014
2009-10	18.07.2014	2.96	1.63	1.69	27.11.2014
2010-11	07.03.2013	3.69	1.32	1.53	26.05.2014
2011-12	17.03.2014	4.68	1.88	1.98	26.06.2014
2012-13	8.12.2014	7.22	2.11	2.16	30.03.2015
Total		22.4	9.37	9.9	

6. Prompt action of the AO in reopening the assessments, expeditious completion of reassessments and active follow-up of collection of demands raised, has yielded a revenue of ₹9.9 crores in total. Though the taxpayer is in appeal, the CIT(A) has confirmed the assessment for the A.Y. 2010-11.

Name of the Officer:

Mr. K. N. Dhandapani, DDIT (Exemp) III, Chennai

LOAN FROM CLOSELY HELD COMPANY TREATED AS DEEMED DIVIDEND

Deemed dividend on taking loan from closely held Company not declared - Taxpayer is shareholder holding more than 10% of shares – Effort made to avoid payment of tax by taxpayer by claiming that the loan was adjusted against the dividend declared by the company in next year was not accepted.

The Taxpayer, Mr. Uday Chakraborty, is an individual engaged in the business of manufacture of lamination core in the name of his proprietary concern Lamination Core Fabricators. He is also a Director in a closely held private limited company, Eastern Lamination Pvt. Ltd. in which, he holds 57.98% shares.

2. During the course of assessment proceedings for Asst. Year 2012-13, it was noticed that the taxpayer had received a loan of ₹1,10,00,000/- from Eastern Lamination Pvt. Ltd. on which interest of ₹3,15,000/- has also been charged and debited to Profit & Loss Account. Details were collected from the said company and it was confirmed that the company had given loan of ₹1,10,00,000/- on which interest of ₹3,15,000/- was charged. However, it was found that the company was not engaged in the business of lending of money and it was earning income from sale of electric machines and this loan was the only loan given to the taxpayer being its director and substantial shareholder. The said company also had accumulated profit of ₹10,55,72,840/- during the year under consideration when loan was given.

3. Subsequent to detailed enquiries, the taxpayer agreed that the provisions contained in section 2(22)(e) were applicable in this case. However, as further submitted by the taxpayer, a curative measure was taken by the company by way of declaration of interim dividend of ₹1,34,55,960/- to him against which, the whole of loan earlier provided to him along with interest was set off and payment of dividend distribution tax u/s.115-O was made.

4. The Assessing Officer held that as per the provisions of section115-O to 115-Q of Chapter XIID, dividend distribution tax is not payable on dividend taxed as deemed dividend. Therefore, the loan of ₹1,10,00,000/- was held to be taxable in the hand of taxpayer treating the same as deemed dividend u/s.2(22)(e). Interest of ₹3,15,000/- paid on the loan was disallowed as the loan was considered as deemed dividend.
5. No appeal against the assessment order is filed by taxpayer and entire demand of ₹45,34,920/- raised on completion of assessment was paid.

Name of the Officer:

Mr. Sushil Kumar Mishra, DCIT, Circle-49, Kolkata

Gathering Storm
Dr. Harmeet Singh ‘IRS 1989’

INTERNATIONAL TAXATION AND TRANSFER PRICING

INTERNATIONAL TAXATION AND TRANSFER PRICING

ATTRIBUTION OF PROFITS TO PERMANENT ESTABLISHMENT IN INDIA BY CARRYING OUT FUNCTIONAL ANALYSIS

Taxpayer foreign company having Liaison office in India – not paying tax by invoking Article 5(1) read with Article 5(7)(e) of Indo-Singapore DTAA – AO/DRP carrying detailed functional analysis – holding the functions carried out in India much beyond preparatory and auxiliary in nature – comparison of functions carried out by Singapore and Indian entity made- finding given that nature of activity in India elaborate as compared to scanty work in Singapore – profit attribution made by using the comparable commission given to Independent Agent for direct sale of equipment.

The taxpayer, Hitachi High Technologies (S) Pvt. Ltd., Singapore, as a "trading arm" of Hitachi High Technology Corporation (HHT) of Japan, was selling various products including electron microscope, analytical instruments, optical disc, manufactured by HHT in India. It also carries out "sourcing and trading operations in respect of non HHT products and equipments".

2. During the assessment years under consideration, the taxpayer had Liaison Offices (LO) in Bangalore, Mumbai and Delhi and its employees "were engaged into marketing, sales promotion and market research" activities, besides "administration" and "office assistance". The LO was converted into full fledged branch from July, 2007. The taxpayer, however, did not pay any taxes in India before conversion of LO to branch claiming that the activities of Liaison Office are preparatory and auxiliary in nature and thus it does not constitute a Permanent Establishment (PE) in India as per Article 5(1) read with Article 5(7)(e) of the Double Taxation Avoidance Agreement (DTAA) between India and Singapore.

3. A survey under section 133A of the Income-tax Act, 1961, was carried out in the office premises of the company in New Delhi

on 24th April, 2008 and statements of a number of employees were recorded. It was found out that when the taxpayer had a L.O., it was carrying same type of activities which it was carrying now as Branch including accepting the purchase orders, deciding final prices, carrying out marketing research etc. The Assessing Officer, therefore, held that the taxpayer had a PE in India and using the data of 'global profitability' supplied by the taxpayer, the AO attributed 50% of the profit arising from the India transactions to such PE as summarized below:

A.Y.	Turnover (million SGD)	Turnover (₹ crores)	Assessed Income (INR)
2002-03	15.34	40.70	14,65,468
2003-04	19.50	52.45	37,24,345
2004-05	113.21	296.72	1,42,42,854
2005-06	74.41	197.35	1,61,83,140
2006-07	55.93	154.05	1,60,21,945
2007-08	51.62	147.86	2,05,53,037
Total	330.05	889.166	7,21,90,789

4. The draft assessment order was confirmed by the Dispute Resolution Panel (DRP) against which the taxpayer preferred an appeal before the ITAT. The ITAT set aside the directions of DRP and remitted back to the DRP for re-adjudication on the issues of determination of the PE of the taxpayer and attribution of profit thereto.

5. The DRP after taking into consideration the arguments of the taxpayer held that the taxpayer has a PE in India and gave directions for determining the profits attributable to the said PE. On the basis of these directions, the revised assessment orders were passed in March, 2015, which resulted in an enhancement of about ₹116 crores in the assessed income as compared to the original assessment. The reasons given for this decision and the methodology of attributing profits attributable to the PE are summarized as under.

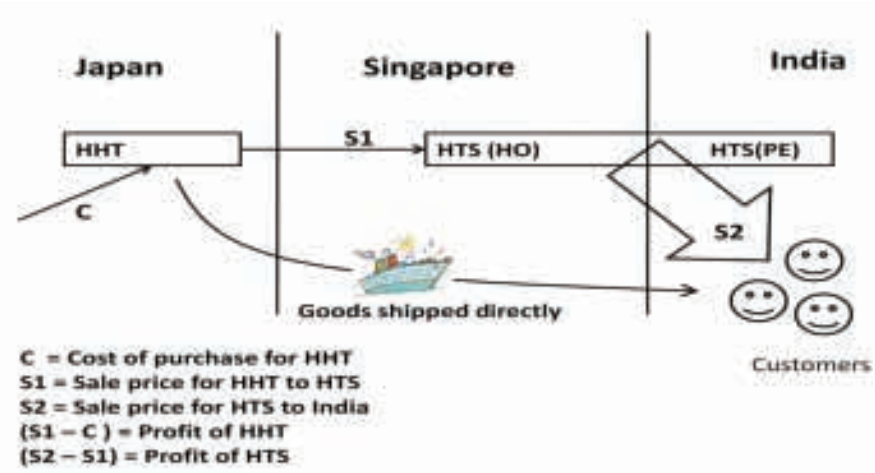
5.1 Since the taxpayer was carrying out business activities in India through its L.O., it has a "business connection" in India as per section 9(1)(i) of the Income-tax Act, 1961 and the business income which is reasonably attributable to the Indian operations will be taxable in India as per the provisions of Indian domestic laws.

5.2 The taxpayer has a PE in India as per Article 5(1) of the DTAA between India and Singapore and the exclusion clauses of Article 5(7)(e) which deals with the fixed place of business maintained solely for the purposes of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise, does not apply.

5.3 The taxpayer company's activities in India can be divided into four segments namely (A)-Sale of equipment to Moser Baer India (MBI), (B)- Sale of Equipment Parts, Spares & Consumables to MBI, (C)- Sale of Equipment through Independent Agent (Forevision), and (D)- Sourcing of Electronic Components for Videocon/Other direct sale. The findings of Survey and other material on record demonstrates that the L.O. was carrying out activities in the nature of obtaining purchase orders from MBI, preparing price quotations for goods to be supplied to MBI, market research, involvement in price related discussions with customers, and follow up on shipments, and these activities cannot be treated as preparatory or auxiliary in nature.

5.4 The profits need to be attributed to the Indian PE under section 9(1)(i) of the Income-tax Act, 1961, read with Article 7(1) of the DTAA between India and Singapore which states that profits of an enterprise may be taxed in India but only so much as it directly or indirectly attributable to the PE. Thus, before embarking upon attributing profit to the business connection or to the PE, 'income of the business' or the 'profit of the enterprise' needs to be determined. It is only thereafter that the exercise of attribution to the 'business connection' or the PE in India can be initiated.

5.5 To determine the profits of the assesee's enterprise, its business model needs to be studied and is represented graphically as under:



5.6 The above business model suggests that the taxpayer in Singapore is a mere re-seller of goods and its main role was to raise invoice and collect payments from Indian customers and thus ostensibly, this business model enabled shifting of profits to Singapore, where a tax resident company can enjoy tax exemption on its foreign income.

5.7 The profit arising to the taxpayer from such invoicing, shown as (S2 – S1) in the above representation, was subject to the transfer pricing provisions of the Indian Income-tax Act as the goods were being sourced through the associated enterprise viz. mainly HHT, and a part of such profit was taxable in India by virtue of it having a PE in India. However, no Transfer Pricing analysis was carried out in India during the assessment years in question.

5.8 The DRP/Assessing Officer carried out detailed functional analysis of the functions performed in Japan, Singapore and India for the four segments mentioned above. With regard to the first two segments of sale of equipment to MBI and sale of parts, consumable etc. to MBI, it was demonstrated that most of the functions are performed in India and Singapore office was

involved only in raising of invoices and collection of payments and thus profits need to be attributed to Indian operations. For the other two segments, i.e., sale of equipment through Independent Agent (Forevision), and sourcing of Electronic Components for Videocon/Other direct sale, on account of insignificant functions carried out by Indian operations, the profits attributable was held to be NIL.

5.9 For attributing profits in relation to the first two segments, i.e. sale of equipments and spares to MBI, the methodology prescribed in Articles 7 and 9 of the DTAA between India and Singapore was followed which states that as a first step the PE of the taxpayer is to be treated as an enterprise that is distinct and separate from the taxpayer in Singapore. At the next stage, a functional analysis needs to be carried out which attributes to the PE the functions performed, assets used and risks assumed by the taxpayer company in respect of the business it carries on through the PE. Finally, a comparability analysis needs to be carried out to determine an arm's length return for the FAR attributed to the PE. Further, any expenses incurred by the taxpayer company in India and elsewhere to earn profits attributed to PE would have to be allowed before arriving at the income of the taxpayer company that can be taxed in India, for the reasons of carrying on business in India through a PE.

5.10 The DRP/A.O. noted that the amount of sale to MBI is not in dispute and all that is required is to find out the margin of profit similarly placed independent enterprise would have earned from carrying out the same/similar business activity in India.

5.11 For such a comparability analysis, the DRP/A.O. noted that the taxpayer company was carrying out sales activities in India through an Independent Agent, i.e., Forevision Instruments, and was paying an average commission of 16.50%. It was demonstrated through functional analysis that activities of taxpayer's PE in India are almost similar to the independent agent Forevision Instruments and thus PE should also be compensated at the same rate.

6. The taxable income of the taxpayer was, therefore, determined as under:

A.Y.	Turnover (million SGD)	Turnover (₹crores)	Arm's Length Profit @16.5% of sales (INR)	Expenses claimed (SGD)	Expenses claimed (INR)	Assessed Income (INR)
2002-03	15.34	40.70	2,32,86,647	3,34,258	88,64,522	1,44,22,125
2003-04	19.50	52.45	4,33,35,513	3,18,858	85,74,092	3,47,61,421
2004-05	113.21	296.72	48,22,84,916	5,48,207	1,43,68,505	46,79,16,411
2005-06	74.41	197.35	31,58,22,941	4,72,417	1,25,28,499	30,32,94,442
2006-07	55.93	154.05	22,97,12,312	4,35,646	1,19,97,691	21,77,14,621
2007-08	51.62	147.86	21,70,05,813	8,20,592	2,35,01,755	19,35,04,058
Total	330.05	889.166	131,14,48,142	29,29,978	7,98,35,064	1,23,16,13,078

Name of the Officers:

Mr. Kanv Bali, DCIT, New Delhi

Mr. Ajay Sharma, Addl. CIT, New Delhi

Mr. M. S. Ray, CIT, New Delhi

Mr. Sanjay Puri, CIT (DRP-1)-1, New Delhi

Ms. Simi Gupta, CIT (DRP-1)-2, New Delhi

Mr. Raj Tandon, CIT (DRP-1)-3, New Delhi

CAPITAL GAINS OF A NON-RESIDENT TAXED BY APPLYING SECTION 50C OF THE INCOME-TAX ACT 1961

*Sale of Plot by a Non-Resident –claim of transfer in 1994 rejected based on crucial evidences – held by the AO that actual sale took place in 2007 - held to be taxable at sale consideration of ₹2,55,50,000 by invoking provisions of section 50C as against the consideration of ₹100000 – the CIT(A) and ITAT con*f *rmed the action of the AO.*

The taxpayer, Mrs. Bhavya Ananth Udeshi, a non-resident individual, and a resident of Sri Lanka, in her return of income for A.Y. 2008-09 showed a capital gains of ₹8,000 on sale of Plot No. 213, K III, Jubilee Hills Cooperative House Building Society Ltd. The said plot was allotted to the taxpayer by the Society on 9th December, 1991, for ₹92,000 and was claimed to have been sold to Mrs. Neerja Reddy on 20th April, 1994, for ₹1,00,000. The sale deed, however, was not executed due to legal hurdles. On 23rd October, 2007, the sale deed was executed by the taxpayer in favour of Mr. G. Srinivas Reddy, with Mrs. Neerja Reddy as a consenting Party and the property was finally transferred to him. The taxpayer, accordingly, offered ₹8,000, i.e., the difference of consideration received in 1994 of ₹1,00,000 and the cost of acquisition of the plot of ₹92,000, for tax in A.Y. 2008-09.

2. During the course of assessment proceedings, the Assessing Officer noted that the market value of the property as determined by Joint Sub-Registrar, RO, Hyderabad South, is ₹2,55,50,000 and adopted this value as sale consideration under section 50C of the Income-tax Act, 1961. The following additional facts and arguments to address the submissions were mentioned in the assessment order.

2.1 Mr. G. Srinivas Reddy had paid the taxpayer ₹74,20,000 as potential tax liability on which an advance tax of ₹69,00,000 has been paid and claimed as refund.

2.2 There was no evidence of payment of ₹1,00,000 to Mrs. Neerja Reddy in 1994.

2.3 Although the intention of sale of the Plot to Mrs. Neerja Reddy was informed to the Society, no receipt of amount or the fact of handing over the property was informed to the Society.

2.4 On request of Mrs. Neerja Reddy, a Special Power of Attorney was executed in favour of her nominee by the taxpayer on 22nd April, 1994, but this Power of Attorney is only a facilitator to perform certain actions and things on behalf of the taxpayer and no rights in the property has been extinguished in 1994.

2.5 After clearing of the legal hurdles in 2006, the Society executed the sale deed in favour of the taxpayer on 15th December, 2006 and only in October, 2007, it was transferred by the taxpayer to Mr. G. Srinivas Reddy. If the plot was transferred to Mrs. Neerja Reddy in 1994, it should been registered in her name in 2006 and not in the name of the taxpayer.

2.6 Through documents collected from Society, it was ascertained that on 3rd January, 2002, the taxpayer requested the Society to register the plot in her name and also made a payment of ₹1,28,010 and this request was reiterated on 1st December, 2004. On 10th August, 2006, the taxpayer expressed her wish to construct her own house on the said plot and requested to register such plot on her name. After registration of the plot on 15th December, 2006, she again requested Society to give NOC to construct a building and provided plans for municipal approval, which was given to her on 28th June, 2007. Only on 23rd January, 2008, she requested NOC for selling the plot to Mr. G. Srinivas Reddy with whom she had entered into an agreement on 23rd October, 2007.

2.7 The Architect had given an affidavit that the taxpayer had prepared blueprints for the proposed building at the Plot in 2006 and has submitted the same to the municipal authorities as also to the Society.

2.8 Various issues were raised like - when the sale was supposed to have been made to Mrs. Neerja Reddy, how the ultimate registration got done in the name of Mr. G. Srinivas Reddy and what consideration, if at all, is received by Mrs. Neerja Reddy.

2.9 It is categorically mentioned in the sale deed that the taxpayer has absolute right, title and full authority to convey the scheduled property and that she has never entered into any agreement or arrangement for the purpose of transfer or any other similar arrangement.

2.10 The taxpayer has given false affidavit that Mrs. Neerja Reddy is her sister while during enquiries she could not even give the address or phone numbers of Mrs. Neerja Reddy.

3. The order of the Assessing Officer was confirmed by CIT (A) and by the ITAT. The ITAT, after addressing the various contentions raised by the taxpayer on the basis of facts brought on record, held that for a transfer to take place under section 2(47)(v) of the Income-tax Act, 1961, there should be contract for consideration, it should be in writing, it should be signed by the transfer or and transferee, it should pertain to the transfer of the immovable property, the transferee should have taken possession of the property and the transferee should be ready and willing to perform the contract. The ITAT concluded that on the facts of the present case, the transfer has taken place on 23rd October, 2007 and thus has rightly brought to tax in the A.Y. 2008-09.

Name of the Officers:

Mr. B. Tyagaraju, ITO, Hyderabad

Mr. Gangadhar Panda, Addl. CIT, Hyderabad

CONSULTANCY CHARGES PAID TO EMPLOYEES OF INDIAN BRANCH

The taxpayer, a manufacturer of auto components claiming fees of ₹2.14 crore paid to Associated enterprise as onsite consultation charges – the taxpayer justifying the payment by using TNMM as MAM at the entity level – TPO segregated the transaction of consultation fees - investigation and statement recorded revealed the payments actually made to Indian employees only evidencing AE did not render any service - concluded that since no services rendered by the AE, ALP of consultation fee should be Nil - adjustment of ₹2.14 crore made to the Returned income.

The taxpayer **M/s. NVH (India) Pvt. Ltd., (NVHI)** is engaged in manufacture of interior parts for Hyundai Motors India ("HMI)'s passenger cars. It is a wholly owned subsidiary of NVH Korea. The international transactions with its AE were import of raw material, import of fixed assets and payment for intra group services. The taxpayer considered all these international transactions at arm's length by using entity level Transactional net margin method as the most appropriate method claiming its margins to be at par with its comparable companies.

2. The TPO examined all the international transactions separately and among them found that a payment by way of Consulting Fee of ₹2,13,93,393 was made to the parent AE. The services envisaged were supposed to be provided to the taxpayer by the parent through employees on its roll who would visit the taxpayer as on-site Consultants. The perusal of the agreement called for revealed that it specifically provided as under:

   "Both parties hereby confirm that the Dispatched Persons designated by Party A* to Party B* under this Agreement are the employees of Party A, while such Dispatched Persons have no employment relationship with Party B and are not eligible to any benefits applicable to employees of party B."

   (* party A in the parent of the taxpayer and party B is the taxpayer as per the agreement)

3. Further enquiries disclosed that the services were rendered by the AE through the following personnel

Employee	Amount (in USD)	Details
HEE WOO KOO	2,22,000	@ $18500 p.m.
KYUNG HO SONG	90,000	@ $7500 p.m.
KYUNG KON KIM	74,400	@ $6200 p.m.
SEOK HEE LEE	66,000	@ $5500 p.m.
	4,52,400	@ 37,700 p.m.

But it was so found out by the TPO that all the above employees were employees of the taxpayer itself and not of the AE. All of them also figured in the list of persons in the notes to accounts for whom expenditure was grouped under the head 'Employee cost – Indirect'. This cost included Managerial remuneration and perquisites paid to Managing Director, Directors and General Manager (Finance). It meant that they were offering their services to the taxpayer as regular employees only.

4. To follow up the matter further, the persons at the helm of affairs of the taxpayer company were summoned by TPO and statements were recorded to ascertain the factual position. The deponents admitted that the persons deputed and the persons serving as MD/Directors/General Manager were one and the same and there were no persons specifically deputed as onsite consultant and the supposed services were rendered by the employees of the taxpayer designated as MD/Directors/General Managers. The TPO corrected these facts with the recitals in the agreement which convey that NVH Korea (AE) had to depute its technically qualified employees as On-site consultants who would render assistance to the taxpayer. As per the agreement, they could not be the employees of the taxpayer company.

5. It was also inferred that these employees of the taxpayer company were already getting remuneration for their services in the form of salary. The payments made to these employees have been grouped as Managerial remuneration to MD Included as part of 'Employee cost – Indirect' and the details of Expat Remuneration shows the remuneration, TDS burden borne

by the taxpayer company, other perks by way residential accommodation, tuition fees, PF etc., and they were employees on the rolls of the taxpayer company and they have filed their returns in India admitting income under the head Salary and Tax has been deducted at Source at the rates applicable for salary income.

6. Under the above circumstances, treating them in the dual role of on- site technical consultants, who were employees of the AE dispatched to India for rendering technical consultancy services, for which payment was required to be made by the taxpayer was held to be contrary to the spirit of the terms of the agreement entered into and inferred that such a claim could not be entertained by an uncontrolled enterprise applying the need –evidence- benefit test. Since no service was rendered by the AE no payment could be made in an uncontrolled and independent situation. Taking such an uncontrolled enterprise as a comparable, the payment that would have been made was held to be NIL and therefore, in the taxpayer's case also the Arm's length price of such technical fees was determined to be NIL. Therefore a downward adjustment of ₹2,13,93,393 was recommended to the AO while computing the income from International transactions. The taxpayer did not contest the issue in appeal and paid the taxes on the adjustment proposed.

Name of the Officers:

Mr. S. Suresh Kumar, JCIT, Chennai

Mr. R. B. Naik, CIT, Chennai

INCOME FROM DRILLING OPERATIONS TAXED U/S 44BB AFTER REJECTING THE BOOKS OF ACCOUNTS

Income earned by drilling operations in India claimed to be non-taxable on account of huge depreciation of the drillship - books of Accounts rejected u/s 145(3)of the Act as they did not reflect the correct and true profitability of the taxpayer – found to be suffering from other shortcomings like simultaneous ownership of same assets in Singapore Head Office accounts and India Project Office accounts - the gross receipt accordingly taxed under section 44BB.

Blackford Dolphin Pvt. Ltd. (BDPL), a company incorporated in Singapore, owns "Blackford Dolphin", a drillship designed to carry out deep sea drilling activities. Dolphin Drilling Ltd. (DDL) had entered into a contract with Reliance Industries Ltd. for drilling operations in India. In order to perform this drilling operations, DDL entered into a contract with BDPL wherein BDPL provides the drillship "Blackford Dolphin", on Charter hire.

2. For the financial year relating to A.Y. 2011-12, BDPL received ₹73,23,07,163 but claimed that its income is not taxable in India on the basis of its accounts prepared in India in which among other things, a depreciation of ₹81,92,00,459 on the drillship "Blackford Dolphin" was claimed.

3. During the course of assessment proceeding, it was noted that the drillship entered into the Indian waters on 29th January, 2010 and it was introduced in the block of assets of the BDPL-India Project Office at a cost of ₹2950,02,67,399. The drillship left India on 6th June, 2010, after conclusion of the contract. The taxpayer presented its account up to 31st March, 2011, and showed the assets as "block of assets" in the balance sheet as on 31st March, 2011, claiming that the accounting is based on liquidation basis of accounting. Depreciation at the rate of 7.5% was, therefore, claimed.

4. The Assessing Officer rejected the books of account under section 145(3) of the Income-tax Act, 1961 and passed a draft order which was confirmed by the Dispute Resolution Panel (DRP). The reasons given by the Assessing Officer/DRP for rejection of the books of accounts are summarized below

4.1 It is a fact that the drillship left Indian waters on 6th June, 2010 and thus the same cannot continue to be shown as block of assets till 31st March, 2011.

4.2 While the gross block of fixed assets, being the drillship, has been recorded at ₹1,617.85 crores in the balance sheet, as representing its original cost less accumulated depreciation, the value taken for calculating depreciation claim was on the gross block of ₹2,559.07 crores.

4.3 During F.Y. 2009-10, the taxpayer had shown fixed assets being drillship at ₹2,599.07 by debiting the same to Head Office and introducing the same into Indian operations. However, no evidence was produced to prove that the drillship was transferred from the books of BDPL, Singapore Head Office to BDPL – India operations and ceased to be assets in the books of BDPL, Singapore. The same assets cannot continue in the books of accounts of two different entities at the same time and both of them cannot continue to be owner of the same asset simultaneously.

4.4 On 6th June, 2010, when the fixed assets is no longer used by the taxpayer, no entry has been passed for relinquishment of the assets which would be transfer of capital assets at the invoice value of ₹2,559.07 crores as per the custom invoice.

4.5 As per the Accounting Standards 24 issued by ICAI, in case of cessation of operation, total assets of the company are required to be shown as assets held for sale and the same is required to be shown at the carrying cost as on the balance sheet date. The taxpayer did not comply with the Accounting Standards.

4.6 The taxpayer in its accounts for Indian operations has recorded only those transactions which in its opinion were necessary. Even the expenses relating to drilling ship have not been recorded in the books of accounts and only legal and professional charges

incurred have been recorded. No separate bank accounts have been maintained for India operations and no cash flow has been captured in the books of accounts. The project control account is in the nature of a balancing account and does not represent anything real or physical.

4.7 The financials have been prepared for Indian operations and once the Indian operation is discontinued, all assets which are held for Indian operation have to be appropriately relinquished/ appropriate accounting have to be passed for this kind of transfer so that the true and fair picture of the Indian operation is presented. However, the way the financial were presented, it showed that the Indian operations are still continuing and fixed assets continued to be in the block of assets for business purposes which is factually incorrect and misleading and thereby distorting the profitability statement of the taxpayer.

5. The income of the taxpayer was, therefore, computed under section 44BB of the Income-tax Act, 1961, as 10% of gross receipt of ₹73,23,07,163, at ₹7,32,30,720.

Name of the Officers:

Mr. Rajeev S. Kesarwani, DCIT, Mumbai

Mr. Shishir Srivastava, Addl. CIT, Mumbai

Mr. C. S. Gulati, CIT, Mumbai

TAXABILITY OF FOREIGN PROFESSIONAL ON ACCOUNT OF FIXED BASED IN INDIA

The taxpayer a U.K. resident – professional service fees paid to him by Indian Company – amount claimed exempt under Article 15 of India-U.K. DTAA - assessment order passed after field inspection and recording of statement of the Director of the Indian Company – based on evidences the taxpayer held to have fixed base in India and such amount held to be taxable- the taxpayer having approached AAR – held the payment received to be in the nature of FTS.

The taxpayer, Mr. Ian Leslie Spooner, a U.K. resident, received professional services fees amounting to ₹50,20,596 from rendering of professional services to CEMA Automation India Pvt. Ltd., an Indian company. In the Return of income filed for A.Y. 2012-13, the taxpayer claimed that the said professional fees is not taxable in India in view of Article 15 of the Double Taxation Avoidance Agreement (DTAA) between India and United Kingdom related to independent personal service.

2. The taxpayer claimed that under Article 15 of the DTAA, the income would be taxable in India only if the person is present in India for a period or periods aggregating to 90 days in the relevant fiscal year or if he has a fixed base regularly available to him in India for the purpose of performing his activities, and since neither of these conditions are satisfied, the professional fees is not taxable in the case of the taxpayer. He further contended that the services were rendered in the United Kingdom and thus on income earned through performance of these services in United Kingdom no taxes would be payable in India.

3. During the course of assessment proceedings, the Assessing Officer conducted field inspection at the premises of CEMA Automation India Pvt. Ltd. He also examined Mr. S. Vasan, Director of the company and recorded his statement on oath. The following facts emerged from the assessment proceedings.

3.1 Even when the taxpayer was not physically present in India, he was engaged in day to day activities of CEMA Automation India Pvt. Ltd. through Internet, telephone and video conferencing.

3.2 The taxpayer participated in all board meetings held by CEMA Automation India Ltd during F.Y. 2011-12.

3.3 The company is providing a place to conduct the activity in the form of guest house, conference hall etc., whenever taxpayer visited India, which can be considered to be a fixed base in India.

3.4 Being an active director in the company all the decisions were taken only after consulting and taking approval from the taxpayer and that the company cannot function without the services rendered by him.

4. From the above, the Assessing Officer concluded that that the taxpayer had a fixed base in India and the taxpayer's role and involvement in functioning of company was indispensable.

5. The taxpayer had also separately filed appeal before Authority for Advance Rulings regarding whether payments would constitute as Fees for technical Services or on any other manner covered under Article 15 of DTAA. The statement recorded from the Director during inspection was furnished before the AAR. Based on the facts collected during the inspection conducted by the Assessing Officer that the taxpayer had a fixed base in India, the Authority for Advance Rulings decided that the payment received by Mr. Ian Leslie Spooner would be in the nature of Fees for Technical Services, strengthening the stand taken by the department.

6. Hence, the remuneration received on services rendered by the taxpayer was treated as Fees for Technical Services and ₹50,20,596 was taxed in India and the taxpayer also agreed for the same.

Name of the Officers:

Ms. S. Sudha, ITO, Chennai

Mr. C.V. Pavana, JCIT, Chennai

Mr. M. Rathinasamy, CIT, Chennai

WITHHOLDING TAX ON PAYMENTS TO COMPANIES LOCATED IN CYPRUS

Payments made to Cyprus Company – no tax deducted by the deductor - held by the Assessing Officer to be liable for withholding tax in India at the rate of 30% in view of Cyprus being notified u/s 94A of the Act as a non-cooperative jurisdiction -the deductor held to be in default - demand raised in the assessment order - writ petition filed by the taxpayer in the Madras High Court challenging the Constitutional validity of Notification of Cyprus as non cooperative jurisdiction and the order of the Assessing Officer u/s 201(1)/201(1A) – writ petition dismissed by Madras High Court.

A Cyprus company named Skyngelor Limited was holding 15,200 equity shares of face value of INR 10 and 21,39,200/- Compulsorily Convertible Debentures (CCDs) of face value of INR 100 in an Indian company named Kovai Real Estate Private Limited. Through a Securities Purchase Agreement (SPA), the Cyprus company agreed to transfer these securities at a rate of INR 8.19 per share and INR 81.9 per CCD, i.e., less than face value, for a total consideration of INR 17,53,24,968/- to Mr. T. Rajkumar and his brothers Mr. K. Dhanakumar and Mr. K. Dhanashekhar.

2. The first installment of the payment amounting to ₹14,63,97,888 was made on or around 31st October, 2014, on which no taxes were withheld in India. The Income Tax Officer (Assessing Officer) initiated proceedings under sections 201(1)/201(1A) of the Income-tax Act, 1961, on 29th January, 2015 and passed orders under these sections on 27th April, 2015.

3. The Assessing Officer in his order noted that Cyprus has been notified as a "notified jurisdictional area" under section 94A(1) of the Income-tax Act, 1961 on 1st November, 2013. One of the implications of this notification as provided in section 94A(5) of the Act is that if a person located in Cyprus is entitled to receive any sum or income or amount on which tax is deductible,

the tax shall be deducted at the highest of the following rates, namely (a) at the rate or rates in force; (b) at the rate specified in the relevant provisions of this Act; and (c) at the rate of thirty per cent. Since 30% is the highest of the three, the Assessing Officer held that Mr. T. Rajkumar and his brothers should have deducted tax before making payment to Cyprus Company and thus the taxpayers are in default. The total demand raised in the three cases were ₹4,81,77,268.

4. Against these orders, Writ Petitions were filed in the Madras High Court, which were dismissed through order dated 12th April, 2016. The Hon'ble High Court held that section 94A(1) as also the Government's decision to notify Cyprus under section 94A is Constitutionally valid. The Hon'ble Court held that the principles that the provisions of the treaty will have effect if they are in conflict with domestic laws cannot be stretched too far to conclude that Parliament does not have power to make law in respect of a matter covered by the treaty and thus Parliament does have the power to enact section 94A(1). The Hon'ble Court also quoted extensively from G20 communique and countries' resolve to deal with non-cooperative jurisdictions, listed the steps taken by other countries and concluded that section 94A was the need of the hour.

Name of the Officers:

Ms. H. Kabila, DCIT, Chennai

Mr. S. Ravichandran, Addl. CIT, Chennai

Mr. M. Rathinasamy, CIT, Chennai

DETERMINATION OF ARM'S LENGTH PRICE AFTER HOLDING THROUGH FAR ANALYSIS THAT THE TAXPAYER IS CONTRACT MANUFACTURER

The taxpayer, a contract manufacturer of third party entity engaged in manufacture of footwear – the invoices routed through AE in low tax jurisdiction – TPO f nding that even while no evidence of services rendered by the such AE, the AE getting 10% of the invoice value raised to third party - it was held that in the absence of any service, payment made to AE, merely a means of prof t shifting – thus ALP of exported goods determined at order price placed by the third party client and not after reducing 10% in favour of the AE.

The taxpayer, Lotus Footwear Enterprises Ltd. is the Indian Branch of Lotus Footwear Enterprise, a British Virgin Islands entity, which is a subsidiary of Growth Link Overseas, Honk Kong. The taxpayer was engaged in manufacturing of shoes for NIKE, USA. The group, of which the taxpayer was a part, had globally established multiple dedicated centers for manufacturing shoes exclusively for NIKE as contract manufacturer.

2. The goods were manufactured on the specific orders directly received from NIKE by the taxpayer. The physical movement of goods also happened from the taxpayer's end to the destination specified by NIKE. However, the export invoices were raised on its Associated Enterprise (AE), Growth Link Overseas, Hong Kong and the said AE in turn raised invoices on NIKE. The invoice price of the taxpayer was less by a clear 10% on the price specified in the order received from NIKE. The invoice price of the AE to NIKE was equivalent to the order price of the NIKE on the taxpayer. The export proceeds were routed through the AE who retained 10% of the order price as consideration for certain services claimed to have been rendered by the AEs to the taxpayer.

3. The financial results of the taxpayer showed only losses on a year on year basis which was inconsistent with the FAR profile admitted by the taxpayer. The taxpayer claimed itself to be an entrepreneurial entity and claimed various economic adjustments like capacity utilization adjustment and working capital adjustment to benchmark AE transactions using TNMM method.

4. A diligent scrutiny of the FAR analysis clearly presented that the taxpayer is an accredited contract manufacturer for NIKE. The entire raw material for manufacture was procured by the AEs and supplied to the tax payer from Vendors approved by NIKE. The moulds and dies and other technical inputs for manufacture of shoes was provided by the AEs which was again designed and approved on the basis of the requirement of NIKE. The end customer exercised complete control and inspection of the taxpayer's premises and had the authority to down-grade the taxpayer's unit on the basis of the quality of the shoes manufactured. A clear case was made out by the TPO that the claim of the taxpayer based on the FAR analysis that it was an entrepreneurial entity was not correct. It was held that the need for a payment to AE for claim of receipt of specific services requires to be recorded as a specific expenditure and cannot be by way of an outside the book adjustment. When the value of an order is known and the order is executed as such without there being any change, the taxpayer has to record the value of such export equivalent to the order price and cannot be permitted to adjust the same by way of a payment equivalent to 10% of the order price as consideration for services received. Therefore the ALP of the export of goods was determined to be equivalent to the order price using CUP method.

5. The transfer pricing audit scrutiny resulted in adjustments for A.Y. 2010-11 and A.Y. 11-12 amounting to ₹13,97,08,685 and ₹25,58,53,091 respectively. These adjustments have been upheld by the DRP.

Name of the Officers:

Mr. S. Suresh Kumar, JCIT, Chennai

Mr. R. B. Naik, CIT, Chennai

DETERMINATION OF ARM'S LENGTH PRICE IN DISTRIBUTION AND MANUFACTURING SEGMENT

Taxpayer engaged in distribution of Air-conditioner manufactured by its AE and manufacturing of goods licensed by the AE – large number of international transactions – benchmarked by the taxpayer using TNMM for distribution and manufacturing segments – the TPO based on cogent reasons rejected TNMM for distribution segment and used RPM - for manufacturing segment, claim of the taxpayer for capacity utilization adjustment tackled by the TPO using comparables with capacity utilization similar to taxpayer – a cumulative adjustment of ₹153,40,73,397 made.

The taxpayer, Daikin Air-conditioning Private Limited is engaged in the business of manufacturing and trading of air conditioners and other related products. It has entered into a large number of international transactions including the purchase of finished goods for resale, the import of raw materials and spares for the manufacture of air conditioners, the payment of royalty and the provision of certain services. The taxpayer has used TNMM as the method to benchmark these international transactions. The taxpayer has used multiple year data.

Distribution function (import of finished goods)

2. The international transaction in this segment is the purchase of finished goods for resale. After examining all issues that are material to the case and the documents that have been submitted, a show cause notice was issued to the taxpayer. The main focus of the show cause notice was proposed change of most appropriate method. The taxpayer claimed that in the distribution of air conditioners it does not make any value addition to the goods that it re-sells and as such Resale Price Method (RPM) would be the best method to benchmark this international transaction. However, the

taxpayer had used TNMM citing the lack of reliable gross margin data.

3. During the course of the TP proceedings, when the taxpayer was asked to provide gross margin data, it easily and promptly provided the same, implying thereby that its claim that reliable data is not available was without proper bases. Under these circumstances, RPM was chosen as the method for benchmarking the international transactions relevant to this segment.

4. The TPO held that in RPM, the comparables were to be chosen carefully as the comparables selected by the taxpayer in TNMM method being slightly less sensitive to products could not be used for RPM.

   Accordingly, it was found by the TPO that only Usha International Ltd was a suitable comparable rejecting two other comparables chosen by the taxpayer. The gross margin of Usha International Ltd was found to be 39.06% as against 24.59% returned by taxpayer. An adjustment of ₹882,823,975 was made.

Manufacturing Segment

5. The international transactions in this segment are the import of raw materials and spares and the payment of royalty. The taxpayer used TNMM to benchmark these international transactions. While doing so, it has claimed a capacity utilization adjustment on this account. The taxpayer claimed that the primary reason for low margin is the underutilized capacity as it had utilized only 39.91% of its capacity while its comparables had utilized much higher capacities.

6. The TPO considered that carrying out comparability adjustment is a process that needs reliable and accurate data. Since, there are differences in the manner of presentation of audited accounts to overcome this problem. The TPO used only those comparables that have capacity utilization comparable to the taxpayer.

7. Accordingly, two comparables were used. Lloyd Electric & Engineering Ltd (capacity utilization: 58.53%) and Subros

Ltd. (capacity utilization: 40.38%). This took care of the concerns regarding capacity utilization and unadjusted margins were used. The average net margin of these two companies was 5.83%.

8. The taxpayer had also sought a working capital adjustment on the ground that the level of inventories, debtors and creditors varies as a percentage of total cost. Apart from that, the taxpayer had not provided any justification for a working capital adjustment. The concept of working capital was explained cogently by the TPO, he held that since both - taxpayer and the comparables had revenue from third party, they would factor in the interest expenditure while negotiating and fixing the price during the course of its sale since there is no difference in the model of the taxpayer vis a vis the comparables, not adjustment was held to be warranted to taxpayer – a cumulative adjustment of ₹153,40,73,397 made.

9. The TPO analyzed the issue and observed that a working capital adjustment cannot be allowed just because there may be differences between level of inventories, debtors or creditors. He held that such adjustments will be allowed only if the international transactions have a bearing on these differences. There is nothing on record to show that the taxpayer took these differences into account when it set its transfer price with its AE. He also explained the situation, where working capital adjustment should generally be allowed. It was discussed in the order that in cases of captive service providers, working capital adjustment was considered to be desirable for the reason that the such services provided are unable to factor - in their working capital availability while incurring expenses on fixed costs like –employee cost, rentals, electricity cost etc. It was pointed out by the TPO that the taxpayer makes sales to non-AEs and it makes its raw material purchases from the AEs comparability adjustments are made by entities that are captives in the sense that their revenues are from associated enterprises. The TPO held that this was not the case with the taxpayer. Its revenue were from unrelated parties and while fixing the price, the taxpayer can take into account the working capital similar is the

case with comparables who incorporate the effect of working capital while fixing the price.

10. After disposing all the objections raised by the taxpayer, the final adjustment u/s 92CA was worked out at ₹651,249,422/- in manufacturing segment. The cumulative adjustment in the case was ₹153,40,73,397/-. The DRP has upheld the adjustments made save allowing working capital adjustment to the taxpayer.

Name of the Officers:

Mr. Bhaskar Goswami, Addl. CIT, New Delhi

Mr. Ganapati Bhat, CIT, New Delhi

REJECTION OF CAPACITY UTILIZATION ADJUSTMENT IN CASE OF SOFTWARE DEVELOPMENT COMPANY

The taxpayer engaged in the business of design and development of customized software applications services to the AE – also provided technical support services to unrelated enterprises in India - the taxpayer carried out capacity utilisation adjustment to arrive at the higher OP/OC margin - analysis carried out by the TPO in respect of month wise details of the employees – finding given by the TPO that the numbers of employees increased consistently during the year, thus holding claim of under utilisation of capacity by the taxpayer erroneous – rejection of the claim resulting into adjustment of ₹8.26 crores.

The taxpayer, Saxo IT India Pvt. Ltd. was originally incorporated in 2003 as Kring Technologies India Pvt. Ltd. Through subsequent changes in ownership and name, the taxpayer continued its business of design and development of customized software applications. Further, it also provided technical support services to unrelated enterprises in India. During AY 2011-12 (FY 2010-11), the primary international transaction of the taxpayer with its AE was provision of software development services amounting to ₹20.72 crores.

2. In order to benchmark this transaction, the taxpayer adopted TNMM as the most appropriate method. In its Transfer Pricing study, the taxpayer had reported OP/OC margin at 22.63%. However, as per the Profit and Loss Account of the taxpayer, the OP/OC margin of the taxpayer worked out to -15.34%. It was noted that the taxpayer had carried out capacity utilisation adjustment to arrive at the higher OP/OC margin of 22.63%. The taxpayer was asked to substantiate the working of its OP/OC margin during the course of TP proceedings. On perusal of the details submitted by the taxpayer it was seen that the expenditure on Personnel cost had been allocated on the basis of man days utilized vis-a-vis the man days available. In respect of

the operating expenditure including depreciation the adjustment on account of capacity utilization was made by considering full bench capacity at 300 while utilized bench capacity was considered at 115.

3. Analysis was carried out by the TPO in respect of month wise details of the employees and it was seen that the number of employees employed by the company had increased consistently as follows:

Sl. No.	Month	No. of employees employed
1	April, 2010	59
2	May, 2010	58
3	June, 2010	68
4	July, 2010	75
5	August, 2010	85
6	September, 2010	98
7	October, 2010	106
8	November, 2010	125
9	December, 2010	154
10	January, 2011	161
11	February, 2011	181
12	March, 2011	213

4. In such a scenario, the assumption made by the taxpayer that the full bench capacity for the entire year was 300 was considered erroneous. Since, the numbers of employees had increased consistently during the year, the full bench capacity could not be considered at 300 for the entire year.

5. During the course of TP proceedings, the taxpayer was also asked to provide the basis for assuming that the comparables were operating at 100% utilization during the course of proceedings. In its reply it was mentioned that since the comparables were incorporated long ago and were well-established vis-à-vis the taxpayer, the capacity utilization adjustment was made. The assumption made by the taxpayer that any entity incorporated long ago, especially in IT service sector, need not expand was not

considered appropriate. IT companies normally, have sufficient bench strength for immediate execution of projects and none of the companies operate at 100% capacity utilization. Moreover, the taxpayer too, is a company incorporated way back in 2003. Consequently, the assumption made by the taxpayer about the capacity utilization of comparables was held to be incorrect. Further, expenses like rent, repairs, maintenance, travelling etc. were also analyzed by the TPO, leading him to infer that the taxpayer failed to draw any correlation between these expenses and the employee expenses to demonstrate that the said expenses pertained to the larger number of employees than were being used. These facts were documented in the TP order after giving a detailed show-cause to the taxpayer and meeting its arguments and objections. It was also brought to the taxpayer's notice that comparability adjustment would have been permissible if the same could be reliably made to the margins of the comparables and to in its own case i.e. the tested party. This was as per the OECD guidelines on comparability adjustment.

6. Accordingly, the capacity utilization adjustment carried out by the taxpayer was rejected. An upward adjustment of ₹8.26 crores was made in this case. In appeal, the Hon'ble Delhi ITAT in its order dated 5th February, 2016, upheld the view taken by the TPO that capacity utilization could not be allowed as an adjustment in the facts of the case as the taxpayer had failed to substantiate such adjustments by submitting reliable data and making reasonably accurate adjustments to the PLI of the comparables.

Name of the Officers:

Mr. Anurag Sharma, Addl. CIT, New Delhi

Mrs. Kavita Pandey, CIT, New Delhi

REJECTION OF CUP AND APPLYING TNNM FOR TRANSFER PRICING ANALYSIS AND ADJUSTMENTS ON ACCOUNT OF INTRA GROUP SERVICES

*The taxpayer benchmarked its international transaction of supply of metro trains to its AE using internal CUP – TPO rejecting the approach as the taxpayer unable to establish comparability on factors like, Contractual terms, Level of market, Geographical market in which the transaction takes place, Intangible property associated with the sale etc. – the TPO carrying out analysis after collecting information u/s 133(6) - benchmarking the international transaction using segmental TNMM to make adjustment of ₹644,123,437 – also disallowing the Intra-group services through substantial evidences and detailed analysis of service agreement- the DRP and ITAT substantially con*f *rmed the* f *ndings and the adjustment made.*

The business of Bombardier Transportation India Ltd. (BTIL) is split into various sub-divisions, which include Propulsion ('PPC'), Rail Control Systems or Signalling ('RCS') and Mainline & Metros ('MLN'). The main line and metros segment has sub divisions of passengers (PGR) and bogies (BOG). Under the MLN division, BTIL is involved in manufacturing of metro trains for supply to Delhi Metro Corporation ("DMRC"). In the PGR & BOG business segment the taxpayer had international transactions relating to Sale of Metro trains, Import of components and sub-assemblies and capital goods, Availing of intermediary services and Reimbursement of Expat Salary.

2. The taxpayer substantiated its international transaction pertaining to supply of metro trains to its AE in Germany using internal CUP. The CUP submitted by the taxpayer was rejected as the taxpayer was unable to establish comparability on factors

like, Contractual terms, Level of market, Geographical market in which the transaction takes place, Date of transaction, Intangible property associated with the sale, Foreign currency receipt and Alternatives realistically available with the buyer and the seller. The remaining international transactions in the PGR and BOG segment were benchmarked using TNMM method.

3. Since all the international transactions in the BOG segment were closely interlinked and inter-related, they were benchmarked by the TPO in a composite manner using segmental TNMM. Examination of accept/ reject matrix of the taxpayer revealed several comparables which had similar FAR analysis as compared the tested party but had not been considered by the taxpayer. It further came to the notice of the TPO that some of the comparables had been supplied free of cost material by Indian Railways. Detailed investigation was carried out by seeking information u/s 133(6) from the comparables regarding the aforesaid amount. In the case of one of the comparable namely BEML Ltd., it was noticed that in the railway segment, the comparable had included value of consortium supply. Information u/s 133(6) was sought from the comparable regarding the same. Examination of the consortium supply agreement revealed that the revenue and cost of the consortium supply was as per pre determined amount agreed upon by the consortium members in the contract. The consortium agreement also included providing services relating to design, training, testing, transfer of technology which was outside the purview of the activities carried out by the tested party. The consortium supply value/cost was therefore excluded from the railway segment of BEML to ensure comparability with the tested party.

4. A detailed show cause was issued to the taxpayer on the issue. The objections of the taxpayer on the comparables selected by the TPO and on the additional comparables proposed by it in the reply to the show cause were dealt with by passing a detailed speaking order. An adjustment of ₹644,123,437 was made on the aforesaid issue.

5. It was further noticed by the TPO that the taxpayer had availed intra group services amounting to ₹780,861,113 during the year. The taxpayer was unable to establish with contemporaneous

documentary evidence- the actual receipt of services, need for the services for which payment had been made, evidence as to when and how these services were requisitioned from the AEs, the basis of determination of rate or payment for IGS at the time of entering in to the agreement, details of cost benefit analysis vis a vis the expected benefit from the IGS, details of benchmarking analysis done at the time of entering into the agreement so as to compare the payment of IGS to the AE vis a vis an independent party under similar circumstances, tangible and direct benefits derived by the taxpayer company from the use of such IGS, details and documentary evidence of cost incurred by the AE for rendering each type of services purportedly received by the taxpayer company.

6. Detailed analysis of the service agreement entered into by taxpayer with its AE was carried out by the TPO. The examination of service agreement revealed the following facts:

6.1 The services to be received from the AE had been specified in very generic terms.

6.2 The cost to be taken into account by the AE for determining the mark up had not been clearly specified.

6.3 The basis of mark up had not been specified.

6.4 No clear cut quality standard/ performance level had been specified for the services to be provided by the AE.

6.5 Many of the services received were in the nature of share holder services as they were being received in order to comply with global reporting level/ standards of the group.

6.6 It was further seen that the Service Agreements had not been defined in terms of a "Service Level Agreement" which elaborated the nature of services, the quality standards, performance levels and breach penalties. Under uncontrolled situations, no enterprise would enter into a blanket service agreement, with no identified performance delivery promise by the service provider and agree to pay an agreed sum.

6.7 Examination of the cost allocation key submitted by the taxpayer revealed that similar nature of intra group services had different allocation key from different AEs. For example, administration

services received from PPC division, BT Switzerland has been allocated on the basis of head count but similar services received from BT Singapore and BT Germany had been allocated on the basis of the time spent by the persons performing the functions. In case of PGR division in BT Germany, the allocation was on the basis of personnel expenses while the same function in case of RCS division in BT Sweden had been allocated on the basis of head count & sales.

The arm's length price for IGS was therefore determined as Nil.

7. The cumulative adjustments made in the case were as under:

Sl. No.	Nature of international transaction	Adjustment u/s 92CA (₹)
1.	Provision of intra group services	78,08,61,113
2.	MLN Division (PGR & BOG Business)	64,41,23,437
	Total	142,49,84,550

8. The taxpayer filed objection against the order of TPO before the Hon'ble DRP-1, New Delhi. The Hon'ble DRP-1 upheld the order of the TPO except for directing for exclusion of BEML Ltd. as a comparable and for revising the margin computation of one of the comparable-Titagarh Wagons Ltd. after taking into account the free of cost material supplied to it by Indian Railways. It further gave relief of ₹14,85,83,208 on account of disallowance of intra group services. The department and the taxpayer filed appeal against the aforesaid directions of DRP before the Hon'ble ITAT, Delhi bench. The Hon'ble ITAT vide its order dated 04.11.2015 upheld all the comparables taken by the TPO including BEML Ltd. which had been directed by the Hon'ble DRP to be excluded. The Hon'ble ITAT also upheld the disallowance of intra group services to the extent of ₹63,22,77,905 disallowed by the TPO, only confirming a relief of ₹14,85,83,208 as directed by the DRP.

Name of the Officers:

Mr. Rahul Garg, Addl. CIT, New Delhi

Mr. Ganapati Bhat, CIT, New Delhi

SHIFTING OF ABNORMAL PROFITS TO BVI – ARM'S LENGTH PRICE DETERMINED APPLYING PROFITS SPLIT METHOD

The taxpayer engaged in manufacturing of Pharmaceutical drugs selling drugs in US market through AEs in BVI and USA – after transferring the IP developed by it to the AE in BVI, huge profit was shifted from India with a claim that the BVI AE owned intangibles and also the BVI AE owned intangibles and also assumed huge risk – TPO and CIT(A) demolishing the claim of the taxpayer based on factual analysis – rejecting TNMM with cost as denomination of the PLI – Residual Profit Split Method was applied after considering functions, assets and risks assumed by the two AEs party to the international transactions.

By TP order dated 20.10.2011, AO made upward adjustment in ALP of ₹382.52 crores. The taxpayer M/s Sun Pharmaceutical, Industries Limited sold Para-IV drug Pantaprazole Sodium (the drug) to its AE **Sun Global British Virgin Island** for a consideration of ₹16.66 cr. which was in turn sold to another AE in US (subsidiary of taxpayer) for ₹1525.42 crores. The details of the sale value in the hands of two AEs and the associated costs are tabulated below:

Accounts analysis of AEs: Sales made by SPIL to Sun Global BVI			
	SPIL	**Sun Global BVI**	
		In ₹	**In US$**
Sales Value	16,66,93,000	15,25,42,21,387	$38,02,14,890
Cost	10,89,31,000	17,27,82,517	$43,06,643
Mfg Overheads	2,15,63,000	0	0
Gross Profit		15,08,14,38,870	$37,59,08,247
Other expenses (mktg, sales, corporate)	2,39,000	58,32,09,957	$1,45,36,639
Profit	3,59,60,000	14,49,82,28,913	$36,13,71,608

Accounts analysis of AEs: Sales made by SPIL to Sun Global BVI			
	SPIL	Sun Global BVI	
		In ₹	In US$
Profit on sales	22	95	95
Margin on cost of goods in % age	28	8,391	8,391

Thus, without carrying out any substantial function, AE in tax haven earned phenomenal profits. The drug was manufactured in US FDA approved Plant of taxpayer and directly dispatched to the subsidiary. Neither any 'Asset' was deployed by the AE nor any substantial function was carried out.

2. The taxpayer justified high margin in the hands of Sun Global BVI on the grounds that the technical know how for the product (drug pantoprazole) was with Sun Global BVI and the entire marketing and sales infrastructure along with associated risks was handled by Sun Global BVI.It was claimed that huge risk was undertaken by the AE in the sale process and accordingly, high margins were earned by the AE and not by the taxpayer. The taxpayer also claimed that the Abbreviated New Drug Application (ANDA) filing done with FDA was in the name of Sun Global BVI and hence Sun Global BVI should be treated as the actual owner of the technology.

3. As against this claim of the taxpayer, it was noted by the TPO that the taxpayer was assuming huge risks in the following manner:

3.1 From the 8K SEC filing by Caraco Pharmaceutical Laboratories (Caracao), the AE of the taxpayer in the USA (subsidiary of the taxpayer), that the taxpayer has entered into a sales and distribution agreement with Caracao on 29th January, 2008, for sale of "Pantoprazole" in which it has been clearly stated that the taxpayer (SPIL) is in the knowledge of the requisite technical know how to manufacture the drug. Sun Global BVI was not mentioned in the said agreement. Thus, although the ANDA, as per USFDA documentation, appears to be in the name of Sun Global, SPIL had substantial stake in the sale of the drug and the risk carried along with it.

3.2 The TPO also noted that this sales and distribution agreement provides that Caracao will receive a fixed margin of 8% on the products sold by it in the US markets and is indemnified against all other risks by the taxpayer company, the SPIL. The fixed margin of 8% and indemnification of risks was provided with a view to avoid Transfer Pricing adjustments in USA. Thus, profits were observed to be shifted from both USA and India, high tax jurisdictions, to low tax jurisdiction BVI.

4. The TPO, therefore, held that the taxpayer company had acted in concert with Sun Global BVI for manufacture and sale of a highly profitable product – Pantoprazole. The taxpayer in addition to its responsibility as a manufacturer had performed several other functions and had assumed substantial responsibility including preparing the ANDA documentation and its filing, selling and marketing, distributor of drug and its dispatch to USA (the dispatch was directly from India to USA and not through BVI), entering into distribution and selling agreement with Caraco and assuming entire risk beyond 8% in USA, etc. Accordingly, he held that SPIL cannot be termed as mere contract manufacturer eligible for a mere 0.25% profits while rest of the 99.75% profits are given to Sun Global BVI. It was observed by the TPO that while the profit from the said operations in the hands of the taxpayer company was only ₹3,59,60,000, the profits generated to Sun Global amount to ₹14,49,82,28,913.

5. The TPO, therefore, rejected the TNNM method and applied Profit Split Method to determine the Arm's Length Price. The TPO noted that for manufacturing per se, SPIL has already been compensated at a rate of 22% amounting to ₹3.59 crore. For the additional functions of SPIL, for the additional risk taken by SPIL in light of the various documents available on record and in light of the additional sales, marketing and distribution functions, which have been assumed by the taxpayer company, the TPO held that a profit share of 50% is reasonable. The Arm's Length Price was determined as under:

Accounts analysis of AEs : Sales made by SPIL to Sun Global BVI		
	SPIL	**Sun Global BVI**
	In ₹	
Sales Value	16,66,93,000	15,25,42,21,387
Cost	10,89,31,000	17,27,82,517
Mfg Overheads	2,15,63,000	0
Gross Profit		15,08,14,38,870
Other expenses (mktg, sales, corporate)	2,39,000	58,32,09,957
Profit as per P&L account	3,59,60,000	14,49,82,28,913
Additional expenditure already incurred by the company		6,84,77,54,578
Remaining profit		7,65,04,74,335
Shared in equal ratio by both associates	382,52,37,167	382,52,37,167

An upward adjustment of ₹382.52 crores was, therefore, made.

Proceedings before CIT (A)

6. The taxpayer filed an appeal before the CIT (A). During the course of appellate proceedings, the taxpayer submitted that a suit was filed in USA for infringement of copyright by the original patent holder Pfizer (Wyeth) of drug Pantoprazole and an out of court settlement was entered. As per this settlement order dated 11th June, 2013, Sun Pharma Global FZE (SPG FZE), a company located in UAE and a subsidiary of Sun Global BVI, paid USD 503 million to Pfizer. The taxpayer claimed that due to this payment, the entire profit on sale of Pantoprazole was wiped off and this justified allocating higher risk to the BVI entity.

7. Upon investigation, the following facts were brought on record by the CIT(A).

7.1 In the original suit, only the taxpayer SPIL and Sun Pharma Advanced Research Company Ltd. (SPARC) were parties who were defending the suit with Pfizer and Sun Global BVI was not even a Party.

7.2 The settlement agreement was between Pfizer as the first Party and SPIL, Sun Global BVI, SPARC and SPG FZE as the "other parties". Thus, the taxpayer was part of the settlement process.

7.3 The entire marketing business of therapeutic drugs (including Pantoprazole sodium) of Sun Global BVI was taken over by SPG FZE in 2013 and was merged with the taxpayer with effect from 1st May, 2013 through a Board resolution of 13th November, 2013 without any consideration. Thus, the infringement loss was taken over by the taxpayer and thus it cannot be said that Sun Global BVI had all the risks associated with litigation in USA.

7.4 It was also noted by CIT (A) that a survey was carried out by the Mumbai Investigation Wing on 8th November, 2011, where it was found that the taxpayer had transferred 25 technologies to group concerns named Unimed Technologies and M. J. Pharmaceuticals which in turn transferred these technologies to Sun Global BVI at nominal value. Subsequently, Sun Global BVI transferred these 25 technologies to Caracao, its AE in USA, and earned huge profits ranging from 95% to 97%. During the survey, the technical dossier of all these 25 technologies were found at the R & D office of the taxpayer appellant wherein it was mentioned that these technologies were to be used by Caracao in USA. In the reassessment order, it was held that all the technologies were actually developed by the appellant in its R & D facility for Caraco but the transactions were indirectly routed through Sun Global BVI in order to shift the profits from the taxpayer to Sun Global BVI which is tax exempted. Thus, it was held that shifting the profits to Sun Global BVI is a practice adopted by the taxpayer in order to erode the tax base in India and similar modus operandi was adopted in case of controlled international transaction under consideration i.e. manufacturing and sale of Pantoprazole tablets.

CIT (A), therefore, held that settlement amount paid for infringement of copyright could not be taken as an evidence for Sun Global BVI assuming maximum risk and hence high value of compensation.

8. The CIT(A) upheld the decision of the TPO in applying Profit Split Method as discussed in OECD Guidelines. Thereafter, A detailed FAR analysis was carried out by her in which, based on her factual analysis she assigned weightage to function, asset and risk component as under:

8.1 Regarding Functions, it was noted by the CIT(A) that manufacturing functions are carried out in the US FDA approved plant in India while no manufacturing function was carried out in BVI. The R&D was done in India as Sun Global BVI had no R&D facility. The marketing and sales have also been done from India as Sun Global BVI had no such facility. Further, the agreement with Caraco wherein it retained 8% profits on sales made by it (low margin was to avoid TP adjustments in USA) was also entered by the taxpayer. Warehousing functions, functions related to financing etc. were also done in India. The CIT(A), therefore, assigned a weightage of 15% to "Functions" and allocated the same to the taxpayer and Nil to Sun Global BVI.

8.2 Regarding Assets, CIT (A) noted that there were only two major assets. The first one was the US FDA approved plant which was owned by the taxpayer. The second one was the IPR for which both Indian and BVI company had played important role. The weightage of Assets were given as 60% with 30% to the US FDA approved Plant and 30% to the IPR. In the IPR, 20% was allocated to India while 10% was allocated to BVI. Thus, in the "Assets", 50% was allocated to India and 10% to BVI.

8.3 In the Risks, it was noted by her that manufacturing defects and litigation claim on that account was the major risks which was in India. For other risks, such as litigation risks, malpractices in marketing etc., both Indian and BVI company were liable. The weightage of "Risks" was, therefore, given as 25% with 15% in India and 10% in BVI.

9. The FAR analysis done by CIT(A) after detailed examination of the facts of the case and after addressing the arguments made by the taxpayer is summarized below:

FAR Analysis – SPIL (India) and Sun Global BVI			
FAR	**Weightage**	**SPIL (India)**	**Sun Global BVI**
Functions	15%	15%	NIL
Assets	60%	50%	10%
Risks	25%	15%	10%

10. Thus, CIT(A) held that 80% of the Profits should be allocated to SPIL in India and only 20% should be allocated to Sun Global BVI using the "Residual Profit Split Method".

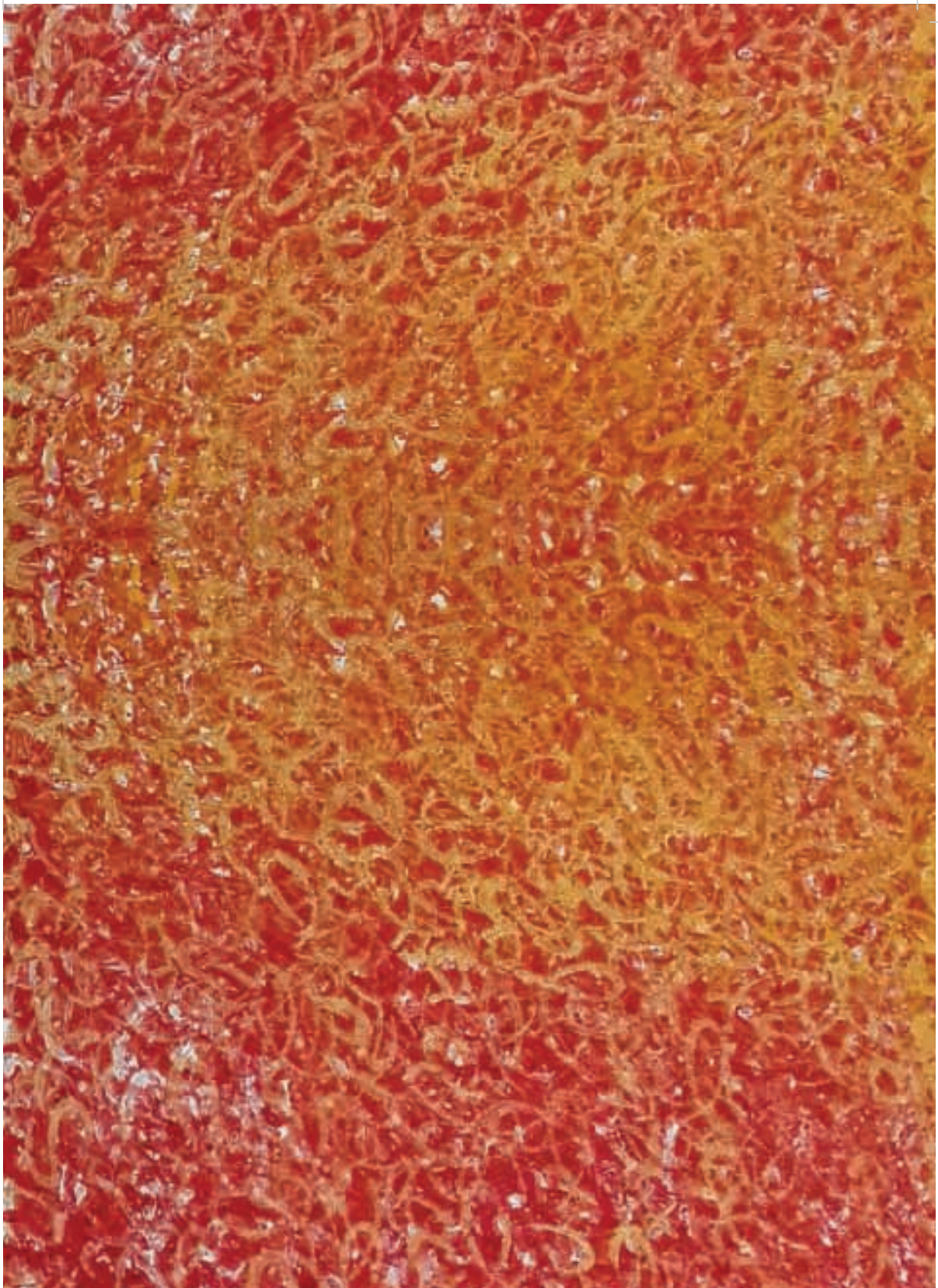
11. The TPO had calculated the combined profits at ₹7,65,04,74,335 out of which 50% amounting to ₹3,82,52,37,167/- was allocated to the taxpayer and an upward adjustment of similar amount was made by the TPO. However, in view of above revised allocation, only 20% of combined residual profits of ₹765,04,74,335 was allocated to Associated Enterprise Sun Global BVI and the remaining amount i.e. 80% amounting to ₹612,03,79,468 was allocated to the taxpayer. Accordingly, income of the taxpayer was enhanced by making a further upward adjustment to ALP amounting to ₹2,29,51,42,301 (6,12,03,79,468 – 3,82,52,37,167).

Name of the Officers:

Mr. S. C. Tiwari, Addl. CIT, Ahmedabad

Ms. Suman Sharma, CIT(A), Ahmedabad

Mr. V. K. Gupta, CIT, Ahmedabad



53 Lines of Light
Sangeeta Gupta ‘IRS 1984’

APPELLATE ORDERS

APPELLATE ORDERS

DISALLOWANCE OF CLAIM OF BAD DEBTS

Public sector bank – claim of bad debt – provision for bad and doubtful debt.

Bank of Maharashtra is a public sector bank in India. It carries on the business of banking under the Banking Regulation Act, 1949. For the A.Y., 2008-09 the bank filed return disclosing income of ₹533.25 crores. Subsequently, revised return was filed, whereby income stood reduced to ₹459.53 crores. It was assessed at ₹479.47 crores in an order u/s 143(3).

2. Regarding the claim of write off of bad debts u/s 36(1)(vii), it was found that the Assessing Officer had disallowed the claim of ₹107.66 crores on the ground that, as per proviso to section 36(1)(vii), the deduction in the case of an taxpayer to whom clause (viia) applies, would be limited to the amount by which such bad debts exceeds the credit balance. During the course of appellate proceedings, it was noticed that the Assessing Officer had allowed deduction of ₹306.43 crores u/s 36(1)(viia) as per the formula prescribed in the section, whereas the actual provisions debited in the audited books of accounts was only ₹84.31 crores. The taxpayer had claimed this amount of ₹84.31 crores both in the original return as well as in the revised return. An enhancement notice u/s 251(2) was issued proposing to restrict the claim to ₹84.31 crores. The taxpayer argued that the language used in the section referred to "any provision for bad & 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.

3. The arguments of the Taxpayer were rejected by the CIT(A) holding that the CBDT Instruction No. 17/2008 clearly restricted the deduction u/s 36(1)(viia) to the amount actually created in the books of the taxpayer or amount calculated u/s 36(1)(viia), whichever is less. The Punjab & Haryana High Court in the case of State Bank of Patiala reported in 272 ITR

59 had followed the ITAT Chennai decision in Bharat Overseas Bank Ltd. 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 and doubtful debts in respect of rural branches u/s 36(1)(vii). At the same time, to prevent double deduction for accounting purposes, the legislature introduced a ceiling for allowance of bad debts by introducing provision to sec. 36(1)(vii), as per which the bad debts to be allowed was to be restricted to the amount by which the same exceeds the credit balance in the provision made u/s 36(1)(viia). Therefore, it was held that the provision actually created in the books of ₹84.31 crores is allowable u/s 36(1)(vii) 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, Chennai ITAT in Bharat Overseas Bank (139 ITR 154) and CBDT Instruction 17/2008.

4. The alternative contention of the taxpayer that ₹86.31 crores (provision for NPA) ₹29.86 (provision for standard assets) and ₹1.82 crores (provision for nominal accounts) may be considered as provision for bad and doubtful debts made in the books for deduction u/s 36(1)(viia) was also rejected since provision on standard assets and nominal accounts being against assets which are good & recoverable and not doubtful assets, as held by ITAT Chennai in Bharat Overseas Bank, are not allowable.

5. In view of the above, the income of the taxpayer was enhanced by ₹222.12 crores, 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.

Name of the Officer:

Ms. Mitali Madhusmita, CIT(A)-1, Pune

DISALLOWANCE OF BOGUS CLAIM OF EXPENDITURE

Claim of procurement charges (commission) – payment to different parties found to be bogus/not proved by the AO – taxpayer failed to discharge its onus of proving the expenditure – disallowance u/s 37(1).

The taxpayer filed his return of income declaring total income of ₹1,97,47,210/-. The taxpayer company is engaged in the business of marketing pumps, spare parts and valves manufactured by said Kirloskar Brothers Ltd. The taxpayer during the relevant F.Y. had claimed to have paid the order procurement charges amounting to ₹1,16,92,870/- to 34 different agents, who, according to the taxpayer company, procured orders from Western Coalfields Ltd. (WCL). and South Eastern Coalfields Ltd. (SECL). The AO after having examined the claim of the taxpayer for payment of procurement charges, disallowed the claim of ₹1,16,92,870/- as not being genuine and added the same to the total income of the taxpayer.

2. The CIT(A) noticed that the AO issued summons u/s 131 to all the parties. The AO recorded statements of 13 parties representing 26 agents. Based on the results of the inquiries, the AO has classified all the 34 agents into 3 categories – A, B & C. Category A included 5 parties who denied to have provided any services to the taxpayer company. Category B comprised 21 parties who accepted that they had received commission and also filed documents. However the AO, after having examined the parties u/s 131 of the Act, found gross discrepancies, therefore, declined to accept the same as genuine, as the services rendered by such parties could not be proved to the satisfaction of the AO. Category C included 9 parties who have not complied with the statutory notices issued u/s 131 and section 133(6) of the Income-tax Act, 1961. The AO gave sufficient opportunity to the taxpayer to cross examine the witnesses but the taxpayer did not avail of the same. The AO also called for the information from WCL and SECL. The AO stated that information was received from WCL but SECL did not reply even after reminders. The

CIT(A) observed that the AO, after examination at length has established that the parties have not been able to prove the services rendered by them to the taxpayer company by way of procuring the purchase orders from WCL and SECL. The CIT(A) held that in respect of all the 34 parties ample material was brought on record to demonstrate that the procurement charges paid by the taxpayer were not genuine in as much as that both the taxpayer and the agents could not substantiate the services rendered in lieu of which such procurement charges were claimed to have been paid. The CIT(A) confirmed the disallowance.

Name of the Officer:

Mr. Amit Bobde DCIT Circle-1, Nagpur

Mr. B. L. Meena, CIT(A)-I, Nagpur

DISALLOWANCE OF CLAIM OF EXPENSES INCURRED ON DOCTORS

Taxpayer a pharmaceutical company claimed expenditure on tour, travel and conference of doctors – disallowance under explanation of section 37(1).

In this case the income of the taxpayer has been enhanced by an amount of ₹3,39,79,594/-. The taxpayer a pharmaceutical company had claimed certain expenses in respect of tour and travel and conference registration in respect of various doctors whose foreign trips were sponsored by the taxpayer. The AO had disallowed an amount of ₹40,13,440/- out of the total claim of the taxpayer at ₹3,79,93,028/-.

2. The claim of the taxpayer was examined with regard to the explanation to section 37(1) read with the amended provisions of Indian Medical Council (Professional Conduct Etiquette & Ethics) Regulations, 2002 and it was established that the entire amount was required to be disallowed resulting in the income of the taxpayer being enhanced by an amount of ₹3,39,79,594/-. The CIT(A) examined the provisions contained in Indian Medical Council (Professional Conduct Etiquette & Ethics) Regulations, 2002 and found that the taxpayer had violated the provisions by providing the facilities like travel, hospitality and conference, registration expenses received by the doctors and hence, the expenditure was against the public policy and hence, not allowable.

3. The CIT(A) also examined the feedback of the participating doctors to see whether the claim of the taxpayer that the conference had resulted in product improvement, product development and making the medicine more effective, was correct. The CIT(A) went through the feed backs submitted by the taxpayer which it had obtained from various doctors and found that feed back had only mentioned comments like (i) Syrup is excellent (ii) Orange flavor is very good, (iii) Size of the tablets should be reduced & (iv) Thanks giving letter for taking them to foreign conference. The CIT(A) found that these

feed backs did not support the claim of the taxpayer that the same was for the purposes of business and related to product development for improvement of medicines.

4. The CIT(A) also examined the CBDT Circular No. 5/2012 dt. 1st August, 2012 and found that the expenses claimed by the taxpayer could not be allowed. The CIT(A) also considered various case laws given by the taxpayer and distinguished them. The CIT (A) further relied upon various decisions of Punjab & Haryana High Court in the case of CIT vs. KAP Scan & Diagnostic Centre Pvt. Ltd. (2012) 25 Taxmann.com 92 and also the decision of the Himachal Pradesh High Court in the case of Confederation of Indian Pharmaceutical Industries, 44 Taxmann.com 365.

Name of the Officer:

Mr. R. S. Arneja, CIT(A)-2, Nagpur.

REDUCTION IN CLAIM OF DEDUCTION U/S 80IA FOR NON ALLOCATION OF OVERHEAD EXPENSES ON ELIGIBLE UNITS

Case of a state govt. Undertaking – claim of 80IA in respect of power generation unit – overhead expenses not allocated over the various units – reallocation of overhead units on the eligible units and reduction in the claim of deduction u/s 80IA.

GMDC Ltd. had filed its return of income at ₹557.66 crores which was revised to ₹555.33 crores and claimed a deduction of ₹31.15 crore u/s 80IA on the profit of power project. The AO disallowed the claim by considering the carried forward loss of eligible unit from the date of commencement of business and after making various disallowances under various heads assessed the total income at ₹589.42 crores. The taxpayer filed appeal before the CIT(A).

2. While deciding the issue related to deduction u/s 80IA, it was noticed by the CIT(A) that the taxpayer had not computed the deduction u/s 80IA correctly. It was noted that the common expenses, which were incurred at the head office level, were not allocated to the eligible units. The head office looked after the activity of all different units of the taxpayer and also controlled them. Therefore, it was logical that all the head office expenses which are not unit specific should have been allocated to all the units owned by the taxpayer in proportion of the turnover of each different unit as that is the most scientific basis on which the expenses can be allocated. Accordingly, the taxpayer was given a show cause notice as to why the deduction claimed by it be not reduced to the extent of proportionate head office expenses pertaining to the eligible units for which the deduction u/s 80IA had been claimed. The taxpayer submitted that the expenses pertaining to the power project were accounted for in the books of power project only and, therefore, no head office expenses were allocated to work out the claim for deduction

u/s 80IA. It was further submitted by the taxpayer that income in the books of the head office was more than expenses on account of interest income earned by the head office and, therefore, no allocation of expenses was done. The head office was treated as a separate profit centre and therefore, there no allocation of expenses was done to any of the projects. The CIT(A), on a careful consideration of the entire facts related to the issue noted that even though the head office has been treated by the taxpayer as a separate unit and the income had been computed on that basis which has resulted into a positive income on account of interest earned by various deposits in the head office, the claim of the taxpayer could not be accepted. There are always certain expenses such as salaries of the accounting department, various directors of the company, various audit expenditure and other expenses which are common to all the units and were borne by the head office. It would, therefore, be appropriate if the expenditure was also allocated to each unit in order to work out the correct profit of that unit. Since the taxpayer was claiming deduction u/s 80IA on account of power project income it would be appropriate to allocate the expenses of the headquarter to the power project unit to work out the correct claim of deduction. In the absence of any allocation the taxpayer would end up getting more deduction and claiming more benefit than permitted under the law. The CIT(A) obtained the details of such common expenses and allocated them over the various units including the power project in proportion to the turnover. The expenses of the head office which were allocated to the power project amounted to ₹6,63,71,309/-. This resulted in decrease of profit of the power project by this amount. The CIT(A), therefore, enhanced the income by ₹6,63,71,309/- by disallowing the claim of deduction u/s 80IA to this extent.

Name of the Officers:

Mr. B. S. Anant DCIT, Circle-4, Ahmedabad

Mr. Shelley Jindal, CIT(A)-2, Ahmedabad

REDUCTION IN CLAIM OF DEPRECIATION ON ACCOUNT OF GRANTS RECEIVED FOR PURCHASE OF MACHINERY

The taxpayer is a local govt. Body – the taxpayer was exempt u/s 10(20) – The exemption was denied due to amendment in the act – the taxpayer claimed depreciation on WDV – WDV was reduced by the amount received from the govt. as grant.

Return of income was filed by the taxpayer on 1.12.2003 declaring loss of ₹1,48,81,31,695/-. Assessment was originally completed u/s 143(3) on 31.3.2006 determining the loss at ₹1,02,01,84,502/-. However re-assessment was completed u/s 143(3) r.w.s. 147 on a total income of ₹43,16,07,010/-. The Assessing Officer recomputed the WDV and the consequential depreciation on the assets of the appellant and assessed the total income at ₹43,16,07,010/-. The CIT(A) considered the facts and various decisions on the issue of change of opinion for reopening the assessment u/s 147 and upheld the reopening. On this issue the CIT(A) has marshaled the facts very well, discussed the relevant provisions of the ACT and has used the latest decision of full bench of Delhi High Court in the case of CIT v Usha International Ltd [2012] 348 ITR 485 (Del) (FB). The CIT(A) has also dealt in detail the issue of reopening consequent to audit objection. The CIT(A) has been able to point out that audit objections were in the other assessment years and not in the A.Y. under consideration. The taxpayer was exempt u/s 10(20) until A.Y. 2002-03. With the insertion of the Explanation to sec. 10(20) by the Finance Act, 2002 w.e.f. 1.4.2003 defining the term 'Local Authority', whereby the taxpayer was no longer covered by the benefit of the provision, the taxpayer became liable to tax w.e.f. A.Y. 2003-04. While claiming depreciation in its return of income, the taxpayer had adopted the WDV of the assets as per the WDV reflected in its books of account. The Assessing Officer had recomputed

the actual cost to the taxpayer (by reducing the grants received from the government from the cost) and also recomputed the depreciation on the recomputed cost in accordance with the Income-tax Act, 1961 to arrive at the WDV.

2. The taxpayer submitted that the question of considering the cost of an asset would arise only when the asset is first put to use and since the assets had already been in use prior to A.Y. 2003-04, what was relevant was the value of the WDV which was to be determined u/s 43(6) read with sec. 43(6). The taxpayer submitted that as a result, the grants received from the government could be reduced from the cost of the assets only in respect of those assets which had been first put to use during the current year and not for the other assets for which the WDV should be adopted as per the books.

3. The circumstances in which sec. 43(6) was introduced was examined by the CIT(A) and it was held that the provisions of Sec. 43(6) were squarely applicable to the taxpayer. As a result, it was necessary to ascertain the 'actual cost' since WDV at the beginning of the year was nothing but the actual cost in the year of acquisition as reduced by the depreciation in successive years.

4. In arriving at the 'actual cost', the government grants and subsidies received by the taxpayer had to be deducted from the cost of acquisition in accordance with Explanation 10 of Sec. 43(1).

Name of the Officers:

Mr. P. V. Subba Raju, IRS, ACIT, Circle-6(1), Hyderabad

Ms. Vasundhara Sinha, IRS, CIT(A)-IV, Hyderabad

DISALLOWANCE OF CLAIM OF DIVERSION OF SALES BY OVERRIDING TITLE

Capital gain on sale of property – mortgaged for loan of some other concerns and not of taxpayer - the taxpayer not offering the capital gain – the loan was not the obligation of the taxpayer.

The taxpayer was represented by her two sons as her legal representatives. The property held in the name of the taxpayer was mortgaged to the Bank towards the loans taken by two concerns belonging to the sons of the taxpayer. The property was sold during the year and the entire amount was adjusted against the bank loan. No Capital Gain was shown. The AO reopened the assessments and brought the sale consideration to tax treating the net consideration after setting of cost of acquisition as Capital Gain. The AO held that the loan was repaid by the taxpayer on behalf of the concerns and utilization of the sale proceeds of the property was only application of income. The claim of the taxpayer that she did not receive the sale consideration was held to be wrong. The AO brought on records the details of bank account to show that the sale consideration was received in the bank and thereafter the taxpayer repaid the loan of the concerns belonging to her son.

2. Before the CIT(A) the taxpayer argued that, due to recession in the line of business, the loan had become NPA and both the concerns were not able to make the payment of even interest. The bank took the matter to debt recovery Tribunal. A proposal for one time settlement was accepted by the Bank Authorities. The taxpayer submitted before the CIT(A) that assessing the sale consideration as Capital Gain is not in accordance with the law and unjust because the entire sale consideration was paid to the bank in discharge of debt and hence allowable u/s 48. The taxpayer also relied on various case laws.

3. The CIT(A) considered the submission of the taxpayer and stated that the sale transaction and loan taken by the concerns were different transactions and the loan transaction had nothing to do with the sale of property by the taxpayer. The loans taken by the two concerns were the liability of the concerns and mortgaging the property of the taxpayer did not change the liability of the concern. The CIT(A) also held that the onetime settlement did not shift the liability from the two concerns to the taxpayer. Therefore, CIT(A) stated that this repayment of loan was not allowable as expenditure or it did not make the sale consideration nil. The CIT(A) discussed the case laws relied upon by the taxpayer and distinguished them. The CIT(A) further observed that no proof was furnished that the taxpayer was under obligation to repay the loan on behalf of the two concerns. The CIT(A) therefore upheld the taxing of capital gain.

Name of the Officer:

Mr. T. Venkat Reddy, CIT(A)-VI, Hyderabad

DISALLOWANCE OF CLAIM OF BUILDER OF LTCG ON UNSOLD CLOSING STOCK OF SHOPS

Taxpayer is a construction company – shows capital gain on sale of unsold block – the AO treats it as business income – denial of cost of improvement – denial of deduction u/s 54EC.

The taxpayer a Pvt. Ltd. company is engaged in the business of printing and construction. Return of income was filed declaring total income of ₹73,94,290/- and assessment was completed u/s 143(3) determining the total income at ₹1,85,51,410/- treating the capital gains shown by the taxpayer as "Income from the business" and consequential denial of claims made u/s 54EC and cost of acquisition and improvement thereon. The taxpayer company had sold immovable property for a total consideration of ₹1,83,75,000/- and offered the same as long term capital gain. It was seen from the records that the taxpayer had claimed to have acquired the capital assets on 21.08.2000 for ₹3,96,088/-, which were sold in the relevant F.Y. for ₹1,83,75,000/-. The taxpayer also claimed the cost of improvement of ₹12,07,803/- and deduction u/s 54EC of ₹1,00,00,000/- against the long term capital gains declared in the return of income filed.

2. The claim of the taxpayer that the blocks / shops remaining unsold were held as capital assets and were used by the taxpayer for its office purposes did not carry much substance. The taxpayer company was engaged in the business of construction and the said commercial units sold by the company in the said commercial complex constructed by it were always treated as stock-in-trade and the resultant profits were also declared as 'business profits' in the returns filed in the earlier years. Therefore, the remaining unsold units formed part of the same commercial complex and could not be treated as investment or capital asset automatically, unless specific treatment was given by the taxpayer company in its books of account by passing a resolution to that effect by the directors and the shareholders. Further that a qualification to that effect was also required to

be given in the audit report of the company. However, none of the conditions for conversion of an asset from stock-in-trade to the capital asset or investment were satisfied in the case of the taxpayer. The AO held that the claim of the taxpayer to treat the transaction of sale of blocks/shops/chambers as Capital Gain transaction did not survive on merits. The CIT(A) examined the issue in detail and upheld the order of the AO of treating the capital gain as business income and denying the deduction u/s 54EC addition.

Name of the Officers:

Mr. Amit Bobde DCIT Circle-1, Nagpur

Mr. B. L. Meena, CIT(A)-I, Nagpur

Neena Singh Pandey ‘IRS 1988’

SEARCH & SEIZURE

SEARCH AND SEIZURE

UNEARTHING OF ACCOMMODATION ENTRIES OF LONG TERM CAPITAL GAINS ON PENNY STOCKS AND BOGUS SHARE CAPITAL/PREMIUM

*Accommodation entries through multilayered transactions among paper entities-detection of cash trail by diligent multistage investigation leads to unearthing a nationwide network of entry providers and bene*f *ciaries, who enjoyed tax free introduction of capital through bogus long term capital gain or* f *ctitious share capital/share premium.*

In October 2012 a Search action u/s 132 was launched by the Ahmedabad Directorate in the **Amrapali Group**. The pre-Search intelligence suggested that introduction of share capital of about ₹100 crores in the Group Companies at a huge premium of which ₹60 crores was prima facie from suspected sources. ₹28.50 crores of this share capital was received from various old listed companies having registered offices at Baroda, Hyderabad, Ahmedabad and Mumbai.

2. Post Search inquiries revealed that individuals of Amrapali group had Returned in A.Y. 2011-12 exempt LTCG ₹69 crores from the sale of shares of Prraneta Industries Ltd. Enquiries revealed that Prraneta Industries Ltd., though an old listed company in existence since 1995, was in fact a Shell company. Even when the company had no genuine activity, share price of this company had increased from ₹2.5 per share to ₹79 per share from April 2009 to February 2011.

3. The share trading data of Prraneta Industries Ltd. was called from BSE. On analysis of the data it was found that the when sellers like Amrapali Group entities off loaded their holding at ₹50-80, to book exempt LTCG, in the counter parties behind BOLT the names of the 25 companies identified as per point 4 occurred repeatedly.

4. This was a startling discovery. This indicated that a big accommodation entry racket was being run by one person or a

group of persons who against payment of cash by beneficiaries facilitated accommodation entry of share premium from listed companies as well as accommodation entry of exempt LTCG.

5. Detailed analysis of MCA database of companies/ ITD database of the companies so identified led to identification of a further network of 100 companies which were being used for providing accommodation entries. This exercise also unraveled the following facts:

5.1 Majority of these companies were being run from 12-15 addresses located in Mumbai/Thane and had common Directors.

5.2 Though these companies were not making any profit they all had huge capital base.

5.3 These companies had incurred huge short term and long term capital losses.

6. Subsequently another Search and survey operation launched in April, 2013. This led to seizure of following clinching evidences:

6.1 Details of 220 bank accounts and more than 300 Blank and signed cheque books were found. These pertain to 212 companies including 16 listed companies, managed by SCS and used for facilitating accommodation entries.

6.2 Directors of the companies have been found to be dummy and for namesake. Statements of persons who are Directors in large number of companies, were recorded wherein they have admitted that they are mere name lenders.

6.3 PAN Cards, seals of the companies, records of statutory compliance etc. of all these companies were found and seized/ impounded.

6.4 Evidence of synchronized trading to artificially raise share price of the listed companies managed by SCS was found and seized.

6.5 The entry wise details of receipt of cash against which cheques for accommodation entries were issued to the respective beneficiary parties has been seized.

6.6 Noting of 16 routes, for layering of funds through bank accounts of the companies managed and controlled by SCS have been found and seized. Through these routes he has standardized the procedure for layering of funds through his group companies, wherein he only has to specify the 'route number' to his employee so as to layer the funds.

6.7 Statements of the key employees and SCS were recorded and they explained the evidence and accepted the involvement of 212 companies including 16 listed companies managed by SCS in providing accommodation entries.

6.8 Perusal of the seized evidence led to identification of other operators like SCS who were involved in the business of giving accommodation entries.

7. The Search has led to:

7.1 Breaking of an accommodation entry racket wherein evidence of facilitation of accommodation entries of long term capital gains, share capital, share premium, unsecured loans etc. of the order of ₹3000 crores has been detected.

Further the sustained investigation over a period of two years helped unravel an organized racket. Detailed references to SEBI and SFIO were made in F.Y. 2014-15. On the basis of the inputs by the Unit, cognizance of the menace of manipulation of Penny Stocks has been taken by SEBI. Finally, after many years for the first time SEBI has started adjudicating on the issue of rigging of the share price of penny stocks with the motivation of booking exempt LTCG.

Names of the Officers:

Mr. Saurabh Singh, DDIT, Ahmedabad

Mr. Rajesh Mahajan, DDIT, Ahmedabad

Mr. Vinod Tanwani, Addl. DIT (Inv.), Ahmedabad

Mr. P. R. Dhayal, DGIT, Ahmedabad

METHODICAL ANALYSIS AND SEARCH REVEAL UNDISCLOSED ACCOUNTS/ DEPOSITS AND CASH TRANSACTION IN COOPERATIVE SOCIETY

Misuse of cooperative society and the bank accounts for personal enrichment of the chairman of the society-careful analysis of seized material detects large number of fictitious accounts/deposits as well as use of cash by the chairman of the society as on-money to purchase immovable properties.

Lokmanya Multipurpose Cooperative Society Ltd. (hereafter referred to as LMC) was established in the year 1995 under the Karnataka Cooperative Societies Act. Its main promoter is Mr. Kiran D. Thakur. The Society is engaged in the business of accepting deposits and lending to its members. LMC is a Multi State Society registered under Multistate Cooperative Societies Act, 2002, governed by the Ministry of Agriculture, Govt. of India. As on the date of Search, LMC had 162 Branches in Karnataka, Maharashtra, Goa and Delhi and had deposits of over ₹1,800 crores.

2. Search and seizure and survey actions were conducted at 27 premises simultaneously in Karnataka, Maharashtra and Goa on 23.09.2014. The actions led to seizure and impounding of documents which proved payment of on-money for acquisition of properties by LMC. It was also revealed that the promoters, viz. Mr. Thakur and his family, had purchased agricultural properties by availing loans from LMC and SMC, converted the same to non agricultural use and sold the same back to LMC at a huge profit within a short period. No taxes were paid on the capital gains by the individual promoters. Income estimated on this issue was ₹99.73 crores. Mr. Kiran Thakur and his daughter had taken large loans from LMC and SMC. Out of the interest bearing funds, they gave interest free loans to others. The disallowable interest payment was estimated at ₹8.57 crores.

3. The unique feature of this case was that the cooperative society was paying on-money for the purchase of immovable properties. For generation of cash, the society adopted an unusual method, i.e. the society opened Cash Credit and Savings Bank Accounts in the name of a fictitious entity. Whenever the need arose, the CC and SB Accounts would be debited and cash would be withdrawn for payment of on money. Over the years the CC Account in the fictitious name had accumulated a debit balance of ₹87.37 crores. Loose papers were seized in which the cash component of the cost of acquisition was clearly mentioned. The Chairman Emeritus of LMC, Mr. Thakur, admitted to the payment of on money and offered the sum of ₹87.37 crores for tax u/s 69 being Unexplained Investment in properties.

4. Another highlight of this case was detection of unaccounted cash deposited in Savings Bank and Fixed Deposit Accounts. During the course of Search itself, the Cashiers' Registers of 50 top branches (spread over Karnataka, Maharashtra and Goa) for the last 6 years were obtained in MS-Excel sheets. It is worthwhile mentioning that the society does not have core banking software, so the data was received in bits and pieces after considerable follow up. The entire data was compiled in one excel sheet and consisted of 4,80,339 entries. It was found that many account holders had deposited crores of rupees in cash, at times in various accounts in various branches in different states and in the names of family members. The excel data was filtered on many parameters and suspect accounts were pin pointed. The account holders were summoned to Belgaum and also to stations like Pune and Goa, where the DDIT (Inv.), ITO (Inv.) and the Inspectors were camping. The account holders were intensely followed up and questioned. The result was that the account holders declared not only the sums deposited in LMC but in some cases, also unaccounted deposits in some other co-operative societies which were not in the knowledge of the Department. Most of the account holders paid tax immediately. Income admitted by the account holders was ₹46.27 crores and estimated was ₹53.60 crores.

5. Overall, the Search and seizure action resulted in admission of undisclosed income of ₹155.83 crores and estimated undisclosed income of ₹295.21 crores.

Names of the Officers:

Mr. Yogesh Kumar, ITI, Goa

Mr. Amit Kumar, ITI, Goa

Mr. Imran Khan, ITI, Goa

Mr. Rajesh Kumar, ITI, Goa

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

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

Mr. Manjeet Singh, JDIT (Inv.), Hubli

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

Mr. S. K. Misra, DGIT (Inv.), Bangalore

SEARCH UNVEILS RACKET FOR PROVIDING ACCOMMODATION ENTRIES OF DONATION U/S 35AC BY A TRUST

A fraudulent charitable trust was run to provide cash in exchange of donations-no charitable activity undertaken by the trust-the donations of approximately ₹80 crores in the past f *ve* f *nancial years routed back to 20 donors as cash through layered* f *ctitious expenditure shown in the books of accounts of the trust.*

A Search action u/s 132 of the Income-tax Act, 1961, was conducted on Navjeevan Charitable Trust [herein after referred to as Trust] on 27-10-2014. The Trust was Notified by the National Committee, Ministry of Finance, Government of India, for the purpose of deduction u/s 35AC of the Income-tax Act, 1961. It was found that cash is being withdrawn by various parties. The money trail as could be traced from various bank accounts led to the Trust. The investigation into the financial transactions of the Trust showed that the Trust had received donations of about ₹80 crore in the past 5 financial years. The said amount was transferred to around 20 parties [as expenses]. Search action was conducted on the Trust and the trustees and Survey actions were conducted on parties to whom the Trust had transferred the amounts to withdraw cash.

2. All the known parties on whom survey was conducted accepted that they only gave accommodation entries to the Trust and did not sell any goods to them. They stated that cheques were received from the Trust but cash was returned to the Trust through a broker after deduction of nominal commission. The broker was also caught and statement was recorded. The statements completed the modus operandi of the Trust as to how the Trust was booking bogus expenses and was collecting back cash from such parties.

3. The above statements/ admissions made by several parties that cheques were collected and cash was returned to the Trust after

deducting nominal commissions was confronted to the trustee. He confessed/ admitted that bogus expenses were booked by the Trust so as to return back money in cash to all the donors after deducting nominal commission. The said admissions have been recorded in statement u/s 132 (4).

4. The Search/ survey action showed a finding that the donors were hand in glove with the Trust in receiving back the money in cash. The donors gave cheques to the Trust so that they could claim deduction u/s 35AC. They also received back cash from the Trust. This was a new modus operandi of tax evasion unearthed by the Investigation Wing, Mumbai, during F.Y. 2014-15.

5. The Search action on Navjeevan Charitable Trust showed that the donors were receiving back donations in cash but still claimed deductions. In view of the above finding, the list of donors was prepared. There are around 400 donors to the Trust. It was found that many donors have multiple offices in Mumbai and many are also from out of Mumbai. It was found that donations ranged from a few thousands to crores of Rupees. 3 donors who had single offices in Mumbai were shortlisted and survey actions were initiated on 30-10-2014. All the above parties admitted that cash was received back from the Trust after deduction of commission.

6. Further surveys were executed on 29-12-2014, on 6 taxpayers who had made donations to Navjeevan Charitable Trust and who had claimed deductions u/s Section 35AC of the Income-tax Act, 1961. Out of the above 6 taxpayers, 4 of the taxpayers accepted that they have received back the donations made to Navjeevan Charitable Trust in cash. Two entities [both belong to a common group] did not accept that donations were received back. However, in the statement, it was accepted that the directors never visited the office of the Trust any time. Though it was contended that donations were made by being impressed by the social work of the Trust and the Brochures of the Trust, the director failed to narrate/ explain the details of the social works of the Trust. He could not produce the brochures provided by the Trust. The fact that the group was covered by the Hon'ble Settlement Commission Order for the period during which the donations are made, deterred the taxpayer from accepting

the truth that donations made was received back in cash. The department has already filed application before the Hon'ble Settlement Commission to review its order.

7. The Navjeevan Charitable Trust has received donations amounting to ₹80 crore in 5 F.Y. The Search/ survey action showed a finding that the donors were hand in glove with the Trust in receiving back the money in cash. The donors gave cheques to the Trust so that they could claim deduction u/s 35AC. They also received back cash from the Trust. The donors along with the PANs and AOs have been identified and information is being passed on to the respective AOs for the disallowance of claims u/s 35AC which would result in collection of taxes with interest on ₹80 crore. The case of the donors would be a fit case for levy of penalties and initiation of prosecution proceedings which would help in creating deterrence against tax evasion.

Name of the Officers:

Mr. Abhyuday A. Anand, DDIT (Inv), Unit-2(4), Mumbai

Mr. Sushilkumar Poddar, Addl. DIT (Inv)-Unit-2, Mumbai

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

Mr. Suresh Jandhyala, DGIT (Inv), Mumbai

SEARCH ESTABLISHES RECEIPT OF ON MONEY BY BUILDER

Extensive pre-Search intelligence that includes shadowing of cash-handers of the taxpayer Group leads to discovery of hidden vault of the taxpayer group-in addition to seizure of undisclosed jewellery of ₹10.09 crores, the Search f *nds on money receipts in real estate projects of more than ₹181 crores.*

Search and seizure operations were conducted in the case of Nish Developers Pvt. Ltd. & Group companies on 04.04.2014. Nish Developers Pvt. Ltd. is developing super premium residential apartments in Curry Road, Mumbai under the Project name "One Avighna Park". This project is being built in the form of two towers of 64 stories each.

2. The pre Search work entailed identifying all the layers of agents, cash handlers, sales executive, managers who were part of on-money collection chain. Call data records were studied for 2-3 months and based on that, key individual were marked for physical surveillance. Physical recce revealed cash handler of the Group who was receiving cash in the residential premise of director of the taxpayer company. Thereafter another person was marked who was eventually responsible for disposing off the cash. As a result of Search and seizure operations conducted in the above group of cases, several incriminating documents including "On Money" evidences in the form of Pen-drive were seized from cash handler.

3. Another noteworthy feature of the Search action was discovery of an undisclosed Bank-locker of the director of the taxpayer company. During pre Search investigations and enquiries, driver of the director of the taxpayer was tracked 3-4 times and was found to visit one building in Opera House in Mumbai. The exact premise could however be pinpointed by the driver when he was interrogated on day of the Search. This place was found to be belonging to a company providing private lockers to select few. The inspector went through the entries in the register of

private locker and this led to the detection of an undisclosed locker which contained Jewellery of ₹10.09 crores.

4. Another feature was systematic recording of statements layer by layer eg cash handler, sales persons, drivers, managers etc. These admissions and facts were confronted to the directors who were left with no option but to admit receipt of on money on sale of lats. Corroborative evidence was admission of cash paid by the purchaser with dates which was found in the pen drive of the employee of the group. In addition, a few of the purchasers of flats were also covered simultaneously and they also admitted paying cash in the course of purchase of flats.

5. On the basis of these evidences gathered taxpayer admitted a sum of ₹181.66 crores as unaccounted receipts on sale of flats and car parking, Scrap sale and bogus material purchases.

Names of the Officers:

Mr. I. P. Prasad, Inspector Unit VII(1), Mumbai

Mr. Shitendu, Inspector Unit IX(3), Mumbai

Mr. Abhishek Meshram, DDIT (Inv), Unit IX(3), Mumbai

Mr. Arun Kumar, Addl. DIT (Inv) Unit IX, Mumbai

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

Mr. Suresh Jandhyala, DGIT (inv), Mumbai

DETECTION OF SUPPRESSION OF INCOME AND INFLATION OF EXPENDITURE IN CASINOS

Innovative pre-Search intelligence against a group that ran an offshore casino at Goa-discovery of incriminating evidences on account of under-cover entry of income tax officials in the casino in garb of players leads to detection of undisclosed income of nearly ₹400 crores.

A Search action u/s 132 of the Income-tax Act, 1961 was conducted in the case of Delta Corp Ltd, Highstreet Cruises & Entertainment Pvt Ltd, Victor Hotels & Motels Pvt Ltd, Peninsula Land Ltd, Swan Energy Ltd and other group concerns on 29.04.2014.

2. The main allegations were as under :

2.1 Suppression of sale proceeds of casino operations. Consequently profit of the taxpayer Group is understated.

2.2 Peninsula Group and Swan Energy Ltd. has involved in suppression of its income by taking accommodation entries in the form of bogus purchase parties.

2.3 Swan Energy Ltd. has introduced its unaccounted income through interest free unsecured loans from various Kolkata based suite case companies.

3. The group runs a casino at Goa at Deltin Royale yatch. The entry into yatch was an issue because of presence of bouncers. Some of the team members checked into yatch at 5am and played on some tables before the strike time. They observed the activities, cash boxes and the chip handlers.

4. Casino establishes its accounted gaming income based on the closing chips of various gaming tables less opening chips plus cash lying in the cash box of each table as casino is selling chips on the table as well. During the course of Search action at Deltin Royale yatch, one Pendrive was found and seized which was containing the detailed working of transactions of

HNI clients/agents. These clients and agents have accounts like outstanding/debtor and advance/creditor in this Pen-drive. These debtors and creditors were not part of the actual books of account of casino but were kept and maintained separately and adjustments in these outstanding/debtor and advance/creditor ultimately determined the actual daily sale of casino operations of the company. The total amount of such suppressed cash receipt which has not been recorded in the books of accounts is ₹24.6 crores in various financial years. It was also observed that the group companies had incurred various types of expenses in cash for agents/junkets/ customers like hotel, travelling, conveyance etc. These expenses to the tune of ₹18 crores were not recorded in books of accounts.

5. Search in real estate arm i.e. Peninsula Land Ltd, revealed that taxpayer company was involved in the practice of debiting bogus purchases in the books of accounts to inflate its expenses and suppress it actual income. The discrepancies found in standard operating procedure were confronted to concerned persons and they accepted this fact that Standard Operating Procedure had not been followed in respect of certain purchases discrepancies and admitted additional income of ₹53.6 crores for the relevant financial years.

6. In the case of joint venture partner of the group Swan Energy Ltd., it was established that Swan Energy Ltd. had obtained bogus unsecured loans through Kolkata based bogus or conduit companies whose identity, genuineness and creditworthiness was not verifiable. The company could not establish and submit any credible evidence to prove the genuineness of these unsecured loans. The statements of entry operator based in Kolkata, who was managing and controlling these paper based companies, broker or facilitator and dummy directors in the concerns from whom unsecured loans entries were obtained, were recorded. In their statements all of them accepted the fact that these concerns were not engaged in any actual business transactions and were conduit or shell companies assisting to various beneficiaries in obtaining

bogus unsecured loans including Swan Energy Ltd. and its group concerns.

The evidences gathered during the course of Search and post Search inquiries led to total detection of undisclosed income of around ₹400 crores and admission of ₹78 crores.

Names of the Officers:

Mr. Shriram Srinivas, Inspector Unit IV(2), Mumbai

Mr. Rajesh Mahajan, DDIT (Inv), Unit IV(2), Mumbai

Mr. Rakesh Kumar Garg, Addl. DIT (Inv) Unit IV, Mumbai

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

Mr. Suresh Jandhyala, DGIT (Inv), Mumbai

EXTENSIVE PRE-SEARCH ENQUIRIES REVEALS CARTEL OF CONTRACTORS IN IRRIGATION AND OTHER PUBLIC WORK DEPARTMENTS

Retrieval of digital evidences that contained incriminating documents of bogus purchases of Irrigation and PWD contractors through cyber forensics leads to admission of undisclosed income of more than ₹500 crores and a seizure of unaccounted assets of ₹7.5 crores.

Irrigation, BBMP and PWD contracts are major contracts executed by Government of Karnataka. Data regarding 200 Top Contractors all over Karnataka based on key criteria like VAT Turnover, Financial Intelligence Unit Information, Tax Evasion Petitions, Press Notings, The analysis revealed a pattern that most of the top contractors happened to come from Bijapur, a small unknown district in Karnataka. Information regarding the above contractors and their networks were collected discreetly from the individual corporations like Kaveri Neeravari Nigam Ltd., Krishna Bhagya Jala Nigam Ltd., Bangalore, Bangalore Bruhat Mahanagara Pallike and Public Works Department of Karnataka. From this information it was noticed that, Contractors used to operate through a series of benami contractors like close relatives, illiterates or employees who were paid for lending their name for taking contracts. These contractors in collusion with the engineers, bureaucrats were able to create a contractor cartel which was used to rig tenders, distort tender pricing and create a monopoly for the cartel where it was impossible for other contractors to make an entry. These cartels created huge price distortions resulting in gains to the contractors and all the sanctioning authority in the process. Some of the biggest cartels were noticed in Irrigation Contracts, BBMP Garbage Contracts and BBMP Road Contracts. Based on above intelligence input, a Search was carried out on 09/10/2014 on D.Y. Uppar, G. Shankar, Amruta Constructions Pvt. Ltd., SNC Corporation Pvt. Ltd., P. Gopinath Reddy, R. Chandru, S.R. Ravishankar, C.P. Umesh, and B.G. Channappa.

2. During the course of Search on Irrigation Contractors, the analysis of the Laptop/PC of the close employee of the Group revealed certain excel sheets which showed that the taxpayer had purchased accommodation bills of cement and steel from more than 14 dealers all over Karnataka. Forensic Imaging of the laptop was carried out on the spot and the excel printout were taken and a detailed statement was made on the process of taking accommodation entries. It was gathered that the taxpayer was in the process of taking accommodation entries from various entries providers all over Karnataka for a commission ranging from 1.5% to 4%. Cash generated through these mode and direct self-withdrawals from the bank accounts were used for unaccounted payments to various sanctioning authorities and for unaccounted personal investment.
3. In the case of few Irrigation Contractors, it was noticed that Project Engineer at the project sites had to make huge payment outside books for sand, local engineer office, and local politician. Consolidated Expenditure Statement of such outside book payments were Photo Scanned and sent to Head Quarters. All such deleted scanned photos were retrieved and same resulted in unearthing of key evidences for outside book payments.
4. In the case of BBMP contractor, R. Chandru, the analysis of Digital Evidences showed some Tender Estimates under some names. Based on this information, Bank accounts, PAN of the six individuals were found. Bank Statement Analysis showed that the contractor operated all the accounts through General power of attorney. This resulted in identifying six benami contractors and consequently unearthing suppressed turnover of ₹200 crores. All these six benami contractors had not filed their return.
5. Irrigation Sector was an untouched area for many years and the Searches/surveys year has resulted in admission of more than ₹500 crore as income and seizure of more than ₹7.5 crore in Kolkata.

Names of the Officers:

Mr. Deepak Chandola, ITI- Bangalore
Mr. Rakesh, ITI-Bangalore
Mr. R. Suresh, ITI- Bangalore
Mr. Nethrapal, DDIT (Inv.), Bangalore
Mr. Kumar Ajeet, Addl. DIT (Inv.), Bangalore
Mr. R. Ravichandran, DIT (Inv.), Bangalore
Mr. S. K. Misra, DGIT (Inv), Bangalore

FORENSIC EXAMINATION LEADS TO DETECTION OF TRADING ON INTERNATIONAL COMMODITY EXCHANGE AND UNDISCLOSED OFFSHORE BANK ACCOUNTS

Search on a bullion trader on allegation of sale of gold to jewelers in cash and manufacture of gold jewellery outside the books of account leads to discovery of engagement of the taxpayer in clandestine trading in metals on international commodity exchange as well as revelation of foreign bank account in Dubai and Singapore.

Shreeji group of Rajkot is a leading gold bullion trader of Gujarat. The pre-Search intelligence showed that out of books sales of gold were made to the jewellers. Also, the group had interest in real estate business wherein the unaccounted income of the bullion trading was invested by the group. Consequently, a Search and survey action was launched in May, 2013. During the course of Search and survey action on the residential and business concerns of Pankaj C Lodhiya and his group, digital data was seized in the form of hard drives. At the business premise of Shreeji Trading Co. at Shaligram Bhupendra Road, Opp. Diwanpara Police Station, Rajkot of Mr. Pankaj Lodhiya, digital data was seized. The soft media were subjected to forensic analysis. It comprised data from one tally server, ten computers and USB sticks. On further analysis of the digital data seized, with the help of Computer Forensic expert, several incriminating digital documents were found. The software used for forensic analysis was the licenced *Encase forensic software ver6.19* through which all the partitions of the hard disk were scanned for recovering the deleted data. Thereafter this data was segregated in such a way that all the present files were copied in a folder marked as "present files" and deleted files were copied as "deleted files". The data so recovered was also exported on the working copy. In the entire process, hash value of the disk remained unchanged. The Computer forensic report was obtained.

2. The first startling evidence that was found, was a file (st.bank_usd.pdf), a remittance slip to be precise, that was deleted just on

the morning of the Search action. Infact as per forensic report, it was deleted twice to be sure of its deletion, which proved that Mr. Pankaj lodhiya is having two Bank accounts viz in Standard Bank, London & National Bank of Ras Al Khaimah, Dubai (U.A.E). One remittance slip of USD 1,00,000/- signed by Mr. Pankaj Lodhiya, transferring amount from one oversees account to other was also seized. The ownership and operation of said bank accounts by Mr. Pankaj Lodhiya, was established beyond doubts.

3. After the recovery of these incriminating materials from the digital data seized, it was clear that Mr. Pankaj Lodhiya, as an individual and in the name of his concerns was regularly trading on the Metals Web platform of Standard Bank London; he was transferring money from his one foreign bank a/c (standard bank) to another foreign bank a/c (RAK Bank) through remittances, but none of these transactions were recorded in the books of the taxpayer.
4. To get the details of transactions and bank account openings details, references were made to FT&TR Division, which have confirmed the evidences found during the Search. The peak credit balance in the foreign accounts has been found to be more than ₹65 crore. Analysis of aforesaid foreign accounts led to detection of few more foreign bank accounts. Further FT&TR reference to the Singapore Tax authorities was made in respect of other accounts. Singapore Tax authorities have confirmed that another account named STSH is also operated by Mr. Pankaj C Lodhiya.
5. The Search & Seizure action has resulted into the seizure of the assets of ₹2.36 crores and jewellery of ₹1.72 crores. The detection of unaccounted income is of ₹70.27 crores. This is exclusive of peak credit of ₹65 crores in foreign bank account.
6. The case is being monitored by the Special Investigation Team appointed by the Hon'ble Supreme Court and it is one of three cases where names were revealed by the Government of India to the Supreme Court as the government felt that the incriminating evidence against the taxpayer group was beyond question and reproach.

Name of the Officers:

Mr. Apul Jayaswal, ADIT (Inv.)-I, Rajkot
Mr. Sandeep Kumar, ADIT (Inv)-I, Rajkot
Mr. Binod Kumar, Joint DIT (Inv.), Rajkot,
Mr. Harish Kumar, DIT (Inv.), Ahmedabad.

SEARCH ACTION AND SUBSEQUENT MULTI-AGENCY ENQUIRIES REVEAL UNDISCLOSED FOREIGN ASSETS

Undisclosed and secret bank accounts of a scion of a large and a well known business house found in Search action-attempt to erase the trail of foreign accounts in the e-mails thwarted by the quick response of the Search team- the Search action leads to detection of concealed income and assets primarily located abroad and in tax havens of approximately ₹1899 crores.

Yashovardhan Birla (here in after referred as 'taxpayer') is a resident Indian and a member of the renowned Birla family. The intelligence gathered during pre-Search revealed that the taxpayer was holding secret foreign bank accounts in the name of an offshore entity 'Mokopane Ltd.' with Barclays Bank PLC, Singapore.

2. The Search action launched in January, 2014 found a monthly investment portfolio of one of the undisclosed foreign bank account in the name 'Mokopane Ltd.' from an e-mail trail of consultant of the taxpayer which apparently reflected the investment value of US$ 48 million. On subsequent confrontation, the wealth manager of the taxpayer confirmed the fact of Yashovardhan Birla holding undisclosed offshore bank account in his sworn statement and also provided cogent information with regard to immovable properties held abroad by the taxpayer. However, despite being confronted with all these facts, the taxpayer denied having any such foreign accounts / assets and hence, the role of post-Search enquiry had become very crucial.

3. FT&TR references were sent to various jurisdictions viz., Singapore, Jersey, Gurnsey, Switzerland and USA in order to obtain cogent information on undisclosed foreign assets / accounts of the taxpayer and queries made thereupon were promptly responded to. Consequently, voluminous information running into more than 15000 pages received, the same was thoroughly analysed and core documents were identified evidencing that the taxpayer is the ultimate beneficial owner of various foreign

assets / accounts held through a complex trust structure created abroad. The digital data seized was also analysed which resulted in unearthing a correspondence addressed to General Counsel, HSBC Private Bank (Suisse) SA, Geneva, Switzerland evidencing that taxpayer was having banking relations with HSBC.

4. Meanwhile, the wealth manager had filed retraction from his statement made during the course of Search & seizure proceedings citing various grounds. However, the said act of wealth manager was subsequently proved wrong by confronting him with facts in seriatim and his statement on oath was once again recorded wherein he had stated that the said letter of retraction was merely signed by him without even going through its contents and that whatever he had stated in his sworn statement recorded during the course of Search action was true and correct to the best of his knowledge and belief.

5. It is also worth mentioning that the instant case provided an opportunity for out of box thinking in the sense that several options were explored which included but not limited to sending appropriate proposals under Mutual Legal Assistance Treaty to USA for providing access to Google data, issuing global prohibitory order thereby directing the taxpayer not to enter into any transaction with regard to offshore investments, requesting foreign jurisdictions not to allow any flight of money etc., not only to establish the tax evasion by way of undisclosed offshore investments of a resident Indian but also to protect the interest of revenue.

6. Finally, after identification of core documents through a microscopic analysis from information received under FT&TR as well as the seized / impounded material and various statements recorded from time to time, an elaborate statement of the taxpayer was obtained in 20 sittings within a time span of two and a half months covering 159 questions running into 126 pages during post-Search proceedings. In the said statement, a clear departure was seen wherein the taxpayer has admitted having connection with number of offshore entities in the capacity of beneficiary of the trust structure created long back. The remarkable shift from his denial mode to admission mode could become possible

due to the fact that the Investigation of the case was taken as a challenging task and as such, matter was pursued with utmost patience and perseverance. Though, the taxpayer has taken plea that so far he had not received any foreign remittances from any such foreign entity as a matter of fact it is established that he was holding offshore credit cards and that the credit card bills of him were being paid by such undisclosed offshore structure. The Appraisal Report quantifies the value of undisclosed foreign assets in the nature of Bank Investments and immovable properties at ₹1450.25 crores and the taxpayer being ultimate beneficial owner of the various offshore entities holding such assets is held as liable to tax on this count.

7. Besides that, the Search & Seizure action on Yashovardhan Birla Group revealed that various concerns of Group were indulged in obtaining 'Accommodation Bills' for purchase/expenses, created circular transactions for trading turnover and had obtained loans/ICDs in cash in contravention of provisions of section 269SS of the Act. It was further revealed that the Group Concerns have paid interest on ICDs taken in cash outside its books of accounts.

8. Consequent to the instant Search & seizure action, total amount of additional income detected/disclosed is estimated at ₹1899.56 crores which includes 1450.25 crores on account of foreign assets and ₹444.45 crores on various corporate issues. The case has been processed for criminal prosecution under the relevant provisions of Income-tax Act, 1961. and Indian Penal Code, 1860. The Hon'ble Court has already taken cognizance of the offences committed by the taxpayer and process has been issued for framing of criminal charges against the taxpayer.

Names of the Officers:

Mr. Ram Krishn Kedia, DDIT (Inv.), Unit 2(2), Mumbai

Mr. Sushil Kumar Poddar, Addl. DIT (Inv.), Unit -2, Mumbai

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

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

Nandini R. Nair ‘IRS 2013’

INVESTIGATION CARRIED OUT BY INTELLIGENCE & CRIMINAL INVESTIGATION (I&CI)

INVESTIGATION CARRIED OUT BY INTELLIGENCE & CRIMINAL INVESTIGATION (I&CI)

INVESTIGATION BY I&CI REVEALS SUBSTANTIAL UNDISCLOSED INTEREST INCOME

Nonintrusive but focused and pointed enquiries lead to a detection of substantial undisclosed income- Evidence gathered is strong and rigorous to force the assesse to admit additional income that he had so far concealed from the revenue- The detection is of ₹12. 42 crores and payment of additional tax is to the tune of ₹4.62 crores.

Substantial interest income was earned under different names that had no unique identifier like a PAN. The information was for financial years 2010-11, 2011-12 and 2012-13. Initial enquiries showed that the Tumkur Urban Cooperative Bank had apparently paid interest to 3 similar names as per the details given below:

Sl. N.	Name	Interest paid (in ₹) for Financial Years			Total interest paid for 3 years (in ₹)
		2010-11	2011-12	2012-13	
1	Vishwas	14,38,880	19,88,634	17,20,303	51,47,817
2	Vishwas U Lad	14,95,685	32,40,897	41,62,149	88,98,731
3	Vishwas, S/o Uday Singh	7,19,440	15,91,938	10,51,462	33,62,840
	Total	**36,54,005**	**68,21,469**	**69,33,914**	**1,74,09,388**

2. To ascertain as to whether the beneficiary of interest is one person, the information was sorted again by '**Address field**' from which it was found that the address for all the 3 name was 2990, 8th Cross, 17th Main, Indiranagar, Bangalore, from which it was prima- facie established that the beneficiary of the interest is one person. Further verification of information provided by the Bank revealed that the interest mentioned above was accrued from the

investments in 103 Fixed Deposits made during Financial Year 2009-10 as under:

Sl. No.	Name in which FDRs were obtained	Date of initial investment	No. of FDRs	Total Amount invested in FDRs ₹
1	Vishwas	29.03.2010	40	3,80,00,000
2	Vishwas U Lad	27-29.03.2010	43	3,92,00,000
3	Vishwas, S/o Uday Singh	27.03.2010	20	1,90,00,000
	Total		**103**	**9,62,00,000**

3. The above person did not responded to the notices issued under Section 133(6) in the three names separately based on information provided by the Bank even though the notices were served . To obtain further information , the ITO in-charge for UCB Project was directed to obtain Account Opening form along with evidences furnished under KYC norms from the Bank and also the copy of bank account statement and account opening form in respect of savings bank account, if any maintained in any of the above name. The information obtained from the Bank revealed that :-

   (i) The signatures on all 103 account opening form in respect of the FDRs obtained in 3 names was same.

   (ii) The savings bank account No. 30301803550 was opened by quoting the PAN ABJPL 0840 K, with the same address on which the investments in the fixed deposits were made. The account opening form was signed by the same person who signed the account opening form of 103 FDRs.

   (iii) The maturity amount of FDRs in the 3 names was credited in the above one savings bank account , from which the amount was withdrawn in cash.

4. After the above verification, it was ascertained that the investment in 103 FDRs was made by one person having PAN ABJPL 0840 K. Using PAN in ITD , the status of filing of returns of income for assessment years 2010-11 to 2013-14 and Jurisdiction of the Assessing Officer was ascertained. It was noticed that the return of income for all 4 assessment years were

filed. The copies of the returns of income for 4 assessment years along with the information furnished during the proceeding pending under Section 143(3) of the Income-tax Act, 1961 for the assessment year 2011-12 were obtained from the Assessing Officer to ascertain as to whether the interest received from the Bank and the investments made in 103 FDRs have been disclosed in the returns of income. The verification of the returns of income and information submitted by the Assessing Officer established beyond doubt that the investment in 103 FDRs and interest accrued thereon was not disclosed in the returns of income filed. Accordingly, a report incorporating finding was forwarded to the Assessing Officer through the jurisdictional Commissioner of Income-tax on 28.1.2014, bringing all the facts and evidences to his notice,

5. Based on the finding given in the report:

   (i) The Assessing officers issued notice u/s 148 for the AY 2010-11, in response to which return of income was filed offering additional income of ₹10.02 crores and tax of ₹3.78 crores was paid on the additional income disclosed.

   (ii) For AY 2011-12, additional income of ₹41.71 lakhs was admitted during the assessment proceedings u/s 143(3) and tax on additional income of ₹10.44 lakhs was paid .

   (iii) For AY 2012-13, revised return of income was filed disclosing additional income of ₹1.24 crore, and tax of ₹48.08 lakhs was paid on additional income..

   (iv) For AY 2013-14, revised return of income was filed disclosing additional income of ₹74.31 lakhs, and a tax of ₹26.57 lakhs was paid on additional income..

   The Assessing officer has also passed Penalty orders u/s 271(1)(c) of the Income-tax Act for Assessment year 2011-12 and Prosecutions u/s 276C(1) and 277 of the Income Tax Act 1961 has been launched for the assessment years 2010-11 and 2012-13.

Name of the Officers:

Ms. M.S. Indra ITO (Intelligence), Bangalore

Mr. O.P. Yadav, Director of Income-tax (I&CI), Bangalore

Nivedita Biswas ‘IRS 1990’

MISCELLANEOUS ORDERS

MISCELLANEOUS ORDERS

CLAIM OF ARBITRATION EXPENSES FOR TERMINATION OF DEVELOPMENT AGREEMENT DISALLOWED

The CIT directed disallowance of arbitration expenses u/s. 263 on account of compensation for termination of Development Agreement - Enquiries revealed that the Development Agreement, the Arbitration Agreement and Termination of Development Rights were forged and fabricated.

The taxpayer, Dhara Jagadishchandra's claim of deduction of ₹3,81,58,013 being compensation paid to a Developer on account of Arbitration Award due to termination of alleged agreement was accepted by the Assessing Officer, in the assessment proceedings. However, during audit scrutiny by the Internal Audit Party it was pointed out as under :

"The taxpayer had sold land as per registered document in F.Y 2008-09 and had earned the income from Short Term Capital Gain of ₹4,79,97,473 in A.Y. 2009-10 against which she had claimed transfer expenses of ₹3,81,58,103. The taxpayer had claimed to have made the entire payment of ₹3,81,58,013 in the F.Y. 2009-10 i.e., A.Y. 2010-11. The arbitration award "authorised the taxpayer to pay such amount within 24 months of the sale of the property. However, audit was of the view that any arbitration award cannot overrule the provision on Income Tax Act, 1961. Therefore, the entire payment of ₹3,81,58,013 was not allowable as an expenditure as the same had not been made by the taxpayer in the year under consideration".

2. Further, the CIT (Audit), Ahmedabad after examining the case records and relevant documents pointed out the following facts:

2.1 The payee viz. Prerna Infrabuild Ltd. had stated that as it had not received any award during the relevant previous year it was not reflected as its income in the said year.

2.2. The payee claimed that this sum was recognized during F.Y. 2009-10 (A.Y. 2010-11) on receipt. However, the payee

maintained its books of a/cs on mercantile basis and as the alleged arbitration award was given on 29/04/2008, the alleged sum was liable to be recognized as revenue during the A.Y. 2009-10 itself. Further, even the return for A.Y. 2010-11 of the said payee did not reflect any receipt of this amount.

2.3. The payee claimed to have transferred this sum to Sagar Developers on 31/03/2010 to neutralize its revenue impact.

2.4. It was noted that the plot of land was purchased jointly by taxpayer with two other co-owners. However, it was surprising to note that the taxpayer entered into an alleged Development Agreement with the said payee, for her part of land without the explicit consent of other joint owners of such property.

2.5. The alleged Development Agreement dt. 29/03/2007 between the payee and other land owners were markedly different. The language as well as contents were totally different. There was no arbitration clause in the agreement with other co-owners. Thus, the claim by the taxpayer was a clear after thought.

2.6. In clause 13 of the alleged Development Agreement it was clearly mentioned that the Arbitration fee was to be paid by the party. However in the alleged Arbitration Award there was no mention of arbitration fee. Hence, the entire exercise was suspicious as no arbitrator would work without fee particularly when there was a specific provision in the alleged Development Agreement.

2.7. The alleged Development Agreement and all over other subsequent agreements between the taxpayer and the payee i.e. Prerna Infrabuild Pvt. Ltd. were unregistered.

2.8. All other agreements with the real purchaser were registered.

2.9. In the sale deed entered into with real purchaser, it was categorically stated, that the taxpayer had not made any other agreement with any other party, whether oral or written.

3. The CIT, after examination of the assessment records and documents available therein, concurred with the views of the CIT (Audit) that no consideration was payable or paid by the developer to the land owner and so the alleged development agreement was not enforceable as per law. Further, payment for compensation to the developer company was made after lapse

of two years from the date of sale of land and after termination of development rights as per Arbitration Award. Hence, the CIT, accepted the audit objection and remedial action was taken u/s 263 of the Act.

4. During the proceeding u/s 263 enquiries were conducted through the Assessing Officer and it was proved beyond doubt that all the documents i.e. development agreement, arbitration agreement, arbitration award and termination of development rights were forged and fabricated based on the statement of CMD of the developer company viz Prerna Infrabuild Ltd. and verification of the records of the company. The Developer Company never entered into any development agreement or subsequent agreements with the taxpayer. The Board resolutions on letter head of Prerna Infrabuild Ltd. to authorize the Director to sign and execute documents on behalf of the company were forged and fabricated as he was never appointed as Director or the employee of the company. Further, an arbitrator was never appointed by the CMD or developer company. Thus, it was proved beyond doubt that the cheques of ₹3.8 crores were never paid to the company Prerna Infrabuild Ltd, but were encashed through the parties involved in the business of cheque discounting or providing accommodation entries. The taxpayer did not avail the opportunity of cross examination of the witnesses.

5. Order u/s 263 of the Income Tax Act was passed accordingly directing the AO to disallow the claim of ₹3,81,58,013/- on account of transfer expenses.

6. This is a peculiar modus operandi which is being adopted by a number of taxpayers to offset the LTCG even the father of the taxpayer namely Mr. Jagdish Chandra B Patel claimed similar expenses amounting to ₹10.61 crores. The outcome of inquiries in the case was communicated to the A.O. of Mr. Jagdish Chandra B Patel to take follow up action accordingly.

Name of the Officers:

Ms. M. Subashri, DCIT, Coy. Circle 1(3), Chennai.

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

Mr. K. K. Arugmugan, CIT-1, Chennai.

DISALLOWANCE OF CLAIM U/S 80IA

Wrong claim u/s 80IA – amalgamation of companies – section 80IA(12A)

The taxpayer group was engaged in power generation through its various group companies. The basic issue involved in these audit objections was prima facie wrong claim made by the taxpayer u/s 80-IA of the Income-tax Act, 1961 on account of amalgamation of the other Indian Companies with its amalgamating company engaged in business of power generation. The said claim was allowed by the Assessing Officers without appreciating provisions of section 80IA(12A) as applicable from A.Y. 2008-09 onwards. It was observed that as per the material available on records, during the A.Y. 2010-11 and 2011-12, two other companies amalgamated with the taxpayer amalgamating company w.e.f. 01-04-2009 (i.e. the Appointed Date) in terms of Order dated 14-12- 2009 of Hon'ble High Court of Himachal Pradesh, sanctioning the Scheme of Amalgamation.

2. The claim of the taxpayer was prima facie incorrect when read in the background of Amendment to Section 80IA with insertion of sub-section (12A). As per the provisions of Section 80IA read with Circular no. 3/2008, dated 12-03- 2008 Tax benefit u/s 80-IA was not available to the undertaking/enterprise of Indian companies undergoing amalgamation or demerger after 31.03.2007. The main intention in providing benefit u/s 801A had been to provide incentive to those who had taken initial investment and entrepreneur risk. Hence, it was felt that there was no justification for passing on the benefit to someone who had not taken these risks and had only acquired the eligible undertaking much later when the risks had reduced. Hence, a new sub section (12A) had been inserted in section 80IA so as to provide that the provisions of subsection (12) shall not apply to any undertaking or enterprise which is transferred in a scheme of amalgamation or demerger after 31.3.2007. Thus, if an undertaking or an enterprise is transferred in a scheme of amalgamation or

demerger after 31.3.2007, the benefit of deduction u/s 80IA will not be available to the amalgamated or demerged undertaking or enterprise. The content of this circular superseded whatever contrary had been stated, on this issue, in any other circular by the Central Board of Direct Taxes earlier. This amendment took effect from 1.4.2008 and accordingly applied in relation to the A.Y. 2008-09 and subsequent Assessment years. Accordingly, the claim of the taxpayer was not found to be in accordance with the provisions of the Income-tax Act, 1961.

3. The cases for A.Y. 2010-11 & 2011-12 were reopened u/s 147/148. The remedial action for the A.Y. 2012-13 on the findings of the Internal Audit was taken while passing Assessment Order u/s 143(3) by the A.O. thereby making an addition of ₹245,78,86,346/- u/s 80-IA of the Income-tax Act 1961.

Name of the Officers:

Mr. V. K. Bathla, ITO, Hqrs. (Audit), Chandigarh

Ms. Meenakshi Vohra, JCIT (Audit), Chandigarh

Mr. Ravi Sarangal, CIT (Audit), Chandigarh

WITHDRAWAL OF REGISTRATION AS ACTIVITY NOT CHARITABLE IN NATURE

Registration granted earlier was withdrawn u/s. 12AA of the Income Tax Act, 1961 – The Trust was generating income by disposing developed lands which was not used for charitable activities.

Jammu Development Authority, (JDA) a Trust was earlier granted registration holding that the Trust was carrying out charitable activities and did not exist for the purposes of "any trade, commerce or business".

2. The records were subsequently reexamined u/s. 12AA of the Income Tax Act, 1961 to find out about the objects of the Trust and the genuineness of its activities by the Commissioner of Income-tax. It was found that the aggregate value of receipts from the activities referred in the proviso to section 2(15) of IT Act was more than the prescribed limit in the P.Y. (i.e. ₹10 lakh). It was felt that the Trust was operating on commercial lines but was claiming its income exempt u/s. 11 of the Income Tax Act, 1961.

3. The Commissioner of Income Tax, Jammu noted that the objects of the taxpayer was to promote and secure the development of the local area for which it was constituted according to plan and for that purpose the taxpayer had the power to acquire hold, manage and dispose of land and other property; to carry out building, engineering and other operations; to execute works in connection with supply of water and electricity, disposal of sewerage and other services and amenities and generally to do anything necessary or expedient for purpose of such development and for the purposes incidental thereto. The taxpayer is a corporate body having perpetual succession and a common seal with power to acquire hold and dispose of properties, both movable and immovable to contract, and by the said name sue or to be sued.

4. The taxpayer had generated income by way of disposing of the developed lands with the definite motive of earning profit. It was found that no sum out of the income was exclusively used for the purpose of charitable activities. The Commissioner of Income Tax, Jammu further observed that as per the clause inserted in the Memorandum of the society, in the event of dissolution of the entity, all the properties, funds and dues etc. were to vest in the government and there was no restriction as to how the same were to be utilized by the government.
5. In view of the above facts, the registration granted u/s. 12AA to the Jammu Development Authority was withdrawn. The order of the Commissioner of Income Tax, Jammu has been confirmed by the ITAT, Amritsar. The ITAT has held that JDA is an authority established with the motive of profit constituted under the J&K Development Act 1970 and that the activities of such Authority are hit by section 2(15) of the I.T. Act 1961 read with first and second proviso and are not in line with the objects of the Authority / Trust as far as activities relating to purchase and sale of properties, and the Ld. CIT Jammu has rightly held that the JDA is not entitled to registration."
6. The taxpayer filed second appeal before the High Court of Jammu and Kashmir, which was rejected.
7. The taxpayer further filed SLP before Hon'ble Supreme Court which was dismissed.

Name of the Officer:

Mr. Ravi Sarangal, CIT (Audit), Chandigarh.

ASSESSMENT ORDER TREATED AS PREJUDICIAL TO THE INTERESTS OF REVENUE AS LEASE RENT PAYABLE WAS NOT EXAMINED

Lease rent received from leasing of heritage palace to an Associate Concern found to be very low – Tariff rates of the Hotel very high – Powers u/s. 263 were invoked by the CIT.

In the case of Jyoti Limited, the Assessing Officer framed the Assessment Order at an income of ₹3,50,000/- under the head "Income From House Property" for Asst. Year 2008-09. However, it was noted that the taxpayer received license fee of ₹5,00,000/- from Lalit Suri Group, i.e. Bharat Hotel Pvt. Ltd., for the property leased out. It is a huge heritage palace of former Maharaja of Srinagar which was being used as a Luxury Hotel, in a posh locality near Dal Lake. It was seen that the rent of one room was more than ₹5 lakhs per month and the AO without making any inquiries accepted the version of the taxpayer. It was further seen that the controlling interest in the taxpayer company and Bharat Hotel Pvt. Ltd., was held by the same Lalit Suri family.

2. The assessment framed was thus found to be erroneous and pre-judicial to the interest of revenue and provision of section 263 of I.T. Act, 1961 was invoked.

3. The property is of historical importance and is presently a luxurious 5 star hotel having 112 rooms. The tariff rates were exorbitant and thus the assessment was found to be framed without adjudging the fare market value of the property. It was also found that the taxpayer company was subsidiary of the main company of the Group which was the lessee and had spent more than ₹56 crores in the initial lease of the building. It was also seen that the lessee had renovated ₹57.59 crores on behalf of taxpayer company in the initial year of lease and had also revised the lease rent deed from ₹5 lakhs to ₹50 lakhs subsequent to the initiation of proceedings u/s. 263.

5. Hence the assessment order framed by ITO was found erroneous and pre-judicial to interest of revenue and thus set aside by passing order u/s. 263 by CIT, (J&K) Jammu.
6. The taxpayer filed an appeal before the ITAT, Amritsar which was dismissed.

Name of the Officer:

Mr. Ravi Sarangal, CIT, Chandigarh

LIABILITY TO CAPITAL GAINS ON DEPOSIT OF MONEY IN SAVINGS BANK ACCOUNT

Use of information from FIU-IND relating to deposits in Savings Account – AO established that the sums received in lieu of sale of land were liable to Capital Gains.

Information was received from Financial Intelligence Unit (FIU), that Ms. Sunita Devi had opened a savings account with State Bank of India. The profile sheets and bank account statement provided by the State Bank of India showed that huge sums were credited in this account.

2. The information in respect of two credits of ₹82,49,000 dated 19.03.2012 and ₹3,28,29,800 dated 18.06.2012 made in State Bank of India were called for, which revealed that Ms. Sunita Devi had received the said amounts on transfer through RTGS from Mr. Dev Dutt. Therefore, further investigation regarding source of the said amount was made which revealed that Mr. Dev Dutt along with Mr. Charanjit and others sold land measuring 6 acres situated at Badshahpur, Gurgaon.

3. During the course of investigation, it was noticed that Mr. Dev Dutt and Mr. Charanjit & other sellers of above said land had not filed the returns of income ever. These persons were confronted with evidences gathered in regard to sale of land to furnish a distance certificate of their land from the Competent Authority to see whether the land was an urban agriculture land or rural agricultural land or situated within or outside the specified Municipal limits for the purpose of taxability of Capital Gains.

4. The taxpayers had no plausible reply except to say that they had sold agricultural land and as such were not liable for any tax. Further, the taxpayers in order to claim exemption from capital gain tax also filed distorted distance certificate regarding municipal limits. On enquiry, it was established that the land of the taxpayers fell within the specified limits i.e., 8 Km. from the municipal limits as per Notification of the Gazette of India Extraordinary Sec. 3(ii) New Delhi dated 06.01.1994.

5. Thus independent enquiries made in the matter clearly established that the land of Mr. Dev Dutt and Mr. Charanjit & others fell within Section 2(14) i.e., the capital asset have been transferred. As such amount of ₹14,43,61,979 and ₹6,18,49,309 received by Mr. Dev Dutt and Mr. Charanjit & other respectively were liable to Capital gains in their respective hands.

6. In this case bank account was investigated through enquiries. It was found that the deposits in the bank account were out of sale consideration received on account of sale of land, which is not shown in Income Tax return, which resulted in unearthing of Capital Gains of ₹20,62,11,287 involving tax evasion of ₹4.30 crores. This enquiry also highlights the importance of information received from FIU-IND and use of this information for investigation of tax evasion.

Name of the Officers:

Mr. Ram Dutt Sharma, ITO (Inv), Faridabad

Mr. Rajeev Kumar, Addl. DIT (Inv), Faridabad

Mr. P. S. Puniha, Pr. DIT (Inv), Chandigarh at Panchkula

OVERVALUATION OF COST OF ACQUISITION OF PROPERTY THROUGH REVERSE INDEXATION AND COMMISSION PAYMENT TO DIRECTORS

Commission payment to Directors for sale of property was disallowed – not found to be expenditure for the purpose of business - Cost of acquisition of property reworked

The taxpayer, Travelmatics Pvt. Ltd, was in the business of providing investigation services. The AO noticed that the taxpayer had sold a property for ₹3.97 Cr. during the year and had shown capital gain arising out of this transaction after reducing commission amount of ₹48 lacs paid to the directors which was claimed as transfer expenses for the Asst. Year 2007-08.

2. The taxpayer sought to justify this payment by stating that the Company had decided to reward its directors for their exemplary work in fetching a price higher than the prevailing market rates. It was stated that the commission had been paid to the directors after tax was deducted at source on which the directors had paid income tax @ 30%. The AO disallowed the same holding that such payment by a company to its directors was not a valid business expenditure and payment of tax by the directors did not alter the nature of this expenditure.

3. The AO also found that there was over-valuation of the cost of acquisition of the property. It was noted that the method of reverse indexation was not an appropriate method of valuing the fair market value of any property. Further, the fair market value as on 1.4.1981 was based on the estimated circle rates of the current year which was not specified and no corresponding evidence by way of government documents showing circle rate of ₹3000/- were furnished.

   Therefore, in order to determine the rates prevailing as on 1.4.1981, the AO called for information from Punjab Small

Industries & Export Corporation Ltd., a PSU engaged in developing and selling industrial plots similar to the one sold by the taxpayer. As per information supplied by PSIEC, similar Industrial plots in the area were allotted @ ₹46 per sq. yards as on 22.07.1981.

The AO fairly took note of the valuer's contention that the market prices are 2 to 3 times higher than the govt, allotment and adopted a value at three times that of the allotment rate of ₹46/-per sq. yard and arrived at FMV as on 1.4.1981 of ₹138/- (46x30) per sq yard and worked out the cost of acquisition as ₹5,75,000. **This resulted in an addition of Long Term Capital Gain of ₹1,47,90,150/-.**

4. The Tribunal restored the correct position of the Law by upholding the stance of the Revenue on both these issues.

Name of the Officer:

Mr. J. S. Kahlon, DCIT, Circle-1(1), Chandigarh

The Birds
Dr. Harmeet Singh ‘IRS 1989’

REPRESENTATION BEFORE TRIBUNALS, COURTS ETC.

REPRESENTATION BEFORE TRIBUNALS, COURTS ETC.

Consideration received from underwriter on sale of flats treated by the taxpayer as advance – not shown as income during the year – stand of the taxpayer approved by the CIT (DR) inter alia submits representation along with facts evidencing completion of project- on the same, ITAT holds the consideration received from the underwriter taxable during the year.

The taxpayer, a builder developed a residential project consisting of 106 flats. Though there was underwriting by a third party for purchase of 30 flats therein and taxpayer received substantial part of consideration, profit therefrom was not offered for assessment on the plea that it is following 'project completion method'. The assessing officer arrived at the profit on sale of these 30 flats at ₹1.64 crores which was deleted by CIT(A).

2. On further appeal by Revenue, The CIT, DR filed a Paper Book containing various documents such as agreement entered into by the taxpayer with the land owner as well as with the construction contractor, underwriting agreement, certificate issued by Architect about completion of the project, various correspondences, the taxpayer had with CMDA etc. to bring home the point that construction of the project was completed during the year under consideration and on account of the underwriting agreement, profit on the 30 flats accrued during the year to the taxpayer.

3. After analyzing various clauses in the underwriting agreement it was pleaded that as far as the taxpayer was concerned, sale of 30 flats mentioned in such agreement took place in F.Y. 1998-99 itself when the construction was completed and almost full consideration was received. Definition of the word 'underwrite' was brought to the attention of Hon'ble ITAT to mean "to assume financial responsibility/to guarantee purchase". It was shown that CIT(A) failed to take into consideration the underwriting agreement wherein valid

promises were exchanged and the moment one party to such agreement performed his part of the promise, it became an executed contract on which income accrued to the taxpayer. Further, to demonstrate that the taxpayer did not earn any income during the current A.Y., the CIT(A) compared the sale proceeds of 30 flats against cost of construction of 106 flats, which was submitted by the CIT (DR) as a faulty method.

4. In this case, the taxpayer treated the consideration received from the underwriter as advance in its books of account and appropriated the same towards sale proceeds as and when the underwriter sold such flats to the ultimate buyer. It was demonstrated by the CIT (DR) that such practice was against the underwriting agreement executed by the taxpayer as well as against Accounting Principles. This was also shown as contrary to the claim of 'Completed Contract Method' said to be followed by the taxpayer. It was also pleaded that 'Completed Contract Method' was applicable to construction contract business wherein a specific contract work is undertaken by the taxpayer for a specified sum or a specified profit margin whereas the taxpayer is a builder / promoter of real estate business and is not doing any construction contract business and hence 'completed contract method' is not applicable to it.

5. Considering the line of argument made by the DR as well as the decisions cited by him, the Hon'ble ITAT reversed the order of the CIT(A) and upheld the order of the AO including the computation of profit from such transaction. It was held that whether the underwriter is eventually able to sell the flats or not will not affect the contract already entered into with the taxpayer and the risk, responsibility and liability to sell the flats underwritten is on the underwriter. On the basis of the submissions of the CIT (DR) it was held by the ITAT that the amount received from the underwriter is in fact sale proceeds of flats which are liable to be taxed in the year of

completion of the project. It was also held that execution of sale deed and handing over of possession of flats to the ultimate buyer is a mere consequence of underwriter bringing the prospective buyers of which the defacto responsibility and liability already stood transferred to the underwriter. It was concluded that consideration received can be treated as advance till the time the project is in progress and the moment the project is completed, the advance has to be treated as sale consideration.

Name of the Officer:

Mr. Shaji P. Jacob, CIT (DR), Chennai

Dispute before Chandigarh Bench of the ITAT with regard to the benefit of deduction of 100% of profits and gains under section 80IC of the Income Tax Act, upon undertaking substantial expansion – Assessing Officer holding that the same not available to the new industrial undertakings which commenced commercial production during the window period but only to the industrial undertakings which existed prior to cutoff dates – The decision of Delhi Bench of the ITAT in favour of the taxpayer reversed in favour of the Revenue by Chandigarh Bench after taking into consideration detailed representation of the CIT (DR).

Section 80IC of the Income Tax Act inserted by the Finance Act, 2003 with effect from A.Y. 2004-05 provided for deduction of 100% of profits and gains of business for 5 years commencing from the initial assessment year and thereafter 25% of profits (30% in the case of assesse being a company) for subsequent 5 years in respect of Industrial Undertakings which commenced their commercial production on or after 07.01.2003 as a new industrial undertaking in the state of Himachal Pradesh (80IC(3)(ii)). The benefit of deduction at the same rate and for the same period was also available to the existing undertakings upon undertaking substantial expansion.

2. The taxpayer firm commenced its commercial production during the F.Y. 2003-04 on 17.01.2004 and claimed deduction of 100% of its profits u/s 80IC in A.Y. 2004-05 as the initial Assessment Year. After availing the deduction @100% of profits for 5 years upto A.Y. 2008-09 as provided u/s 80IC(3)(ii), the taxpayer undertook substantial expansion in the F.Y. 2008-09 by way of addition to 'Plant and Machineries' and further claimed deduction of 100% of profits and gains for A.Y. 2009-10 on the strength of substantial expansion. The Assessing Officer allowed claim of deduction only @25% of its profits in terms of section 80IC(3)(ii) by holding that the benefit of 100% deduction on substantial expansion was not available to the industrial undertakings or enterprises which commenced

their commercial production on or after 07.01.2003 but to the industrial undertakings or enterprises which existed prior to 07.01.2003 and undertook substantial expansion on or after 07.01.2003. The stand of the Assessing Officer was upheld by the CIT (Appeals).

3. Before the Chandigarh Bench of the ITAT, the issue came up for adjudication in large number of cases whether the industrial undertakings which commenced commercial production as new undertakings on or after the cut-off date of 07.01.2003 were still eligible for 100% deduction of profits in the sixth year upon undertaking substantial expansion. The view of the taxpayer was supported by the decision of the Delhi Bench of the ITAT, in the case of Tirupati LPG Industries Ltd. (ITA No. 991/Del/2013 – order dated 29.01.2014) (45 taxmann.com 326) wherein it was held that benefit of deduction of 100% of profits upon undertaking substantial expansion was available to a new industrial undertakings u/s 80IC and there was no restriction in law on undertaking substantial expansion by the new undertakings or enterprises. The ITAT Delhi decided the issue in favour of taxpayer by placing reliance on the decision of the Hon'ble Supreme Court in the case of Bajaj Tempo Ltd (196 ITR 188) considering the provisions to be ambiguous and by emphasizing the need for liberal interpretation.

4. The CIT (DR) made detailed arguments during the course of hearings before the ITAT which have been incorporated in para 20(i) to 20(xi) of its Order. The Hon'ble ITAT has decided the issue in favour of Revenue Department. The arguments of the CIT (DR) revolved mainly around the interpretation of provisions of law with a focus to establish that there was no ambiguity on this issue upon holistic consideration of the provisions of section 80IC. Briefly, following arguments were made:

4.1 The CBDT in Circular No. 7/2003 clarified that section 80IC was inserted to allow a deduction for ten years from the profits of a new undertaking or enterprise or existing undertaking or enterprise on their substantial expansion. But in absence of any clarification in this circular as to what constituted an

"existing industrial undertaking', further reliance was placed on the notification No. 49/2003 issued by the Central Excise Department and notification dated 08.01.2003 issued by the Ministry of Commerce in which existing undertaking was defined to mean "an industrial unit existing before 07.01.2003".

4.2 To counter the argument of the taxpayers that the Circulars issued by the CBDT and other authorities of the Government are not binding upon Courts, reliance was placed on the decision of the Hon'ble Supreme Court in the case of K. P. Varghese (131 ITR 597) (SC) and N. K. Vaidya (224 ITR 186) (Karnataka) wherein it has been held that the interpretation of statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible.

4.3 To counter the contentions of the taxpayer regarding liberal interpretation of provisions, it was emphasized that even in the situation of any ambiguity, the rule of strict interpretation should be applied following the decisions of the Hon'ble Supreme Court in the cases of Novopan India Ltd. vs. Collector of Customs and Orissa State Warehousing Corporation vs. CIT (237 ITR 589).

4.4 The deduction u/s 80IC was available to the undertakings which either begin to manufacture or produce an article or thing or undertake substantial expansion during the window period i.e. on the 7th day of January, 2003 and ending on 31st day of March, 2012 (as applicable to Himachal Pradesh and Uttaranchal). Therefore, the substantial expansion on 07.01.2003 could have been undertaken only by an industrial undertaking or enterprise which existed prior to 07.01.2003.

4.5 The words **"and undertakes substantial expansion"** used in section 80IC(2)(a) and 80IC(2)(b) are applicable to all the states of Sikkim, Himachal Pradesh, Uttaranchal and North Eastern States. Under section 80IC(3)(i), a new undertaking in the states of Sikkim and North Eastern States is eligible to claim deduction of 100% of its profit for 10 years even if it does not undertake any substantial expansion. If an inference was drawn that a new undertaking can still be eligible to claim further deduction of 100% of its profit in 6th year after undertaking substantial

expansion in the state of Himachal Pradesh, than the words **"and undertakes substantial expansion"** would be rendered otiose in respect of the industrial undertakings in the states of Sikkim and North Eastern Region. The words 'substantial expansion' are not at all required for the states of Sikkim and North Eastern States if the concept of substantial expansion is applied to new undertakings. An interpretation which results into deletion or addition or alteration of any word(s) in a statute or make certain word(s) used by the legislature meaningless is NOT permissible under any rules of interpretation.

4.6 The language used in section 80IC(3)(ii) cannot be modified to provide 100% deduction beyond 5 years in the grab of substantial expansion since there is no provision to claim deduction @100 of profits for 10 years. The words **"and thereafter"** used before 'twenty five percent of the profits and gains (or thirty per cent where taxpayer is a company)' in section 80IC(3)(ii) shall be rendered otiose.

4.7 As per mandate of section 80IC(8)(v) which defines 'Initial Assessment Year', there can be only one Initial Assessment Year for the purpose of section 80IC because of use of exclusionary word 'OR' before the words "completes substantial expansion".

4.8 If the benefit of substantial expansion is allowed to the new undertakings which commenced commercial production on or after 07.01.2003, than such undertakings would be automatically disqualified for deduction by virtue of provisions of section 80IC(4)(i) of the Act as it would lead to reconstruction of business already in existence.

4.9 If a new undertaking having commenced commercial production within the window period and claimed 100% deduction for five year undertakes substantial expansion in 6th year and again claim 100% deduction of profits, than the profits of this undertaking which are not eligible for deduction to the extent of 70 or 75 % (the deduction allowable from 6th year is 25 or 30%) get eligible for 100% deduction in the wake of substantial expansion, which is not permissible in law.

4.10 If the new undertakings after having claimed deduction of 100% of profits for 5 years are again allowed 100% deduction

on the strength of substantial expansion, that would result into great anomaly and discrimination in as much as an existing undertaking shall only be eligible to claim deduction of 100% of its profits for 5 years on completing substantial expansion and thereafter @ 25% or 30% whereas the new undertakings shall claim deduction of 100% of their profits for 10 years. This cannot be the intention of the legislature to dole out uneven benefits to two type of industries meant to be equally poised in the given legal frame work enacted by section 80IC.

5. After considering the arguments and written submissions, the Hon'ble ITAT has held that the liberal interpretation of an incentive provision is possible if there is any doubt or ambiguity. If various sub- sections of section 80IC are read carefully, it leaves no doubt that deduction was meant only for new units or in case of old units if substantial expansion was carried out in such old units and deduction was available only for a period of 10 years. Therefore, there is no question of giving any interpretation much less liberal interpretation to section 80IC when the reading of whole section makes the provision very clear. If the interpretation given by the taxpayers that benefit of 100% deduction of profits on substantial expansion was available to new industrial undertakings is accepted, than the words "and undertakes substantial expansion" used in section 80IC(2)(a) and 80IC(2)(b) in the context of states of Sikkim and North Eastern States and the word "thereafter' used in section 80IC(3)(ii) would be rendered otiose; besides being discriminatory wherein old undertakings would be entitled to 100% deduction of profits on expansion for the first five years and 25% thereafter whereas the new units would be entitled to deduction of 100% of profits for first five years and again @ 100% for subsequent 5 years on substantial expansion. This order has also been uploaded on the website of ITATONLINE. ORG under the category Tribunal Judgments on 29.05.2015.

Name of the Officer:

Dr. Amar Veer Singh, CIT (DR) (ITAT)-2, Chandigarh

Assessment completed by the Assessing Officer u/s 143(3) restricting the claim of the taxpayer u/s 80 IB- the CIT passing revision order u/s 263 and further restricting the deduction on the Duty Drawback Claim received by the taxpayer – appeal by the taxpayer before the ITAT with claim that the order of the CIT was based on change of opinion – the CIT (DR) relying on factual arguments and the binding decision of the judicial authorities – decision pronounced in favour of Revenue by Three Member Bench of the Tribunal.

Appeal was filed by the taxpayer against order u/s 263 passed by the CIT. In this case, the Assessing Officer passed scrutiny assessment order restricting the claim of the taxpayer u/s 80IB by disallowing claim on interest received as well as reducing the deduction already claimed u/s 80HHC. The CIT noticed that deduction u/s 80IB was allowed on the Duty Drawback Claim received and hence passed the revision order.

2. On appeal, the A/R contended that the various disallowances made by the AO regarding claim u/s 80IB shows that the AO had applied his mind on the issue and hence the action of the CIT merely amounts to change of opinion. He further contended that no fresh facts were obtained by the CIT / AO thereafter to allege that the original order was passed without verification. The third line of argument was that at the point of time when the CIT passed the revision order, there were contradictory orders of Chennai Bench of the Hon'ble ITAT on the issue and hence the order of the AO cannot be treated as erroneous at that time.

3. As counter to the above- the CIT (DR) made the following representation:

3.1 Opinion is formed on an issue; sec. 80IB has different facets and the AO has not formed any opinion on the issue of eligibility of sec. 80IB deduction on duty drawback receipts.

3.2 As held by the Apex court in the case of Malabar Industrial Co., it is the duty of the AO to make proper verification before

completion of the scrutiny assessment. It was expressed by the DR that verification means verification of facts as well as verification of law.

3.3 When the CIT passed the order u/s 263, though there were contradictory orders of the Hon'ble ITAT, orders of jurisdictional High Court were available on the issue and all such orders were in favour of the Revenue. It was demonstrated that though such orders were on sec. 80I, sec. 80IA etc. in effect sec. 80IB is parimateria with these sections.

3.4 It was also demonstrated that order of the Hon'ble Madras High Court on the issue under sec. 80IB itself was existing on the date of passing the revision order by the CIT and non-citing of such decision by the CIT in the revision order was not fatal.

3.5 Finally, it was submitted by the DR that the issue stands subsequently decided by the Hon'ble Supreme Court in the case of Liberty India and the order of the Apex court will date back.

4. Various decisions in support of the above propositions were also cited by the CIT (DR). There was division of opinion, between the Members in decision and hence the matter was referred to the Third Member who after detailed hearing decided the issue in favour of Revenue. This being a Third Member Decision will have binding force throughout the country on the above aspects.

Name of the Officer:

Mr. Shaji P. Jacob, CIT (DR), Chennai

For A.Yr. 2003-04 and 2004-05 The taxpayer filing Return of Income in accordance with the change in its office address – assessment completed by the officer holding jurisdiction over this address – subsequently the taxpayer taking the plea of violation of jurisdiction by the AO and accordingly pleading to treat the assessment null and void – the CIT (DR) analysing the legal provisions in detail – the ITAT giving the finding that objection to jurisdiction has to the made within the 30 days of time u/s 143(2) of notice thus rejecting the taxpayer's claim. Department's view upheld.

For A.Yr. 2003-04 to 2007-08 the taxpayer following cash system of accounting and still not showing revenue receipt on account of sale of flats as income taking support from its "Hire Purchase" agreements as per terms of which sale not considered complete unless all payments made by the purchasers- the AO rejecting the plea and taking the value of installments received as income during the year holding that the taxpayer follows cash system of accounting- the CIT(A) deleting the addition- based on the argument of the CIT DR the ITAT upholding action of the AO with the observation that the taxpayer cannot follow two different systems of accounting under the same head of income.

For A.Yr. 2008-09 the taxpayer debiting expenditure of Rs. 225 cr. On account of land for International Airport at Mohali-the AO disallowing the expenditure by holding the same not having been incurred wholly and exclusively for business- the CIT(A) carrying out factual enquiry and analysis to substantiate and strengthen the agreements of the AO- the ITAT upholding the action of the AO and the CIT(A) on the basis of factual findings incorporated by the CIT(A).

A.Yr. 2003-04

The taxpayer Punjab Urban Development Authority was having its registered office in sector 17, Chandigarh and was filing' return of income in circle 2(1), Chandigarh. During the relevant assessment year the office of the taxpayer was shifted to Mohali and accordingly the taxpayer filed Return with Assistant Commissioner. Circle 6(1) which was having jurisdiction for Mohali area. The Return was transferred to Assistant Commissioner Circle 2(1) as the case was previously dealt by him. The case was selected for scrutiny and Notice under section 143(2) was issued by Assistant Commissioner, Circle 2(1) on 5-1-2004. The taxpayer further filed revised return for this year on 7-2-2005, again with Circle 6(1). This Return was again transferred to Assistant Commissioner Circle 2(1) on 17-2-2005. In May 2005, Assistant Commissioner Circle 2(1) transferred the case back to Assistant Commissioner Circle 6(1). The assessment was finally completed by Assistant Commissioner Circ1e 6(1).

2. During the assessment proceedings, the taxpayer never objected to the jurisdiction of Assistant Commissioner Circle 6(1). However, when the taxpayer was not satisfied with the Assessment Order, an appeal was filed against the same and an additional ground was taken before the Commissioner (Appeals) that Assistant Commissioner, Circle 6(1), Chandigarh had erred in assuming jurisdiction from Dy. Commissioner, Circle 2(1) Chandigarh on the direction of Joint Commissioner Range 6. Chandigarh. It was also contested that the Assessing Officer had assessed the case without receiving the order under section 127 from the Commissioner Chandigarh. It was further contended that no opportunity of hearing was granted to the taxpayer before transferring the jurisdiction over its case and hence, the total assessment was bad and void ab-initio. The Commissioner (Appeals) held in favour of the taxpayer that this was a case of transfer of jurisdiction and since no valid order had been passed by the concerned Commissioner, the jurisdiction was not properly transferred and Assessment order was therefore void ab-initio.

3. The Department preferred appeal before the Chandigarh Bench of the ITAT. During the course of proceedings before the ITAT, the CIT (DR) gathered various factual informations and carried out analysis of Law. In her submissions, she inter-alia represented that:

3.1 Section 127(1) provides that a case may be transferred by Director General of Income Tax or Chief Commissioner of Income tax or the Commissioner from one Assessing Officer to another after providing for reasonable opportunity to the taxpayer. However, sub-section (3) of this section carves out an exception which provides that no such opportunity is required to be given where a case is transferred within the same city. Since Taxpayer's case has been transferred within the same city, therefore, no opportunity was required to be given to the taxpayer. If taxpayer had any issue with the jurisdiction, then the same should have been taken up under section 124(3)(a) which clearly provides that if the objection is not raised during the assessment within a period of one month from the issue of notice under section 143(2), then the issue of jurisdiction cannot be called in question after completion of assessment. This is a case where the taxpayer has Suo-moto filed Return in Circle 6(1) and even while the notice has been issued by the Assessing Officer of Circle 2(1) against the revised return filed by the taxpayer in Circle 6(1) as he was having jurisdiction prior to change of address to Mohali. The Return was subsequently rightly transferred to Circle 6(1) where the jurisdiction subsequently vested on account of change in address.

3.2 After filing of Revised Return the Assessing Officer got fresh powers to issue notice under section 143(2) against such Revised Return which was issued on 12-7-2005. The Revised Return filed on 7-2-2005 under section 139(5) was well in time. At the relevant point of' time, Notice under section 143(2) could have been issued within a period of 12 months from the end of the month in which the Return had been filed. Sub-section (2) of section 143 refers to section 139 which means that the Return under sub-section (5) of section 139 is included therein. Since, this Notice has been issued on 12-07-2005, it is well within the prescribe time limit.

3.3 Requirement for raising the objections regarding jurisdiction has been incorporated in section 124(3)(a) because it is settled law that the issue of transfer is an administrative matter and if any question arises regarding jurisdiction, the same can be determined by the Director General of Income Tax or the Chief Commissioner of Income Tax. This is specifically provided in sub-section (2) of section 124.

3.4 Section 246A, provides right to the taxpayer for filing of Appeals. No Appeal has been prescribed in respect of jurisdiction sections namely 120, 124 and 127 etc.

3.5 The Assessing Officer, Circle-6(1) was having inherent jurisdiction u/s 120 to assess this case.

4. It was held by the Hon'ble ITAT that if the taxpayer had any objection to the jurisdiction, he should have raised such objection within 30 days of issue of Notice to the taxpayer by the Assessing Officer Circle 6(1). In the absence of such objection the taxpayer cannot challenge the jurisdiction later on. Taxpayer had submitted itself to the jurisdiction of circle 6(1). Secondly when the taxpayer filed Revised Return and a Notice under section 143(2) was issued by the Assessing Officer Circle 6(1), the taxpayer did not raise objection on the jurisdiction. This issue is being raised merely as a matter of technicality to get the assessment annulled which is not possible because even if the assessment was to be made by the Assessing Officer Circle 6(1), no inconvenience was caused to the taxpayer. Thirdly inherent jurisdiction of the taxpayer being located at Mohali lies with the Assessing Officer Circle 6(1). Accordingly, the Assessing Officer's order was restored and CIT(A)'s decision was set-aside.

A.Yr. 2003-04 to 2007-08

Receipts on account of installment on Sale of House/Flat to be accounted for during the year in cash system of accounting - Department view up held

5. During the assessment proceedings the Assessing Officer noticed that the receipt from sale of houses and flats where complete payments by the purchaser were not made, were

being accounted as capital receipt by the taxpayer. It was mainly submitted by the tax payer that such houses and flats had been sold on Hire Purchase basis and as per the 'Hire Purchase Agreement' sale was not complete unless all payments had been made by the purchaser. The Assessing Officer held that since the tax payer had adopted cash system of accounting, income had to be computed on the basis of installments received during the year minus any amount which had already been accounted for as revenue receipt during the year under consideration. The Commissioner (Appeals) deleted the addition by holding that since the taxpayer was following the Project Completion Method, therefore the income would be shown only on the completion of the Scheme.

6. Following submissions were made by the CIR (DR):

6.1 The provisions of section 145 were substituted by Finance Act, 1995 with effect from 01-04-1997. Before this substitution, the taxpayer had choice to follow mercantile or cash or even hybrid system of accounting i.e. the taxpayer could choose cash system of accounting for one source of income and mercantile system of accounting for other source. Since, the income of the taxpayer is chargeable under head "profits and gains of business or profession", therefore, the taxpayer could have adopted only one system of accounting. Before the present year, the taxpayer was following mercantile system of accounting and during the year under consideration, the method of accounting has been changed to cash system of accounting and as such, the amounts received during the year was to be accounted for in its income.

6.2 Where an organization which is carrying out the business of construction and development of houses and if such organization sells the same out-rightly or on installments basis then such installments would be in the nature of income. There is no force in the submissions of the taxpayer that the installments received by it do not come under the Charging Section and hence not taxable for the reason that the same is bound to be taxed on case basis under section 145.The receipt under cash system has to be taxed. It has been clarified by the Hon'ble Supreme Court in case of South Technologies Ltd. Vs. JCIT 320 ITR 577(SC) that no other Act can override these provisions.

7. The ITAT Held that the installments received against such sales which are in the nature of revenue receipts, are required to be taken into consideration for determination of income in this year because the taxpayer has adopted cash system of accounting during the year. Regarding the contention that the taxpayer was continuously following project completion method and therefore, no income can be determined unless the projects are completed, it was held that taxpayer cannot follow two different systems of accounting under the same head of income and therefore, the Assessing Officer correctly included all the installments received from the allotters of the houses and the flats in the income of the taxpayer. The Assessing Officer was further directed to include installments received on sale of various houses and flats under Hire Purchase Agreement and at the same time allow corresponding expenditure which had been incurred by the taxpayer in cash (including through cheque). Further, in the year of completion of a particular Scheme, effect has to be given in respect of accumulated installments as well as accumulated expenditure which has not been already considered in a particular year on cash basis.

A.Yr. 2008-09

Contribution made by the taxpayer towards land held to be expenditure not incurred for business purpose

8. The taxpayer had debited an expenditure of ₹225 crores on account of land for international airport at Mohali. The Assessing Officer did not allow the expenditure for the following reasons:-

    - The JVC consisting of the taxpayer had been formed for the purposes of construction of airport at Mohali in which GMADA, HUDA and Airport Authority of India had their specific shares, but PUDA did not have any share holding in the JVC. In fact it had nothing to do with the airport at Mohali and so it was not known as to in what capacity PUDA had booked the amount of ₹225 crores for acquisition of land for airport at Mohali.
    - The expenditure of ₹225 crores for acquisition of land for airport at Mohali was not at all related to income earned during the year.

- The taxpayer had not shown the acquired land in its fixed assets schedule / balance sheet, which clearly substantiated that the expenditure was not related to the business of the taxpayer.
- The expenditure was not related to or not for the purposes of generating business income. Therefore, it cannot be treated as revenue expenditure allowable u/s. 37(1) of the Act.
- The Assessing Officer also distinguished various judgments relied upon by the taxpayer.

9. During the appellate proceedings, the CIT(A) went into great details and examined the directions issued by the Government in the light of the objects of the taxpayer company.

9.1 The CIT(A) also applied provisions of the Act as well as various case laws on these subjects. After considering the issue in its entirety, the CIT(A) found that the taxpayer had not made the expenditure on its own. The expenditure was not for the purpose of business of the taxpayer company. The expenditure was incurred at the direction of Government of Punjab. The CIT(A) found that the Government of Punjab had decided that the taxpayer company would pay ₹225 crores because the Joint Venture company partners did not have the surplus funds whereas the taxpayer company had surplus funds. The CIT(A) further found that the proposal of the Chief Secretary, Government of Punjab directing the taxpayer company to pay 75% of the cost was opposed by the Chief Administrator of the taxpayer company vide Note dated 7th March, 2008.

9.2 The CIT(A) found from the documents that the decision to establish the airport was that of the Government and how much money should be contributed by each organization was also decided by Government; of course after taking into account the availability of funds with each organization. The concerned organizations were neither a party to the decision for the establishment of the airport nor did they have any say in regard to the quantum of contribution, which they were required to make. In fact, as is clear from the noting on the files of PUDA, the officers of PUDA were against bearing the financial burden, which the Government had imposed on it. The selection of

the organizations was purely on the basis of the availability of surplus funds, which is clear from the fact that one of the organizations required to contribute was Greater Ludhiana area Development Authority (GLADA), which by no stretch of imagination could be considered as having anything to do with the airport at Mohali. It can be clearly inferred that the contribution was not even voluntary. Hence, the CIT(A) held that the contention of the Ld. Counsels that the expenditure in the form of contribution was for business purposes totally lacked conviction.

9.3 One of the contentions raised by the taxpayer was that the expenditure was incurred as per PUDA Act and so it should be considered legitimate business expenditure. The CIT(A) decided that mere fact that an expense can be incurred under PUDA Act does not ipso-facto make it a business expenditure. The provisions of the PUDA Act for PUDA are like the clauses of the Memorandum of Association for a Company. Any expenditure outside the scope of Memorandum of Association, if incurred, can be recovered from the directors by the company. The same position obtains in the case of statutory bodies. However, merely because an expenditure can be legally incurred, will not make it per-se, a business expenditure. The CIT(A) decided that in the present scenario, the taxpayer has neither any title to the land nor does it get any direct advantage to its business, but had to pay money because of the diktat of those, who control the organization and the amount is being claimed as a deduction from the business income,

9.4 The taxpayer also made an attempt to contend that the establishment of an international airport would push up the prices of land in the area and so would promote the business of the taxpayer. The CIT(A) stated that any economic development of the area would benefit all. But to qualify for deduction under section 37(1), the expenditure must be shown to have direct nexus with the business of the tax payer and there was no such nexus in this case.

9.5 In view of the above discussion, the CIT(A) decided that from the notings on the files of PUDA it is clearly established that

the Punjab Government did not think of the business interest of PUDA or others while fixing their contributions and of course, these organizations had no say in the decision making and PUDA merely accorded ex-post facto approval to the payment. PUDA was the largest contributor for the cost of land and neither it had any share in the land nor in any other part of the project. It had no share in the JVC formed for the establishment of the airport. The members of JVC were HUDA, GMADA and Airport Authority of India. In view of the above, the CIT(A) confirmed the disallowance of claim of ₹225 crores as the same was not wholly and exclusively for the purpose of business and hence, not allowable u/s. 37(1) of the Act.

10. The taxpayer's Appeal was accordingly rejected by the ITAT.

ITA Nos. 762/Ch d/267. 759, 760, 765 & 769/Chd/2068, 744 & 745/Chd/2669. 524. 545 & 1220/ Chd/2011 and 390 & 484/ Chd/2012- A.Y. 2003-04 to 2008-09

Name of the Officers:

Ms. Jyoti Kumari, CIT (DR), (ITAT)-1, Chandigarh.

Mr. P. K. Shrivastava, CIT (A)-1, Chandigarh

*For A.Y. 2008-09, this case has been selected in both the categories i.e. CIT Appeals and representations before the ITAT. It was therefore decided to bring out a common synopsis incorporating the actions of both the officers i.e. the CIT Appeals and CIT DR ITAT.

Section2(15) of the Income tax Act 1961. Amended videFinanceAct,2008- a Proviso added to the existing provision which states the advancement of any object of general public utility shall not be a charitable purpose if it involves any activity in the nature of trade, commerce or business for a cess or fee or any other consideration - During the A.Y. 2009-10 the taxpayer receiving ₹124.87 crores from advertising as against sale of newspapers of ₹17.49 crores – the AO disallowing the claim of exemption made by the taxpayer u/s 10(23C) (iv) – the CIT (Appeals) deleting the disallowance – before the ITAT the CIT (DR) vehemently representing that exemption not permissible in the case of the taxpayer in view of newly introduced proviso - the ITAT accepting the argument of the DR and holding that the taxpayer was carrying out only one activity of printing and publishing of Newspaper which is covered by the clause of "other objects of general public utility" – order of the AO upheld

The taxpayer M/s Tribune Trust is deriving income from printing and publication of Newspaper, interest income, advertisement income and misc. income. The taxpayer was claiming exemption u/s 10(23C)(iv) of the Act and during the year, the taxpayer had claimed exemption amounting to ₹1,97,95,36,211/- and had claimed deficiency to be carried forward amounting to ₹38,74,62,223/-. The assessing officer also reworked the total deficiency to be carried forward at ₹14,86,51,125/- instead of the claimed value of ₹38,74,62,223/-. The taxpayer had paid taxes on FBT amounting to ₹31.49 lakh. After analysing the legal provisions and applying the same to the facts of the case, the AO disallowed the claim of exemption u/s 10(23C)(iv) made by the taxpayer in view of the change in definition of section 2(15) as per Finance Act, 2008 and Instruction No. 11 of 2008 dated 19.12.2008. Consequently, he determined the income taxable at ₹26,81,557/- for the A.Y. 2009-10.

2. The CIT(A) deleted the disallowance citing reason that irrespective of the Amendment in Section 2(15), the

taxpayer will continue to enjoy the exemption granted till it is withdrawn by the CBDT for the reason that the case does not fall under Section 2(15), the income being exempt u/s 10. Before the ITAT, the taxpayer had filed assessment order for A.Y. 2010-11 in which the AO had allowed exemption u/s 10(23C)(iv) though the AO had observed that there was no change in the nature of business of the taxpayer. The AO has even observed that the status of this exemption in the light of Amended provision of section 2(15) is not clear. However, he has accepted the income/loss returned by the taxpayer. The taxpayer took the plea during the course of the hearing that once in the subsequent assessment year the AO has accepted the taxpayer's claim, then afore said Department's appeal in this case for A.Y. 2009-10 was not maintainable.

3. The matter was contested by the Department before the Chandigarh Bench of the ITAT. Before the Bench, the CIT (DR) put forth detailed arguments vehemently opposing the action of the CIT (A). The submissions inter alia included:

3.1 In view of the amended definition of section 2(15), the taxpayer becomes a taxable entity and thus the income of the taxpayer cannot be exempt from tax. Section2(15)was Amended vide Finance Act, 2008 and a Proviso was added to the existing provision. Proviso to section 2(15) states that advancement of any object of general public utility shall not be a charitable purpose if it involves any activity in the nature of trade, commerce or business for a cess or fee or any other consideration. The taxpayer is deriving its major income from advertising and not from printing and publication of newspaper. During the A.Y. 2009-10, taxpayer has received ₹124.87 crores from advertising as against sale of newspapers of ₹17.49 crores. Circular No. 2008 dated 19.12.2008 states that the newly inserted provision will apply in respect of entities whose object is advancement of any other object of general public utility i.e. fourth limb of the definition of charitable purpose.

3.2 The object of the taxpayer Trust is not education for the reason that publishing and distribution of Newspapers cannot be equated to education.

3.3 In the case of the taxpayer itself Hon'b1e Privy Council in the Trustees of Tribune, 7 ITR 415 have held that printing and publication of Newspaper is an object of general public utility.

3.4 The Hon'ble Supreme Court in the case of Sole Trustee Lok Shiksha Trust, 101ITR234(SC)have held that printing and publication of newspaper is not education. It held that educational effect of a newspaper is only indirect and education is through normal schooling and therefore, printing and publication of news paper was an object of General Public Utility.

3.5 The AO should have considered the newly inserted provision of Section 2(15) before allowing exemption u/s 10(23(C)(iv) for A.Y.2010-11. In view of last proviso to section 10(23)(C) inserted w.e.f.01.04.2009, the AO can disallow the exemption claimed u/s 10(23)(iv) if the first proviso to section 2(15) becomes applicable to such Trust or institution whether or not any approval granted or notification issued in respect of such Trust or institution has been withdrawn or rescinded. Further, conditions mentioned in 7th proviso to section 10(23)(C)(iv) are also required to be examined as to whether taxpayer's business is incidental to the attainment of its objective and whether separate books of account are maintainable by it in respect of such in come.

3.6 Though the taxpayer is claiming exemption u/s 10(23)(C)(iv), it is filing FBT return and paying tax even while the proviso tosection115W(a) states that any person eligible for exemption u/s 10(23C) shall not be deemed to be an employer for the purpose of this Chapter. By natural corollary, the conduct of the taxpayer leads to admission of its taxability rather than exemption.

3.7 The taxpayer has been claiming excess exemption u/s 10(23C)(iv). It has claimed deficiency to be carried forward at ₹38.74 crore whereas the actual deficiency worked out by the assessing officer to be carried forward was ₹14.87 crore.

4. The ITAT accepted the argument of the DR and held that the taxpayer was carrying out only one activity of printing and publishing of Newspaper and it is covered by the clause of "other objects of general public utility". The Hon'ble ITAT

distinguished various decisions cited by the taxpayer and held that the taxpayer was earning profit and it also held that even if exemption has been granted, income can still be assessed if it is found that 1stproviso to section 2(15) is applicable. It was held that the applicability of 1st proviso to Section 2(15) was supported by the fact that the taxpayer had filed the return of FBT.

Name of the Officer:

Ms. Jyoti Kumari, CIT (DR), (ITAT)-1, Chandigarh

R. K. Mishra 'IRS 1991'

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