For Departmental Use Only

LET US SHARE

A Compilation of Best Practices & Orders
of Income-tax Department

Vol. II 2009

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

S.S.N. Moorthy
CHAIRMAN

केन्द्रीय प्रत्यक्ष कर बोर्ड
राजस्व विभाग, वित्त मंत्रालय
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Government of India
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MESSAGE

I am happy that the good beginning towards harnessing knowledge made with the first volume of "Let us Share" has been continued and followed up with the publication of this second volume. It gives me immense pleasure to announce that we have been able to create an institutional memory within a short span of 10 months to give effect to an important decision taken in the 24th Conference of Chief Commissioners and Directors General held on 9-10th of June last year.

I am glad that a part of hitherto oral tradition of the Department is now being documented. This will help the department reach heights unheard of in the past.

There has always been a need for a book of this kind containing the distilled experience of the department. Documentation of our individual learning for collective use would also conserve our precious resources and help us focus better on our core functions, which are scrutiny, investigation and providing better taxpayer services. The knowledge management initiative aims at sharpening the investigative and analytical skills of the departmental

personnel and providing excellent service delivery mechanism for improving taxpayer service. This initiative could not have come at a better time.

I am sure that all the officers of the department will welcome institutionalization of this process of co-creation of knowledge and participate in the process wholeheartedly.

I congratulate the team whose diligent efforts have made this publication possible.

22nd April, 2009
New Delhi

(S.S.N. Moorthy)
Chairman, CBDT

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FOREWORD

In my Foreword to the first volume of "Let us Share", I had concluded that with the publication of the book the department had taken its first step towards the final stage of learning curve "Unconscious Competence".

The decision to come out with the second volume of compilation in quick succession is to impart a sense of permanence to the institutional mechanism for the process of co-creation of knowledge and to internalize the significance of having an organizational memory. I am delighted to see a healthy competition amongst the departmental personnel for the limited space in the second volume, demonstrating that the idea of "striving for excellence" has actually caught on in our department. I am sure, sharing of ideas and expertise with our colleagues will raise the bar even further and this process itself will result in continuous improvisations and improvements. The first volume contained orders and practices of last five years, as such it was not possible to collect or include best practices and orders from the entire country in one book. The second volume in that sense becomes a continuation of the first, literally and figuratively.

The taxpayers have shown an enthusiastic response to our initiative to share our first publication with them. The media has also hailed it as an important step towards transparency and has termed it as a "paradigm shift in the institutional thinking". As a professional organization responsive to its customer, it has become all the more important for us now to have a blue print ready for the future. The "Road Ahead", a chapter in the current volume, has laid down the road map for the future.

Our aim is to align this exercise of knowledge management with our core activity of formulation of tax policy and its implementation for improved voluntary compliance. This will provide an all India platform for debating contentious issues arising out of the Income Tax Act and would eventually help us arrive at a consensus. While the compilation is not intended to serve as a reference to anyone, I am sure that the debate that would be generated on the issues published in the book would ultimately bring uniformity of approach across the country. It would also help reduce litigation and develop a robust tax jurisprudence which will serve the taxpayers better. From now on, the publication of the compilation will be an annual event to coincide with the All India Conference of Chief Commissioners and Director Generals so that the august body of the top management of the Income Tax Department has a chance to debate on the tax policy and administrative issues.

A sound tax policy cannot, however, achieve the objectives in isolation. Innovative administrative measures, aimed at providing quality taxpayer services will also have a very important bearing on the level of compliance. The conduct of a two day workshop on "Best Practices" at NADT on an annual basis to discuss both regional and national initiatives is a testimony to the determination of the Central Board of Direct Taxes to continuously improve services to our valued taxpayers.

This compilation is, however, not intended to serve as an authority on any legal proposition. This book is published for internal consumption and the contents should not be shared with anyone outside the Department. While we expect the officers of the department to learn from this compilation, they should not take it as the ultimate guide. This book is just a compilation of good orders and practices of the Income Tax Department and should be viewed as such.

I extend my heartiest congratulations to the team of officers who have given wings to the concept of knowledge management and sincerely hope that the collective wisdom of the departmental officers would nurture this initiative to make the department an epitome of professional excellence.

22nd April 2009
New Delhi

(Saroj Bala)
Member (Revenue), CBDT

ACKNOWLEDGEMENTS

Our maiden effort towards institutionalization of Knowledge Management bore fruit in the shape of the first volume of "Let us Share", a compilation of Best Practices and Orders. This publication was the result of months of planning and coordination, and tireless efforts of a number of officers and others. The compilation of the second volume after a very short gap is also the fruit of the processes put in place while publishing the first volume. This volume contains a selection from an overwhelming number of proposals that were received from the regional Committees, which is not only a testimony to the positive response to the first volume, but also a testimony to the fact that a substantial volume of high quality work in the field of administration, assessment, appellate proceeding, investigation and TDS is being carried out by our officers and staff across the country. The complexity and challenging nature of work in the department, the continuous metamorphosis of systems and evolution of law would be better managed by our officers through this sharing of knowledge.

I sincerely thank all the officers of the department for taking pride in their work and sharing their experience and expertise with others through the contributions submitted at a very short notice.

I would also like to express my gratitude to the regional, committee members who spared their valuable time to go through the numerous submissions before objectively evaluating them. This compilation would not have been possible without their efforts and contribution. The National

Evaluation Committees also spent long hours, burning midnight oil to meticulously evaluate the entries and shortlist the best for inclusion in the national compilation. I would like to place on record my gratitude to them for undertaking and completing this difficult task of selecting the most appropriate entries for this volume.

The Editorial Board headed by Smt. Poonam Kishore Saxena, DGIT(Inv), Jaipur had the onerous responsibility of editing and compiling the entire volume in a time bound manner. They have worked tirelessly for days on end, without any break, to complete this task.

I would also like to thank Shri K. Chandrahas, CCIT-V, Chennai for his invaluable inputs and Shri Nilimesh Baruah, DIT(O&MS), & Shri Amitabh Kumar, DIT(PR,PP&OL) for rising to the challenge of piloting and bringing out this compilation at a very short notice. I wish to thank Shri Vivek Kumar, Addl DIT(O&MS), Shri Subhakant Sahu, Addl.DIT(O&MS), Shri R.K. Raina, Addl. DIT(P&P), Smt Renu Amitabh, Addl. DIT(PR), Shri D.K.Chauhan, DDIT (O&MS), Smt. Deepshikha Sharma Kumar, DDIT (O&MS), Shri Hira Singh Negi, AAD (O&MS) and Smt. Namrata Rai, AAD (O&MS) for assisting the editorial team and Shri Sudhanshu and Shri Shailendra of DIT(PR,PP&OL) for the secretarial assistance provided by them.

I would finally like to place on record a special note of gratitude to Smt. Saroj Bala, Member (Revenue), who has been the driving force behind the creation of this initiative and for institutionalizing the process of recording and recognizing quality work through this publication. I am grateful to Shri S.S.N. Moorthy, Chairman, CBDT for giving us this gentle push, without which the second volume would not have come at such a short interval.

Kalyan Chand

22nd April 2009 Director General(Admn.)

BEST PRACTICES

BEST PRACTICES

TAXPAYER SERVICES & E-GOVERNANCE INITIATIVES

INITIATIVES FOR ENHANCING REVENUE PRODUCTIVITY

TAX RETURN PREPARER SCHEME

The first phase of tax reforms in India typically centered on the rationalization of tax rates and simplification of tax laws. The result of these measures has been spectacular. Direct tax collection has jumped from nearly Rs 11000 crore in 1990-91 to Rs 3,14,000 crore in 2007-08.

There has, however, been an increasing realization that the rate of compliance is not affected solely by the tax rates but also by the cost of compliance and quality taxpayer service. The cost of compliance is defined to mean the cost incurred by taxpayers in meeting the requirements laid down by tax laws and the administrative processes. These are costs over and above the actual payment of taxes and over and above any 'distortion costs' inherent in the nature of tax. Studies conducted by Richard M. Bird & Erik M. Zolt on behalf of the World Bank (2003) and by Saumen Chattopadhyay & Arindam Dasgupta (2002), suggest that small and marginal taxpayers incur more cost for tax compliance per unit of income earned than those in the higher income bracket resulting in lower compliance levels amongst the small and marginal income earners. The study also revealed that in India the use of tax advisors result in substantial money compliance costs to the taxpayers, but at the same time it adversely affects tax compliance. The studies, therefore, underlined the need for reducing compliance cost, increasing awareness and monitoring the functioning of tax advisors.

For Income Tax Department, the task of adding new taxpayers or bringing back stop filers has not been very easy due to cumbersome processes, lack of awareness, high cost of compliance in terms of hiring of legal help, maintenance of accounts, etc. and fear of frequent visits to the income tax offices. The Department itself suffers from major constraints of resources, infrastructure and manpower. In order to ease the burden on taxpayers, the Department has undertaken large scale computerization of its processes which enables it to offer a host of online services e.g. e-filing of Income Tax returns, e-payment of taxes, e-filing of TDS returns, online tracking of tax challans etc. Though these processes are convenient and cost effective, Internet itself as a channel of communication and taxpayer service has limitations of public acceptance and many small and marginal taxpayers are unable to utilize these

services for want of knowledge or availability of computers and connectivity etc.

Objectives

In the backdrop of these findings, the Tax Return Preparer Scheme was visualized to fulfill the objective of reducing the cost of compliance amongst the small and marginal taxpayers; to increase compliance amongst them and to provide self-employment opportunities to the educated unemployed by allowing them to assist the taxpayers in preparing and filing of their tax returns. The Tax Return Preparers are also meant to serve as intermediaries to help small and marginal taxpayers utilize the plethora of taxpayers services offered through internet channel, that they were hitherto unable to use.

The Scheme

The Tax Return Preparer Scheme was launched by the Government during the year 2006-07 to assist small individual and HUF taxpayers file their returns of income.

Eligible taxpayers

Since the compliance cost for small and marginal taxpayers is relatively high, the scheme has been made available only for Individual and Hindu Undivided Family taxpayers including small businessmen, salaried employees, senior citizens, women, non-filers and stop-filers who file simple and straight forward returns. Taxpayers like companies and others whose accounts are required to be audited under the provisions of Income Tax Act have been kept outside the purview of the scheme.

Country wide coverage

Since services of Tax Return Preparers are required in every corner of the country, candidates have been trained at 100 different locations. Keeping in mind the complexities involved in understanding tax laws, the training was restricted to the graduates from select subjects, like law, commerce, mathematics, economics, statistics, and management.

Web based teaching

Considering the prohibitive costs involved in long duration class room training and the inconvenience it would cause to the candidates, a mix of pre-training self study, class room training and web based advanced learning was introduced for the TRPs. Given the experience that the use of tax advisers

actually reduces compliance in the country, it was also decided to monitor the performance of the TRPs online in the field and issue quality alerts to them in case they failed to perform as per expectations.

Incentive

The scheme was devised to encourage new taxpayers and stop filers join the tax net. The TRPs are, therefore, provided incentive of 3% of the tax paid by the new taxpayers in the first year's return prepared by them, 2% in the second year and 1% in the third year subject to the maximum of Rs. 1000. If the incentive is Rs. 250 or more, the TRPs cannot charge any fees from the taxpayers and their returns are prepared free of cost. The old assesses are required to pay a nominal fees of Rs 250 for preparation of the return. Preparation of returns at such nominal costs or free of cost substantially reduces the compliance cost of the small taxpayers.

Public Private Partnership model

NIIT was made a partner organization to roll out the scheme. The partner organization was made responsible for enrolment, training, and end-of-the-course examination and certification of the TRPs. However, as NIIT was not familiar with tax laws, the responsibility of developing content for training and advanced learning was given to Taxmann.

Training Design

The training itself was divided into three distinct phases, i.e. self-study phase, classroom training, and post certification advanced learning phase. The self-study phase was followed by classroom training conducted at 100 centres across the country. The classroom training was preceded by selection and training of trainers. In order to standardize training at all hundred centres, a common power point presentation was prepared by the content manager to be used by trainers in the classrooms. Classroom training was also used to clarify the doubts and to give hands-on training on return preparation software. At the end of the training, the trainees appeared in an online 'end of the course examination' and the successful candidates were given an Identity Card and a certificate to work as authorised TRPs. A dedicated website namely www.trpscheme.com has been set up to provide Learning Management System (LMS) support for the TRPs. LMS provides advanced learning material

for the TRPs. They have the facility to examine legal issues in greater depth and to take mock tests for every subject. The TRPs also get the support of online expert advice, helpdesk, and discussion forum during advanced learning. The Resource Centre keeps track of the scores of the TRPs during advance learning and the mock tests.

Resource Centre - the web based administrator

The TRP Scheme is monitored by a web based administrator called the "Resource Centre". The Resource Centre monitors the enrolment process, content development by experts, web based learning, discussion forums, online submission of claims by TRPs and online disbursement of claims through ECS. The activities of the TRPs are monitored through online claims filed by them quoting their unique identification number. It is proposed to match the claims of TRPs with the data captured during the computerized processing of the returns before release of incentives, and to issue quality alerts to them in case they commit mistakes in return preparation.

Recent Changes

The trained TRPs have started functioning and have assisted small taxpayers to prepare and file their returns from July 2007. The work of TRPs is seasonal in nature. Thus, out of 3737 certified TRPs, about 2000 TRPs are currently active. To ensure that TRPs have more employment, they have also been trained and authorized to prepare quarterly TDS returns for deductors. The existing TRPs have also been trained in filing Service Tax Returns. This has not only reduced the cost of selection of TRPs for CBEC, but would also establish synergies in preparation of Income Tax and Service Tax returns from the same books of account.

Conclusion

The scheme has already been replicated by the Central Board of Direct Taxes for TDS returns and the Central Board of Excise and Customs for Service Tax returns. Various financial institutions have shown interest in using the services of TRPs for further penetration of their Internet based services. Time is not far when more and more taxpayers would be encouraged to e-file their returns, and by then the department will have enough TRPs for facilitating this work.

Names of officers	:	B.P. Shah, then CCIT, Delhi – III
		Akhilesh Prasad, CIT-II, Delhi
		Quaiser Shamim, CIT-IV, Delhi
		R.K. Bajaj, DIT (Systems)
		Ashutosh Chandra, CIT (CO), Bangalore
		Shishir Sinha, CIT (A)-IX, Delhi
Visualization	:	Amitabh Kumar, then Addl. CIT, R-2, Delhi
Administration	:	Kalyan Chand, DGIT(Admn.), Delhi
		Amitabh Kumar, DIT(PR, PP&OL) &
		Head Resource Centre, TRP Scheme, Delhi

'Tax Return Preparer Scheme' has been included in BOYB as an article by Shri Amitabh Kumar, DIT (PR, PP & OL), New Delhi, which was published by the Department of Administrative Reforms & Public Grievances and released on the Civil Services Day on 21st of April, 2009.

TOTAL TECHNOLOGY

Laptops had been distributed to all departmental officers in 2008. The Meerut I.T. Office immediately installed Wi-Fi in the office. This provided wireless connectivity in the entire office premises and enabled officers to freely access the internet and also communicate amongst themselves using the windows meeting place. The system is secure and password protected to prevent misuse.

SYSTEMS INTEGRATOR ROLL OUT AND DATABASES MIGRATION & CONSOLIDATION

The computerisation of the Income Tax Department has progressed rapidly in recent years and there has been considerable growth in the number of users accessing the system. Directorate of Income Tax, Systems (DIT) decided to consolidate the databases into a central infrastructure as a part of its "Vision 2005" initiative. The project aimed to consolidate 36 independent regional databases into a single centralized database (PDC) at Delhi with a full-fledged Business Continuity (BCP) site at Mumbai and a limited Disaster Recovery (DR) site at Chennai which would assist in mitigating the risk of disaster at the Primary Data Centre (PDC) of Delhi. The project was expected to achieve computerisation of all the offices of the department in all towns and cities across India and to include more than 13,000 users under "Single Application Single Database" model.

For this purpose, All India Tax Network (TAXNET) had to be set up and a System Integrator(SI) had to be appointed. To make the project work, its four components i.e. Network, Application, Hardware and Services had to be put in place and made to work together. The specific challenges for the team were

(I) Convergence of delivery of hardware with Data Centre availability requiring substantial coordination.

(II) Consolidation of 36 RCCs to a central database in a phased manner. This was the biggest challenge of SI project. Due care had to be taken to ensure that black-out was announced at each RCC as per schedule, and data exports taken on time to be physically shipped to the Data Centre for consolidation process. M/s TCS had to ensure completion of database consolidation within strict timelines. As a parallel activity, M/s Airtel had to ensure that all locations linked to an RCC were re-configured to connect to data center within the black-out period only. Similar activity was required to be done by M/s IBM at all users desktops. The entire process had to be repeated for all 36 RCCs during the entire rollout phase of 6 months. Since the core operations of the Department had to be suspended at these locations during the black-out period, substantial co-ordination was undertaken by the Project

team among vendor agencies to reduce the black out period.

(III) While implementing SI Contract, the Project team arranged a number of meetings with Technical Evaluation Group (TEG), the Price Negotiation Group (PNG) and Empowered Committee (EC) of Ministry of Finance to get their expert opinion and thereafter get approvals on technical , financial and administrative matters.

(IV) Dissemination of information on SI Project & distribution of RSA tokens to users throughout India was a challenge. The Project team headed by Director General of Income Tax (Systems) visited major stations to sensitize senior functionaries of the department. Nearly 11000 RSA tokens were distributed across 530 stations.

(V) An important challenge in implementation of SI project was handling the administrative and financial sanction requirements under the General Financial Rules, 2005 and Government of India Administrative Business Rules.

The Successful Milestones achieved so far are:

- The migrated consolidated database is of 2.5TB size approximately and is one of the largest databases of Govt of India. The main achievement of the migration and consolidation project was online staggered migration of 36 regional databases into central Database without stopping the work at respective locations of the Department.
- Networking of approximately 700 locations across 510 cities of the country covering more than 13000 users. Network security stands implemented through distribution of RSA Tokens to departmental users.
- Asset Data Collection of all the 13000 users and making a repository of the data at NCC.
- Uploading of necessary softwares on all the 13000 client machines across the country. Wherever necessary, the computers of high end users were upgraded/replaced.
- Migration of OLTAS, CBN and NCC data bases to PDC, Delhi without interruption to the users as well as to applications according to announced schedules.

- Creation of e mail addresses of all the users and managing messaging solution at an All India level.
- Training users/trainers across the country on the migrated application and RSA token usage. It was ensured that ITD Application training of probationers was updated and computer/laptops provided to them.

  Post-consolidation, when the number of users had increased on the Central System and the transactions gradually increased, the issue of slow application response was reported by the users. This was a major concern for the Project Team considering that all the office locations were now using this central system. Faced with this crisis situation, the Directorate formed a Crisis Management Group (CMG), involving all the vendors including M/s Oracle, to analyze the problem and thereafter to initiate necessary corrective action. Such problems are usual in any undertaking of this magnitude and every organization, Indian or foreign, had undergone such initial problems which take a couple of months to sort out. The CMG met every week to discuss corrective actions as were required by various vendors to ensure that user's difficulties could be overcome as quickly as possible and that the system worked at the desired efficiency level. Owing to sustained efforts, the System has stabilized and about 1,30,000 returns were processed daily during the last fortnight of March 2009.

Names of officers in the current team of System Integration	:	K. Vasudevan, DGIT(Systems) Gopal Mukherjee, DIT(Systems) Rajeev Mehrotra, Addl DIT(Systems) Sanjay Shivam, Addl DIT(Systems) H.V. Gujjar, Addl DIT(Systems) Romesh Chander, DD(Systems) K.K. Nagar, DD(Systems) M.K. Barnwal, ADIT(Systems)
Special Mention	:	Shri Harish Kumar, DIT(Systems)

Development of concept and drawing up of Plan	:	S S Gandhi, DGIT (S) Retd. Ajai Singh, DGIT (S)(Now Member L & C) S.S. Khan, DIT (S)[Now Member (I.T.)] B.B. Nanavati, DIT (S) Simanchal Das, Addl. DIT(S) Nikhil Choudhary, Addl. DIT(S) M.S.A. Khan Addl. DIT (S)

An article on 'e-filing of IT returns' by Shri K. Vasudevan, DGIT (Systems), New Delhi has been included in the booklet 'Cause for Applause: Award Winning Case Studies', published by the Department of Administrative Reforms & Public Grievances and released on the Civil Services Day on 21st April, 2009.

SETTING UP CYBER FORENSIC LABS AND CYBER FORENSIC WORK STATIONS

The taxpayers have resorted to increasing use of digital data storage devices such as CDs, DVDs, Pen Drives, MP3 Players, iPods, and Mobile Sim Cards etc., which not only increases the data storage capacity, but also provides easy avenues to hide and conceal important data protected by passwords. Digital data stored on networked Servers can be remotely accessed. Instances of data stored on Shared International Networks and Platforms having trans-national jurisdictions have also come to light. During the course of search and seizure operations, specialized skills are required to identify and safely retrieve relevant data so that the integrity of the data could be protected and its evidentiary value could be established in the court of law. Discovery of these devices and retrieval of the data stored therein presents a challenge to the tax administrators.

There are, at present, no uniform instructions on how to access computer systems and other digital devices for retrieving digital data during a search operation.

Different practices being followed in different parts include

- Taking hard copies of data and their seizure;
- Using a CD writer to take copies of the hard disks; &
- Seizure of the hard disks or computers.

Shortcoming of current practices

These methods are forensically unsound and may result in compromise of data integrity and authenticity. Some of the grounds on which integrity of seized data can be challenged are:

- When a system is seized on a particular date and is switched on/ booted at a later date to view its content, the dates and time of opening these files get automatically modified.
- Even if a seized system is not booted on its own but its hard disk is attached to another system, the Windows Operating System automatically writes on all attached media and creates folders with the system restore tag in the disks attached to the Investigator's system. Further, the anti-virus software on the Investigator's system scans files

on the seized hard drive and changes date and time. The anti-virus program may even delete or quarantine critical evidence on the seized disk.

- Some systems are loaded with software tools (logic bombs) which get activated if the system is not shut down / started with a particular set of keystrokes. These can cause severe damage to the file systems or critical files. It is important that the investigating team does not trigger off these logic bombs.
- Any system or hard disk that is accessed without the use of 'write-protect' devices causes change in the hash value or digital fingerprint of the disk. This can render the evidence on such disks inadmissible.
- The hidden, password protected and deleted files cannot be retrieved by making copies of the hard disk or taking its printouts.

Computer forensics

A successful investigation of computerised records, therefore, requires-

- Identification of relevant digital data,
- Recovery of any hidden / password protected or deleted data; and
- Protection and storage of the data in a manner that it can be accepted as evidence in legal proceedings.

Digital evidence is extremely fragile but surprisingly resilient. Every digital act leaves a trace, even if steps are taken to hide it. Most digital transactions leave digital trails that can be uncovered through a systematic study of interdisciplinary knowledge. Computer forensics deals with recovery of data from disks and systems including the "hidden" areas and analyzes them in a manner that leaves no possibility of distortion of data. It enables us to reconstruct events and ensure that they can be authenticated before a court of law.

Functions of Forensic Labs

To meet the above challenges, Forensic Labs in Delhi and Mumbai have been set up and these Labs are now being used extensively for cloning of disks, recovery of hidden/ deleted data, and cracking of passwords etc which require specialized skills and hardware/ software resources. Forensic labs are likely to be set up in Bangalore and Kolkata also.

Standard Operating Procedures (SOPs) for Digital Data Support to Investigation Units

i) Wherever possible, the Investigation unit has to give a requisition for the services of the lab mentioning the computer environment expected at the searched premises. This may include such information as-

- Make /model /number of servers at the location;
- Number of client computers, presence of any unusual media such as LTO drive systems, SAN etc;
- Type of networking or kind of connectivity to the internet, e.g. whether remote dial-in facilities exist or not etc.

ii) The brief for the search parties , inter alia, should contain information regarding-

- Method of performing a preview of computers and other disks found at the searched premises;
- Method of handling loose media found at the site like floppies, CDs, CF cards, Tapes, Memory sticks, USB pen drives, MP3 players, iPods, mobile phones, digital cameras etc;
- Circumstances in which imaging/ cloning is to be done onsite and in which hard disks would be seized;
- Criterion to be used to select the computers relevant to the investigation.

iii) A forensic team is deputed to the site where digital data is found. The forensic team is equipped with -

- Sufficient number of pre-wiped disks for imaging/cloning;
- Disk imaging device capable of imaging all types of disks drives;
- Portable Labs for previewing computer hard disks to identify the computers that needed to be imaged;
- Sufficient evidence bags and tags to properly pack, label & transport the imaged data in a proper form.

Procedure for onsite imaging / seizure of disks

The following procedure is adopted by the Forensic team for onsite imaging and seizure of disks-

(i) Examination of communications network and other connections and observing the screen display. Unplug communications, connections and Modems from computers without turning off the computers, and labeling of all connections. It is recommended to disconnect Network cables and connections at the time of investigation. This can also be done by switching off the Network Hubs and Switches and sealing them till the Search/Seizure operation is complete.

(ii) Identifying serial numbers of CPUs, monitors, hard disk drives and other electronic equipment

(iii) Deciding whether to shutdown the computers that are on, recording reasons as to why and when a shutdown was carried out.

(iv) Accessing the computers through write blockers and making of two physical images (clones) of each hard disk found using previously wiped blank disks by using hardware imaging devices. It will compute hash value of each disk found and mention it in the panchnama.

(v) Properly labeling and placing the disk in protective covering while seizing it. Shutting down and collecting the computer(s), peripherals, printouts (if any), floppies (if any) and any other potential evidence - bag and tag individually.

(vi) The following information will need to be included in the panchnama, copy of which will be given to the assessee-

- Inventory of all computer hard disks/ media found;
- Time displayed in the CPU clock of the PC /Server and the actual local time at that time;
- Inventory of all disks which were cloned/ imaged with number of clones created/ seized giving hash value of each disk;
- Inventory of all disks found and seized without cloning;
- Inventory of all disks found and not seized.

Procedure for imaging seized hard disks

In cases where hard disks cannot be cloned at site and are to be seized, two sets

of images/clones should be created in the lab in the presence of the assessee or his representative and the authorized officer after following the same procedure described above. A panchnama should be prepared for this activity recording the hash value of each of the hard disks imaged and other particulars mentioned above. The assessee may be given an option to obtain a copy of the image at his cost. The stored data may be required to be produced before the appropriate authority in the event of a dispute. This would require appropriate network attached storage system.

Excellent results have been achieved in many search & seizure cases by availing expertise of Forensic Labs of Delhi & Mumbai. Some important cases handled by Cyber Forensic laboratories are as follows:

1) In the case of MDH group, the assessee had disclosed large sum of income during the search but retracted before the Central Circles and refused to provide any books. The case was getting time barred within a week. The Cyber Forensic Lab went through voluminous hard drives in one night to ferret out books of accounts.
2) In the case of Mahanivesh (Tarun Goyal), the forensic analysis revealed entries of over Rs 200 crore given to others and also details of investments in a hotel overseas.
3) In the case of Swastik Pipes and Northern Strips recovery of deleted files led to uncovering of huge evasion.
4) In the case of Koutons, analysis of the Server during search led to the assessee surrendering Rs. 74 crore of concealed income.
5) In the case of Suncity Group, the equipment of the forensic lab was used to carry out cloning of SCSi and other difficult hard drives like 1.8" HDD etc.

Names of officers : S. S. Khan, Member (IT), CBDT, Delhi
Milap Jain, DG (Inv), Delhi
Ashish Abrol, JDIT (Inv), Special Cell, Delhi

TAN ALLOTMENT

The CBDT had expressed deep concern over TDS defaults by Government Agencies. All the CIT (TDS) charges in India were asked to give high priority to allotment of TAN to all the Drawing and Disbursing Officers (DDOs) of the State Government. The TDS charge at Bangalore has allotted TAN to all State Govt. DDOs who disburse salaries by coordinating with the State Government who have created a compulsory 'field' of TAN in their HRMS (Human Resource Management System) module.

TAN can be allotted only on an application made by the deductor. The process of approaching the DDOs to apply for TAN is time consuming and difficult to implement considering the high number of DDOs involved and still it cannot guarantee complete success. The other alternative of setting up special camps at TIN facilitation centers for allotment of TAN is very expensive and again not fool proof.

The challenge of allotting TAN to all the DDOs including the ones located in the remotest part of the State, in a minimum timeframe without diverting much manpower and resources was met by the TDS commissionerate at Bangalore by using to its advantage the working of the State Government of Karnataka. The DDOs of Karnataka are compulsorily required to draw the salary bills of their units on HRMS module on its intranet. [Government of Karnataka has prohibited passing of paper bills]

In the meeting with the State Government authorities, it was agreed by them to create one more 'field' of TAN in the HRMS module. The State Government issued a circular making it mandatory for all the DDOs to obtain TAN before 1/11/2008 for getting access to the HRMS module after that date. The entire exercise required numerous meetings with the State Government officials at various levels and continuous follow up. About 7,500 DDOs were allotted TAN in this manner. This exercise also led to better appreciation of the TDS issues by the State Government authorities.

Names of officers : Archana Choudhary, CIT(TDS), Bangalore
Ajit Korde, Addl. CIT(TDS), Bangalore
A. Shanthakumar, ITO(TDS), Bangalore

DATA CAPTURING FROM A SINGLE SOURCE : A NOVEL WAY TO PLUG LEAKAGE OF REVENUE IN REAL ESTATE TRANSACTIONS

A new CIB code was prescribed by the CBDT in October 2008 to supplement the efforts of the field formations to augment revenue collections. The code prescribed collection of data relating to transfer of immovable properties where value adopted for stamp duty purposes by registration authorities exceeded the consideration shown in documents. In Maharashtra, the data was available with 400 Sub-Registrars functioning at different cities/towns in 27 districts of the State (Other than Mumbai city). The existing practice of CIB Wing was to issue notice under sec. 133(6) individually to each Sub-Registrar for furnishing relevant data in a given format. This was an onerous and time consuming task with associated problems of data accuracy and different format used in furnishing of data.

In Pune Charge, basic registration data pertaining to each Sub-Registrar was available in the office of Inspector General of Stamps and Registration, Pune. After several discussions with the office of IG Stamps and Registration, Pune, the entire related data for 340 sub registrars was captured from that office in a hard disc.

This data for financial years 2005-06, 2006-07& 2007-08 was cleansed and standardized by the CIB wing with help of NIC and converted into MS-Excel format as required. The converted data contained essential parameters of name of sub-registrar, registered document no., date of registration of the property, name and address of transacting parties, and the difference between stated consideration and market value for stamp duty. The same was forwarded to CCIT, Pune for further dissemination to field formations for necessary action by the AOs.

The difference between the stated consideration and the market value for stamp duty was noticed in approximately 22000 cases. In about 2000 cases difference of Rs 25 Lakhs or more was noticed indicating substantial understatement of capital expenditure. The work was completed without any outsourcing and within a short span of time.

Names of officers : K.C.Sarangi, DGIT(Inv.) Pune
B.G.Reddy, DIT(CIB), Pune
Deepa Hiray, ITO(Hq.)(CIB), Pune
Bharati Choudhari, ITO (CIB)-II, Pune

HANDY HANDBOOK

To familiarize AOs with do's and don'ts of making assessment/re-assessment/penalty orders, a committee in CCIT Pune Region prepared a hand book for Assessing Officers titled 'Sharpening the Cutting Edge'.

KNOWLEDGE BULLETIN

The Knowledge Management Group of Pune, constituted by and functioning under the chairmanship of CCIT, Pune, issued its first periodical news letter titled "Knowledge Bulletin" in March, 2009. The rationale was to educate the Officers about different statutory provisions and to encourage sharing of knowledge, particularly of critical and contentious issues which impinge on our core competence.

This first issue covered issues relating to sections 80-IA (5) and 80-IA (9) for better understanding of the officers. The group also highlighted the need for necessary rectificatory actions in past assessment orders because of the Hon'ble Supreme Court's decision in the case of CIT Vs. Suresh N. Gupta (297 ITR 322) wherein it was held that the proviso to section 113 is clarificatory in nature and would, therefore, be applicable to all pending block assessments. The bulletin also elucidated amendment to Explanation 1 to section 115JB which states that deferred tax liability or provisions, if debited to the Profit & Loss Account would be adjusted while computing book-profit u/s. 115JB.

Four other crucial decisions of the Hon'ble Supreme Court have also been discussed viz. the case of Union of India Vs. Dharmendra Textiles Processors and others, 306 ITR 277 (SC) wherein it has been held that penalty u/s. 271(1)(c) is a civil liability ; the case of CIT Vs. Gold Coin Health Food Pvt. Ltd., 304 ITR 308 (SC) wherein the decision in the case of Virtual Soft System Vs. CIT (289 ITR 83) was over-ruled and it was held that the amendment to Explanation 4 to section 271(1)(c) is clarificatory; the case of ACIT Vs. Saurashtra Kutch Stock Exchange Ltd., 305 ITR 227(SC) wherein it was held that the decision of the jurisdictional High Court or of the Hon'ble Supreme Court would have retrospective application and, therefore, would render a contrary stand taken in the earlier assessment "mistake apparent from records"; and the case of CCE Vs. Ratan Melting & Wire Industries, 14 DTR (SC) 324 in which it was held that while Circulars and Instructions are binding on the authorities below, denying the revenue authorities the right to question the same would amount to denying scope for adjudication by the High Court and the Supreme Court.

Names of officers : M. Narasimhappa, CCIT, Pune
Tejinder Singh , DIT (TP), Pune
S K Mishra, CIT-III, Pune
A .C Shukla, CIT(Appeals),Pune
A.K.Misra, Addl. CIT,Pune
Suman Sharma, Addl. CIT, Pune
V.S.Kumar, Addl. CIT, Pune
Sunita Billa, Addl. CIT, Pune

AWARD OF EXCELLENCETO CCIT, PUNE

Top Management Consortium (TMC) of Pune has conferred 'Award of Excellence' in Tax administration for the Year 2008-09 to Shri M. Narsimhappa, CCIT, Pune. The award was given by Her Excellency Smt. Prabha Rao, Hon'ble Governor of Himachal Pradesh, in a ceremony held on 2nd April, 2009 at Pune. The award was given for creative and innovative practices introduced in the income tax department, Pune.

Since 1990 every year, TMC has bestowed the Award of Excellence "with a view to recognize and appreciate contributions in specific areas like industry, trade, service industry and public administration etc."

The Advisory Board of the TMC is chaired by the Hon'ble Shri Mohan Dharia, former Union Minister, and includes eminent citizens like Shri B.G. Deshmukh, former Cabinet Secretary, Dr. Malshekar, former DG, CSIR, Dr. Narendra Jadhav, Vice Chancellor, Pune University etc.

IDEA OF THE MONTH COMPETITION

To encourage creativity amongst all members of the staff, a new competition for innovative and creative ideas, including small and beautiful ideas, was introduced by Pune Charge. The main features of the same are as below:

- The competition is called "Idea of the month" and as the name suggests is held every month.
- Members of staff submit their ideas to respective Commissioners or Directors and Addl. CIT (Hq) (Admn).
- The ideas submitted should be original or implemented in any office or organization.
- The ideas should relate to the following four areas: augmentation of revenue; taxpayer services; administrative matters and staff welfare. Preferably the ideas should be such as would impact various spheres of office work e.g. enhances the output of work, expedites issue of refunds, prevents vigilance, improves working conditions in office, utilizes space & resources optimally, improves the cleanliness and hygiene of work environment, etc.
- The best ideas selected by the Commissioners/Directors and Addl. CIT (Hq)(Admn) would be displayed along with the photograph of the contributor at a prominent place in the office of the CCIT/DGIT (Inv) and CIT/DIT(Inv).
- The best ideas selected by the Commissioners/Directors and Addl. CIT (Hq) (Admn) are required to be forwarded to Addl. CIT (Hq) (Admn) in the office of CCIT by the 10th of the following month. After the end of the financial year, an open house of all officers up to the rank of Addl/Jt. CIT would be conducted where such ideas would be showcased and discussed to choose the idea of the year. A rolling Cup was instituted for this category.
- The contributors of best ideas would be given recognition and suitable reward at the end of the year.

  This practice has the following advantages:-

  (i) In terms of Manpower: The staff is motivated to work towards

the efficiency and benefit of the organisation, improvement in taxpayer services, and welfare of fellow staff members. It helps them to identify with the organisation and its goals and ultimately, improves the morale of the staff. Implementation of the 'ideas' becomes easy and results in increased efficiency.

(ii) In terms of Monetary Benefits: The 'ideas' bring about improvement in work efficiency, cutting out wastage and resulting in monetary savings, e.g. the idea whereby purchase of computer stationary earlier procured @ Rs 185/- per ream is now purchased @ Rs 130/- per ream.

(iii) In terms of Improvement in Product or Service Delivery Mechanism: New ideas in the area of augmentation of revenue improve the productivity, while new ideas in the area of tax payer service improve the service delivery mechanism. The idea for staff welfare improves both because men are behind both the product as well as the processes.

The 'idea of the month' has created a tremendous sense of belonging in the organization and encouraged the staff to become proactive and creative.

Name of officer: M. Narasimhappa, CCIT, Pune

KNOWLEDGE IN THE PALM

'Knowledge in the Palm' is the first digital compendium of knowledge created through assiduous and painstaking collection, collation and indexation of voluminous information taken from NADT, RTIs, retired and serving officers and tax professionals. The compendium contains 1200 folders with 12,200 files spread over 90,000 pages on every conceivable subject on Direct Tax and allied subjects.

CCIT, Pune Region

DISSEMINATION & COORDINATED INVESTIGATION TO COUNTER TAX AVOIDANCE

In recent years, employee compensation in the corporate sector has undergone significant changes with the introduction of (a) Employee Stock Option Plans (ESOPs) especially in "cashless" schemes, (b) stock appreciation rights (SARs) and (c) equity based compensation in cases of mergers, de-mergers and acquisitions. In a "cashless" scheme the employee does not pay anything for acquiring the shares upfront but just receives the capital gains net of the notional grant price when the option is exercised and sold (which is usually on the same date). However, it was found that several assesees represented such transactions as long term capital gains by taking the date of grant or vesting of the option as the date of acquisition of the asset. Under the scheme of stock appreciation rights, the employee only receives the appreciation value of the shareholding at the time of exercise of SARs without any physical possession of shares.

Existing practice: Typically, in salary charges, information about assessees is disparate, non-centralized and uncoordinated leading to increased scope for tax avoidance. There is usually lack of coordination in individual assessments by Assessing Officers and lack of information flow and knowledge regarding market developments and evolution of case laws. Often assessments are carried out without adequate information and knowledge inputs with regard to new systems of executive compensation and there is lack of consistency in approaches of A.O.s leading to difference of treatments and subsequent rejections at appellate stage.

Evolved practice: To overcome the difficulties stated above, an alternative set of practices was evolved in CIT-XVI charge by way of centralized and coordinated investigations into employee compensation cases. This process was initiated in the case of IBM-Daksh acquisition where unusual issue of bonus shares was noticed during review of scrutiny cases. Subsequently, several forms of tax evasion and avoidance including outright suppression of capital gains were detected in other group cases. This was followed by processing of information, delivery of actionable information to A.O.s and dissemination of relevant case laws and information. In this regard, in CIT-XVI Charge, the

following procedure was evolved for coordinated investigation and follow up :-

1. Collection of legal and practical information regarding ESOPs and share holdings from third party sources including TDS, Dept. of Company Affairs, etc.
2. Detailed inquiries supervised by the CIT and coordinated by the Addl/JCsIT. Follow up action by A.O.s
3. A.O.s supplied with actionable information, knowledge of relevant case laws and sharing of on going developments regarding assessments.
4. Developing a consistent approach to specific issues backed by relevant case laws through sharing of information, brainstorming, co-ordinated action and strategic direction given by CIT and followed through by JCsIT and implemented by A.O.s.
5. Processing of information by staff of the leadership group (CIT, Addl./JCIT or DCIT/ACIT).
6. Dissemination of relevant case laws and information by CIT and coordinated follow up by JCITs regarding evolving taxation norms, tax avoidance scenarios and relevant case laws.
7. Use of simple Hindi in written communication with staff and officers to ensure easy communication.
8. Evolution of an operating procedure for coordinated investigation and follow up. This process may be summarized as below:
    a) Identification of relevant information from scrutiny, review of assessments or mass media.
    b) Inquiry u/s 133(6) from Employer company with due approvals.
    c) Compilation & collation of list of assessee employees in receipt of ESOPs and sale transaction thereof.
    d) Issue of letters/showcause to ascertain whether due taxes have been paid or such income has been correctly declared.
    e) Identification of defaulters and necessary action under section 142(1), 143(3), 148 or 210.
9. Dissemination of information to all India jurisdictions.

The above procedure was used for cases associated with large corporations including M/S IBM Daksh, Pernod Ricard India Pvt. Ltd., Dabur

Ltd., Agilent Technologies, M/s Sapient Pvt. Ltd., M/s Microsoft Ltd., M/s PepsiCo India Holdings (P) Ltd., M/s Cadence Design Systems India Pvt. Ltd. etc. The investigation revealed a sustained pattern of tax avoidance across salary assessees in terms of suppression or misrepresentation of capital gains from ESOP shares.

Benefits of the practice:

1. There was saving on man hours since ITIs and other staff of A.O.s were not overburdened with the task of preliminary inquiries.
2. Due to focused inquiries as mentioned above there were minimal inquiries in cases of persons not involved in tax avoidance.
3. Substantial revenue gains have been made due to these investigations. Taxes realized approximately include Rs.2 crore in the case of Daksh e- Services Pvt. Ltd. and Rs. 3 crore in respect of cashless schemes of Pernod Ricard, Microsoft, Agilent, PepsiCo etc.
4. Saving in terms of postal and other inquiry devices due to centralized and coordinated inquiries.
5. Corresponding lowering of cost of compliance since the employer company responds to a single office carrying out the enquiry. In most cases, taxes were paid before filing of revised returns.

Lessons and further implementation:

Most cases of employees evading tax relate to those occupying important positions in the company hierarchy. This practice can therefore be modified and implemented in assessment of directors/executives assessed in company charges throughout India. More specifically, the following forms of tax evasion which were detected in a large number of group cases of various companies in CIT-XVI Charge can be investigated in other salary and corporate charges as well-

(i) Tax avoidance by way of "cashless" scheme is most prevalent in case of employees of Indian subsidiaries of foreign companies. Most specifically, many employees erroneously claim tax exemption from long term capital gains on the grounds of payment of STT in stock exchanges outside India.

(ii) Wrong claim of date on which shares are acquired

(iii) In case of demerger, non-disclosure of allotment of SARs and not

showing them as perquisites

(iv) Non-declaration of sale of shares allotted by employee company of ESOPs and other compensations

(v) Wrong claim of section 54F etc when capital gain is not long-term.

Names of officers : Gopal Kamal, CIT-XVI, Delhi
Supriyo De, JCIT-48, Delhi
Vandana Ramachandran, JCIT-46, Delhi
Surender Pal, JCIT-47, Delhi
H. K. Sharma, ITI- CIT-XVI Office, Delhi

EMPLOYEE STOCK OPTION PLANS

Employee stock option plans typically are incentive plans of an employer company entailing investment by an employee in the stock of the company. Section 2(15A) of the Companies Act, defines 'Employees Stock Option' as under:

"Employees Stock Option means the option given to whole time directors, officers or employees of a company which gives such directors, officer or employees, the benefit or right to purchase or subscribe to a future date, the securities offered by the company at a pre-determined price".

ASSESSMENT ORDERS

ASSESSMENT ORDERS

DEDUCTION U/S 80-IA (4)(iv) CONDITIONS NOT FULFILLED

Assessee engaged in distribution of power claimed deduction u/s 80-IA(4)(iv) - claim not in conformity with the provisions - no substantial renovation & modernization of existing network of transmission & distribution lines - claim u/s 80-IA(4)(iv) rejected

The assessee, M/s. Bangalore Electricity Supply Co. Ltd., is a company engaged in the distribution of power. For the A.Y. 2005-06, the company declared NIL income under normal computation but paid tax of Rs.6.93 crore u/s.115JB (MAT). In the return, the assessee claimed deduction of Rs.139.90 crore u/s 80-IA(4)(iv) of the Act. The AO examined the claim. The company was formed under the Karnataka Electricity Reform Transfer Scheme to carry on the business of distribution activity of energy covering the specified area of Karnataka. The auditor certified that the company was covered for deduction under clause 2 and clause 3(ii) read with clauses (b), (c) of (iv) of sub-section (4) of 80-IA of the IT Act on the income derived from the distribution of power. The provisions of sec. 80-IA(4)(iv)(c) allow an undertaking a deduction of the amount of expenditure incurred on substantial renovation and modernization of the existing network of transmission or distribution lines at any time during the period 1/4/04 to 31/3/2010. The explanation provided therein also specifies that substantial renovation and modernization means an increase in the plant and machinery in the network of transmission or distribution lines by at least 50% of the book value of the plant and machinery as on 1/4/2004.

In the course of assessment, the AO examined the applicability of the above provisions to the claim of the assessee. He examined the contract works given, the agreements thereon, the billings and held discussions with technical personnel of the company to identify the expenditure incurred on renovation of actually existing lines and to ascertain the extent to which such renovated lines were operationalized. It was found that the expenditure was incurred on renovation and modernization of existing network and not for expansion, i.e. for providing new transmission lines. However, the expenditure incurred on renovation and modernization of existing network was found to be less than

50% of the book value of the plant and machinery as on 1/4/2004. Thus, the condition that there should be an increase in the plant and machinery in the existing net work by at least 50% of the book value as on 31/3/2004 was not fulfilled. The assessee contended that the deduction was available if an assessee "undertakes" renovation and modernization work which implied that modernization / renovation should have commenced but need not be completed. This plea was rejected by the AO in view of the limit of increase stipulated in the Explanation. Accordingly, the claim of deduction u/s 80-IA to the tune of Rs.139.94 crore was rejected. The assessment was completed on total income of Rs.141.84 crore resulting in tax liability of Rs.61.07 crore.

The CIT (A) dismissed the assessee's appeal and confirmed the disallowance made by the AO.

Names of officers : M. Ravindra Sai, Addl. CIT, Range 11, Bangalore
N.P. Singh, CIT, Bangalore I, Bangalore

INTIMATION OF LOSS

Sec. 157 requires the AO to notify in writing to the assessee the loss assessed for the purpose of carry forward and set off.

DISALLOWANCE OF DEPRECIATION ON RIGHT OF USE

Payment made for right of use for laying pipelines - capitalized to pipeline cost & depreciation claimed thereon - asset acquired is land and not P&M - not entitled for depreciation

The assessee M/s. Gujarat State Petronet Ltd. is engaged in the business of laying of pipelines and transport of gas. The return of income for the A.Y. 2006-07 was filed showing Nil income. The AO noticed from the "Notes on Accounts" attached with P &L A/c that the company has acquired right of use/ right of way (RoU/RoW) before the actual laying of pipelines and that the expenditure incurred in this regard was written off. The matter was examined in the course of the assessment proceedings when it was explained by the assessee that the following three types of expenses were capitalized along with pipeline costs:

1. Land compensation paid to the Competent Authority under the Gujarat Water and Gas Pipelines Act;
2. compensation for crop & trees paid to the farmers and
3. compensation to corporates for right to usage for crossing pipelines, which was paid wherever the pipelines crossed roads or areas belonging to other corporates.

The AO examined the agreements for compensation and held that what the assessee had acquired by making these payments was the perpetual right on the underground space in which the pipelines were laid. He concluded that whatever be the nomenclature, the underlying asset was the land which was not a depreciable asset. The AO, therefore, disallowed the assessee's claim of depreciation on the underground space used for laying pipelines. The assessee had included this expenditure in the block plant and machinery and claimed depreciation thereon. The AO relied upon the decision of the Apex Court in the case of CIT v. Alps Theatre (65 ITR 377) wherein it was held that cost of land is not entitled to depreciation along with the cost of building standing thereon. The assessee's contention that since the ownership of land was not with it, the asset cannot be grouped under the head land was also rejected following the

decision of Bombay High court in the case of CIT v. Indian Oil Corp. Ltd. (218 ITR 511) wherein it was held that leasehold land should be grouped under the head land and that depreciation cannot be claimed on the premium paid on the leasehold land. As the assessee did not furnish the details of the cost incurred for acquiring the RoU/RoW that was included in the block of plant and machinery, the AO estimated the cost of underground space to be 10% of total cost incurred on pipelines. Accordingly, the claim of depreciation to the extent of Rs.8,29,90,171 was disallowed.

The AO also examined the assessee's claim for deduction of preliminary expenses u/s. 35 D of the Act. It was found that a sum of Rs. 28,41,641 represented expenditure towards enhancement of capital being fee paid to the Registrar of Companies. The expenditure was held inadmissible as deduction u/s.35D. Further, the claim of Rs. 75 lakhs on account of equity syndication charge was found to be on account of mobilizing equity investment. This expenditure was held to be capital in nature and was disallowed.

Names of officers : M. Mathivanan, JCIT, Range Gandhinagar
Gurpreet Singh, CIT, Gandhinagar

BOGUS SUB-CONTRACT

Non-resident company engaged in dredging contract - completed contract method resulting in loss - sub-contract to company registered in Mauritius which was not exigible to tax in India as per DTAA - genuineness of sub-contract examined - no activity carried on by the sub-contractor - sub-contract a façade to avoid tax - sub-contract expense disallowed upheld by the Settlement Commission.

The assessee, JAN DE NUL N.V ('JDN'), is a non-resident company engaged in execution of dredging contracts. It filed the return for the A.Y. 2000-01 as a non-resident showing loss of Rs.15.28 crore. The assessee had undertaken dredging contracts at Ennore port and at Tuticorin port. While it declared profit of Rs.7.63 crore u/s 44BBB of the Act in respect of Ennore contract, loss of Rs.16.61 crore was claimed in respect of Tuticorin contract. It was found that the assessee had followed completed contract method for Tuticorin contract and from total contract receipt of Rs.196.42 crore payment to the sub-contractor to the extent of Rs.179.27 crore was debited. The assessee explained that it had given sub-contract for dredging work to M/s Port Louis Maritime Corporation Ltd. (PLMC) after taking approval of the port authority. It was noticed that the assessee did not deduct TDS on the payment to the sub-contractor. When enquired, it was explained that PLMC was a company registered in Mauritius and as per the Double Taxation Avoidance Agreement this payment was not exigible to tax in India. It was also submitted that the dredger used by PLMC stayed for a period of less than nine months and, therefore, the said company had no permanent establishment (PE) in India.

The AO conducted enquiries to ascertain the genuineness of the expenditure in respect of the sub-contract payment and the findings were startling. The enquiries revealed that the sub-contract was done on paper only. It was entered into with an intention to evade tax. The entire project was executed by the assessee company itself in the garb of sub-contract to PLMC and no activity was carried out by the sub contractor company. This conclusion was arrived at with the following irrefutable evidences collected in the course of enquiry:

- In the tender document, the assessee had shown ownership of the

Cutter Suction Dredger 'Leonardo Da Vinci' (LDV), which was intended to be used for the dredging project. It was found that the entire project was executed by the same dredger LDV. Though the assessee claimed that the ownership of LDV was transferred to PLMC no evidence in this regard could be produced.

- It was found that PLMC was a group company and the assessee was holding 95% shares of PLMC. But the assessee was unable to produce any evidence for the expenses incurred by PLMC while executing the contract.
- The RBI allowed PLMC to start a project office and required them to furnish the postal address. Despite the approval of the RBI, PLMC opened neither any branch office nor any bank account at Tuticorin.
- The enquiries revealed that no expenses connected with the execution of project towards purchase of fuels and consumables, engagement of labour, payment of salary and wages, repairs to plant and machinery etc. were incurred by PLMC and all the expenses were met by the assessee only. The bill of entries for import of the dredger LDV and for import of consumables and spare parts were all in the name of the assessee only.
- As the crew, engineers and technicians stayed in India for more than six months while executing the contract, PLMC was liable to make TDS on the payments made to them. PLMC neither deducted any TDS nor filed any TDS return in India.

The AO held that the assessee had created a façade of sub-contract in order to circumvent its tax liability. As the entire contract was executed by the assessee company, the claim of deduction on account of payment to the sub-contractor to the extent of Rs.179.27 crore was disallowed. The AO, however, allowed deduction of depreciation on dredger LDV, spares and consumables as per bills of entries, fuel and other expenses debited to the account of PLMC and 20% of sub-contract value towards payment of salaries to professionals and executives. The assessment was completed determining the total income at Rs.61.53 crore resulting in demand of Rs.25.20 crore.

In first appeal, the addition was substantially confirmed. Both the department and the assessee filed appeal before the ITAT and the Tribunal restored the matter to the AO. Thereafter, the assessee filed an application before the Settlement Commission and the case was admitted. The Settlement Commission determined the income at Rs.18.49 crore with tax liability of Rs.8.87 crore, which has been collected.

Names of officers : Rajeev Kumar, DCIT, Circle I(1), Chennai
K.R. Meghwal, Addl. CIT, Range 1, Chennai
S. Lahiri, CIT - I, Chennai

RETURN FILING WITHIN THE DUE DATE MANDATORY FOR AVAILING INCENTIVES

As per sec.80C, for the A.Y. 2006-07 onwards, deductions under sections 80-IA, 80-IAB, 80-IB and 80-IC shall not be allowed to the asessee unless he furnishes a return of income before the due date specified u/s 139(1).

EXCESSIVE CLAIM U/S. 36(1)(vii)(a) AND DEPRECIATION ON INVESTMENT PORTFOLIO

Claim for deduction u/s.36(1)(viia)(a) and also under the first proviso thereto not admissible - entire investment portfolio treated as stock in trade and deduction for notional loss on valuation claimed - not in accordance with RBI guidelines - claim reworked

In the return filed, M/s Karnataka Bank Ltd., the assessee, claimed deduction for provision for bad and doubtful debts as also deduction u/s.36(1)(viia)(a) of the IT Act. In addition, the assessee had also made claim for provision of Rs.47,08,55,338 being 10% of doubtful or loss assets under the first proviso to section 36(1)(viia)(a) of the Act. The assessee had taken a plea that both the deductions could be availed notwithstanding the word 'at its option' mentioned in the proviso. It was also contended that the additional incentive allowed by the Finance Act, 1999 with effect from 1st April, 2000 was admissible without any time limit. In this regard, the assessee relied on the Board's Circular which termed it as incentive and to be interpreted favourably in allowing relief.

In the course of the assessment, the claim of the assessee was examined. As per the provisions of the Act, a bank which is not able to take full advantage of deduction u/s.36(1)(viia)(a) of the Act, can exercise its option for deduction under the 1st proviso of that section and the deduction under the 1st proviso is not a further deduction. In case of a loss making bank no deduction can be claimed under clause (a) and only in such circumstances the deduction under the proviso will be beneficial and the bank can exercise its option. As the assessee had already claimed deduction under the clause (a) of sec. 36(1)(viia), it was not entitled to make a further claim under the proviso also. Hence, the excessive claim of Rs.47.08 crore made under first proviso was disallowed and added to the total income.

The AO also noticed from the schedule annexed to the balance sheet that the assessee had claimed deduction of Rs.22,44,96,976 towards loss on valuation of its investment portfolio treating the same as stock-in-trade. The AO asked the assessee to furnish the details of its investment portfolio under

the categories 'Held to Maturity', 'Available for Sale' and 'Held for Trading' and confirm if the above transactions and methods of accounting were in accordance with the CBDT Circular No. 665 (F. No. 201/3/92-ITA-II dtd: 05-10-1993) read with the RBI Circular No. DBOD.PB.BC 32/21.048/2000-01 dtd: 16-10-2000. The assessee explained that the bank was following the RBI Circular for book purpose only (both in respect of valuation of securities and presentation in the balance sheet) but not for the purpose of computing the real income. It was submitted that for the income-tax purpose, the entire investment portfolio was considered as stock-in-trade irrespective of whether it was held under the categories 'Held to Maturity' or 'Available for Sale' and depreciation in their value was claimed without netting off against appreciation in other securities.

The AO found that the method followed by the assessee was not in accordance with the RBI Master Circular. The entire investment portfolio held by the assessee bank could not have been classified as stock-in-trade. The AO reworked the notional loss in the value of shares in accordance with the RBI's Circular. It was found that against the claim of Rs.22,44,96,976 in its books of account, the allowable depreciation in the value of shares was to the extent of Rs.87,58,019 only. The AO, therefore, disallowed the notional loss of Rs.21,57,38,957.

Names of officers	:	Pradeep S. Arya, ACIT, Circle- 2 (1), Mangalore Amarapali Das, Addl. CIT Range - 2, Mangalore Nilima Mansukhani, CIT, Mangalore

CAPITAL GAIN ON TRANSFER OF TRADEMARK USER'S RIGHT

Nirma Chemical Works Ltd. sold 'Nirma' brand for Rs. 450 crore - claimed gain not taxable - self generated asset - cost nil - AO held cost existed and ascertainable - reference to WT assessment of the transferor - cost as on 1.4.1981 ascertained

The assessee, M/s. Nirma Chemical Works Ltd., sold 'Nirma' brand / trademark or right to use such trademark on 26.03.2001 to Nirma Industries Ltd. for Rs.450 crore and claimed that no capital gain was chargeable to tax as the asset in question was a self generated asset or alternatively it was not possible to determine the cost of acquisition. The assessee relied upon the decision in the case of B.C. Srinivasa Shetty 128 ITR 294 (SC) in this regard.

On enquiry and verification during the course of the assessment proceedings for the A.Y. 2001-02, it was found by the AO that Nirma brand / trademark was purchased by the assessee from Smt. Shantaben K. Patel on payment of royalty as per the terms and conditions of an agreement dated 07.02.1980. The AO held that the asset in question was not a self generated asset and it was possible to determine the cost of acquisition to the assessee. Following this finding, the AO held the long term capital gain as chargeable to tax.

The CIT(A) confirmed the action of the AO with a direction that the market value of the trademark as valued by IIM, Ahmedabad as on 01.04.1981 should be taken as the cost of acquisition. On further appeal, the ITAT, Ahmedabad held that the date of acquisition of Nirma brand / trademark was ascertainable and accordingly the cost of acquisition was also ascertainable. The ITAT further held that the "User's Right" in brand name / trademarks was transferred by Smt. Shantaben C. Patel to the assessee and the same was a capital asset chargeable to capital gain tax. Regarding the cost of acquisition as on 01.04.1981, the ITAT restored the matter to the file of the Assessing Officer.

Smt. Shantaben C. Patel had acquired the right to receive royalty in exchange of giving "User's Right" in brand name / trademark to the assessee. In the wealth tax assessment of Smt Shantaben C. Patel, the value of this right was determined at about Rs.4.2 lakhs in the AY 1982-83 and this value was finally upheld by the ITAT. Pursuant to the order of the ITAT, the AO relied

upon the aforesaid information in the wealth tax records and determined the value of such exchanged asset as the value of the "User's Right" in brand name / trademark of the assessee as on 01.04.1981. The cost of acquisition as on 01.04.1981 was determined at Rs.3,85,321/- in the consequential assessment and the capital gains was accordingly computed.

Names of officers : VinodTanwani, ACIT, Central Circle 1(1), Ahmedabad
D.C. Patwari, Addl. C.I.T. Central Range- 1, Ahmedabad
Sunil Chopra, CIT Central - 1,Ahmedabad

HEARING OF CASES

Each assessee should be given different timing for attendance...
It has been brought to the notice of the Board that while fixing the hearing of cases by the issue of statutory notice, the Income Tax Officers indicate the same time for attendance in all cases, e.g. 10.00 a.m. As a result, many assessees have to wait for a long time before they are given a hearing as obviously all the assessees cannot be heard at 10.00 a.m. The inconvenience and harassment caused to the assessee is, therefore, quite obvious but avoidable. It is, therefore, desired that the Income Tax Officers should give each assessee a different timing.
(Circular No. 230 F.No. 225/109/77-IT(A-II) dated 27-10-1977)

BOGUS LONG TERM CAPITAL GAINS THROUGH PENNY STOCKS

Assessee admitted long term capital gain on purchase and sale of penny stocks - Stock exchanges informed that no transactions in the assessee's name - income assessed u/s 68

The assessee, Shri Ramnivas Ramjivan Kasat, proprietor of M/s. Venkatesh Sales Agency was a commission agent and art silk cloth agent. In the return filed, besides his regular business income, he disclosed short term capital gain of Rs.74,16,987 and exempted long term capital gain of Rs.3,37,58,401 on sale of shares. The family members of the assessee also disclosed in their returns of income short term and long term capital gains of the order of Rs.1 to 3 crore.

On scrutiny of the contract notes for purchase and sale of shares, ledger accounts of scrip-wise transactions and dematerialization statements, it was found that the claim of long term capital gain to the extent of Rs.83,79,356 on sale of penny scrips was not genuine. The details of purchase and sale of penny scrips were as under:

Name of scrip	Purchase date	Qty.	Purchase Rate(Rs.)	Date of sale	Sale rate (Rs.)	Sale proceeds (Rs.)	Surplus (Rs.)
Twentyfirst Cent.	7.4.04	3000	6.62	5.6.05	298.84	896654	876658
Acess Global	16.4.04	2000	9.37	5.6.05	209.62	419257	400767
Amlucky Invest	15.4.04	4000	12.42	5.6.05	297.04	1188160	1138480
Amlucky Invest	15.4.04	1000	12.42	5.6.05	295.12	295120	282700
Amlucky Invest	15.4.04	3000	9.17	5.6.05	295.12	885360	857850
MP Invest	06.4.04	5000	10.82	13.5.05	139.45	697250	643157
Prreneta Inds	9.4.04	37000	0.20	18.7.05	18.08	668960	661264
Prreneta Inds	9.4.04	57000	0.20	21.7.05	15.29	871530	859674
Prreneta Inds	9.4.04	50000	0.20	26.7.05	15.13	756500	746100
Prreneta Inds	9.4.04	50000	0.20	29.7.05	14.57	728500	718100
Prreneta Inds	9.4.04	63000	0.20	31.8.05	19.17	1207710	1194606
						8615001	8379356

On perusal of the ledger account of the broker M/s. S.B. Bhutra and Company, it was found that the scrips of 21st Century and Amlucky Invest and M. P. Invest were purchased partly by cash payment and partly by adjustment against speculative profit on sale of shares of Satyam Computers, TATA Motors and TISCO. On enquiry, the Calcutta Stock Exchange informed that the broker M/s. S. B. Bhutra and Company had not made any transactions in the above scrips under the client code of the assessee. The scrips of Prreneta Industries were purchased through the broker, Vijay Bhagwandas & Co. The purchase cost of the scrips of Prreneta Industries was set off against the speculative profit on sale of Biocon Ltd. for which the bill was issued by Vijay Bhagwandas & Co. On enquiry, the Bombay Stock Exchange reported that the assessee was not registered as a client with the Trading Member, Vijay Bhagwandas & Co., that the said Trading Member had not entered into any transaction in the above mentioned scrips in the name of the assessee and that the said Trading Member had traded in shares of Biocon Ltd. in the name of another client, Dishank Vipul Shah, bearing the same trade number, date and time. The contract notes issued by the broker, Badri Prasad, for purchase of 2000 shares of Access Global was adjusted against differential profit on speculation of shares of Satyam Computers. On enquiry, the Calcutta Stock Exchange informed that the said broker had not executed any transaction in the scrips of Satyam Computers as on the date appearing in the contract note.

In view of the above facts and evidences, the AO inferred that the assessee had obtained bogus purchase bills from the share brokers to create evidence so that the alleged sale of shares appeared to be genuine and he could claim exemption of long term capital gains on the bogus sale of shares and he could bring his unaccounted money in the books of account.

The AO concluded that share transactions as mentioned above were not genuine and bona fide and the assessee introduced his unaccounted money in the accounts. Therefore, the AO treated the amount of sale proceeds amounting to Rs. 86,15,001 as unexplained cash credits u/s. 68.

Names of officers : N.Y. Jaggi, ACIT, Circle-2, Surat
U.B. Mishra, Addl. CIT, Range - 2, Surat
Rajiv Lal, CIT - 1, Surat

TAXATION OF PROJECT PROFITS DEFERRED INDEFINITELY

The assessee had not offered profits for taxation even after the completion of project - enquiries including survey u/s 133A proved that the project was complete and profits- liable to tax - another issue was whether income from the sale of the building was business income or partly capital gains and party business income - entire income assessed as business income

The assessee company, M/s Safire Hotels Pvt. Ltd., was engaged in construction of a commercial project in Wakadewadi, Pune. The project was started in F.Y. 1990-91 and it was following project completion method of accounting. The assessee did not show any income in respect of this project till the A.Y. 2005-06. When enquired, it was submitted that following the project completion method the profits would be booked when the project was complete. In the course of the assessment, the assessee was required to furnish certain specific information in support of its contentions. However, the required information was not furnished. The AO smelt something amiss and, therefore, conducted a survey u/s 133A with a specific purpose to gather relevant material evidences.

The evidences found in the course of survey were startling. The documentary evidences found in the course of survey revealed that the said project was completed in the year 2001-02 itself and the assessee had sold a part of the project and the remaining part was given on rent. It was also found that income could not be correctly computed as per the accounting method followed by the assessee. The income of the assessee from the project was found chargeable to tax in the A.Y.s 2001-02, 2003-04 and 2005-06.

When cornered with the evidences collected in the course of survey, the assessee contended that part of its income was taxable as capital gains and the other part as business income. The AO held that the project of the assessee was already complete as the project had either been sold out or given on rent. The AO held that the assessee's case was covered by the Supreme Court decision in the case of CIT v. British Paints India Ltd. 188 ITR 44 where it was held that the method of accounting consistently followed by the assessee should ordinarily be acceptable but if the correct profits are not deducible from the

accounts, the AO is entitled and has duty to take recourse to the proviso u/s 145.

The AO also held that section 45 (2) was not applicable to the assessee's case. The assessee had not given any basis for computing the cost of acquisition, as per section 55(2)(b), of the land which was claimed to have been converted into stock in trade. The AO found that the assessee started construction on the said land in 1989. The assessee never resorted to section 45(2). As per section 45(2), the FMV of the asset in 1989 was to be taken for the purpose of capital gains, whereas the assessee imputed revalued cost of land in 1993 as the FMV in 1989. The land was revalued for the purpose of taking loan from Cosmos Bank in 1995 as the company did not have sufficient funds for construction. This could not be taken as FMV in 1989. The manner of computation of business income was found to be not correct.

The assessments resulted in taxing undisclosed income of Rs.61,42,253, Rs.1,99,12,053 and Rs. 59,09,076 respectively for the AsstYrs. 2001-02, 2003-04 and 2005-06. Thus, the total undisclosed income from the construction business was determined at Rs. 3,19,63,382 having tax effect exceeding Rs.1 crore.

The CIT (A)-II, Pune has confirmed the order of the AO for the A.Y. 2003-04.

Names of officers : Bhim Kunwar, ACIT, Pune
S.G. Deshmukh, ACIT Pune
Naval Jit Kapoor, Addl. CIT, Range 6, Pune
S.M. Mishra, CIT - III, Pune

AIR INFORMATION LEADS TO ASSESSMENT OF HUGE CAPITAL GAINS

As per the Annual Information Return, the assessee had transferred a property for Rs.7.28 crore on 01/04/2004 - further enquiries revealed that the assessee transferred adjoining property in the same F.Yr. for Rs. 16 crore - return for asst. year 2005-06 not filed notice issued - assessee instead of filing return, filed computation showing long term capital loss of Rs. 5.39 crore along with a valuer's report showing FMV of the properties at Rs. 1,230 per sq.mt as on 01/04/1981- extensive field enquiries including reference to the Registrar established the FMV as on 1-04-81 to be much lower and capital gains determined at Rs.22.93 crore - appeal before CIT(A)- dismissed

A transaction was reported in the Annual Information Return (AIR) that M/s The Sathe Biscuits and Chocolate Company Ltd. had transferred an immovable property for a consideration of Rs. 7,28,00,000 on 01/04/2004. Further enquiries in this regard revealed that the assessee had also transferred adjoining property on 28/03/2005 for a consideration of Rs. 16,00,00,000. As the assessee had not filed the return of income for the A.Y. 2005-06, the AO issued notice u/s 142(1) to the assessee calling for the return of income. In compliance to the said notice, the assessee merely filed a computation of income showing long term capital loss of Rs. 5,39,25,300 on transfer of these two properties and no return of income was filed. The properties were claimed to have been acquired prior to 1/04/1981. The assessee also furnished a Registered Valuer's report along with the computation, wherein the FMV of the properties transferred was estimated at Rs. 1,230 per sq.mt as on 01/04/1981 for the purpose of cost of acquisition u/s 55 and for computation of capital gains.

The AO examined the computation of long term capital loss filed by the assessee. It was noticed that the Regd. Valuer had not referred to any comparable sale instance for arriving at the value of the land at Rs. 1230 per sq. mt. as on 1/4/1981. The AO made extensive enquiries with the sub-registrar's office and obtained comparable sale instances of adjoining properties, which revealed that the fair market value of the property as on 01/04/1981 was

around Rs. 15 per sq. mt. only. The AO also gathered that the existing building on the land was constructed in the year 1959 and this old dilapidated building had no value. The AO also examined the Regd. Valuer in co-ordination with the Investigation Wing and confronted him with the findings collected in the course of enquiry. It was found that the Valuer had estimated FMV of the property as on 01/04/1981 by land and building method, which was not applicable to the property transferred as it was mainly land. Further, it was also found that the Valuer had adopted the Sub-Registrar's office reckoner rates for estimating the value which were applicable to new buildings and not to old dilapidated buildings. In view of these discrepancies, the valuation as made by the Regd. Valuer was rejected.

The AO concluded that when the land was transferred at Rs. 5,861 per sq.mt in March 2005, the rate adopted by the registered valuer at Rs. 1,230 per sq. mt in the year 1981 was arbitrary and unrealistic and did not reflect the fair market value of the property as on 01/04/1981. The Assessing Officer adopted the FMV as on 01/04/1981 at Rs. 15 per sq.mt as per comparable sale instances following the decision of Bombay High Court reported in 271 ITR 229 and computed long term capital gain of Rs. 22.93 crore as against long term capital loss of Rs.5.39 crore shown by the assessee. The appeal filed by the assessee was dismissed by the CIT(A).

The enquiries made by the AO also revealed that the assessee has sold another adjoining property on 19/3/2007 for a consideration of Rs.76,51,85,850 and the assessee had not filed the return of income for the A.Y. 2007-08. On the basis of this information, the assessment proceedings for the A.Y. 2007-08 were initiated. Thus, as a result of enquiries made by the AO, unrecorded sale transactions of Rs.92.51 crore of two more properties, other than the transaction reported in AIR, were detected.

Names of officers : J.L. Correa, ITO-2(CIB), Pune
Ajay Kumar Srivastava, Addl. CIT (CIB), Pune
B. G. Reddy, CIT (CIB), Pune

TAXATION OF VOLUNTARY CONTRIBUTIONS OF A TRUST

Trust receiving donation of shares - shares retained even after one year - forfeiture of exemption - donation of shares not towards corpus - value of shares reckoned as voluntary contributions and taxable - some shares sold holding period of previous owner not relevant in case of donations - gain assessed as short term capital gain

Ajay G. Piramal Foundation is a trust formed on 30.06.2005 with the objectives to establish, develop, maintain and operate hospitals, medical schools, medical colleges, nursing institutions, dispensaries, maternity homes, child welfare centres, etc. The trust was granted registration u/s 12AA w.e.f. 30-7-2005 and was also approved u/s 80G vide order dated 31.1.2006.

The assessee filed the return declaring NIL income on 30.10.2006 for the Assessment Year 2006-07. The assessee revised its return on 10.01.2007. While scrutinizing the return for the year, the AO noticed that the assessee received 16,50,000 shares of Nicholas Piramal India Ltd. from another trust, namely, The Piramal Enterprises Executives Trust. The assessee stated that the shares were received as a gift on 3.8.2005 towards the corpus and thus the receipt was exempt u/s 11 (1)(d) of the IT Act. The assessee sold 4,00,000 of these shares during the year for a consideration of Rs.11,41,95,430. It claimed that the shares constituted long term capital assets since they were held by the previous owner for more than 12 months and the gain was exempt u/s 10(38) of the Act since the sale was through the stock exchange and subjected to STT.

The AO noticed that the assessee continued to hold 12,50,000 shares of M/s Nicholas Piramal India Ltd. They were not disposed of within a period of one year. Thus, the assessee contravened the provisions of section 13(1)(d) entailing forfeiture of exemption u/s 11. The assessee filed a revised return stating that it lost exemption u/s 11 to 13 in view of violation of the provisions of section 13(1)(d), contended that it did not carry out any charitable activity and sought assessment for the year under the normal provisions of the IT Act.

The AO was of the view that the receipt of 16,50,000 shares of Nicholas Piramal India Ltd. by the assessee constituted voluntary contribution following which the market value of the shares at Rs.42,41,32,500 was liable to tax under sec.2(24)(iia) of the IT Act. The assessee, however, contended the

shares were received as corpus donations, the value of which as per sec.12(1) cannot be taxed as income. The AO obtained the minutes of the meeting of the donor trustee held on 3rd August 2005 which contained the resolution to transfer the shares to the assessee unconditionally. There was no decision to donate the shares towards the corpus of the assessee trust. The assessee at this stage furnished a copy of letter dated 3rd August, 2005 of the donor trust in which it was mentioned that the donation of 16,50,000 shares was towards the corpus. The AO held that this letter was not in consonance with the minutes of the meeting of the Board of Trustees of the donor trust. The purpose of the donation had been fully explained in the minutes wherein there was no direction for donation of shares being towards the corpus. Once the Board of Trustees decided to donate shares as voluntary donation and not as corpus, such intention of the donor trust could not be varied by any subsequent communication of an office bearer of the donor trust. In view of this, the AO did not accept the claim of the shares being donated towards corpus. The AO also held that even if the donation was treated as corpus donation, it would still be taxable because of the provisions of sec.11(1)(d). The AO accordingly assessed Rs.42,41,32,500 as the income of the assessee for the year.

The assessee sold 4,00,000 shares of Nicholas Piramal India Ltd. during the year for a consideration of Rs. 11,41,95,430. Cost of these shares on the basis of their fair market value on the date of donation worked out to Rs.10,28,20,000. Thus, the assessee earned capital gain of Rs.1,13,75,430. The assessee contended that the shares sold were long term capital assets since they were held by the previous owner for more than 12 months. When those shares were sold, the gain was exempt in terms of sec.10(38) of the IT Act. The AO held that the assessee received the shares as donation. He stated that donation and gift are of different species. They are not synonymous. They have different meaning and purpose. The provisions of sec.49(1)(ii) applied to gifts and not to donations. He opined that where voluntary donations are deemed to be income u/s 2(24)(iia), benefit of sec.49 (1)(ii) is not available when shares received as donations are subsequently sold. The AO held that the assessee is not entitled to the benefit of sec.49(1)(ii). The AO held that the period of holding by the assessee of these shares was less than 12 months and, accordingly, capital gain arising on sale of those shares was short term capital gain. Consequently,

the AO denied the assessee's claim of exemption u/s 10(38). This resulted in taxation of a sum of Rs. 1,13,75,430 as the assessee's income under the head 'short term capital gains'.

Names of officers : Inderjeet Singh, Addl. DIT (Exemptions), Range-II, Delhi
S.K.Singh, DIT (Exemptions), Delhi

THE SUPREME COURT ON TAX CALCULATIONS

We should... like to observe that to avoid unnecessary controversies, the department should, in future, adopt the salutary and useful practice of incorporating the entire tax calculations in ITNS 65 for itself or, in the alternative, make the ITNS 150 an annexure to form part of the assessment order, have it signed by the ITO and have it served on the assessee along with the ITNS 65. That will enable the assessee to have the full details necessary to enable him to file a proper appeal, if needed, against the order and demand. If these safeguards are not taken, there is a danger of the tax calculation being left entirely to the subordinate staff, the ITO contenting himself with a cursory glance thereat... We hope that the observations made by us would ensure, at least in future, that ITOs do not allow themselves to be indifferent to this part of the process of assessment or shirk the responsibility of verifying and authenticating the correctness of the tax computations resulting in the demand raised against the assessee.
(Kalyankumar Ray v. CIT (191 ITR 634)

ASSESSMENT OF CAPITAL GAINS ON EXCHANGE OF LAND

Footnote to the return - gain on sale of land exempt - details called for - assessee admitted gain is taxable but only sale consideration received in cash and not in kind - claim rejected and consideration in kind also taxed - indexation restricted - deduction u/s 54B also examined

Shri Gajanan H. Bagwe, Nagpur filed the return for the Assessment Year 2005-06 declaring total income of Rs.13,11,028. In the balance sheet furnished with the return, the assessee admitted sale of agricultural land for Rs.2,85,30,027 which comprised sale of an area of 182964.66 sq.ft. for Rs.1,18,92,702 received by the assessee in kind and sale of the remaining land for Rs.1,66,37,325 in cash. The assessee claimed that the land sold was agricultural land and, therefore, the gain on sale was exempt. The assessee supplied this information by way of a footnote to the computation of income.

In the course of the hearing of the case, the AO asked the assessee's AR to furnish the details of the sale of the agricultural land and justify his claim of exemption of the gain with evidence. In response to this, the assessee stated that he was under the mistaken impression that agricultural land was exempt from tax until he was informed that agricultural land within 8 kms. from the municipal limits attracted capital gains tax. The assessee admitted that the land that he sold was within 8 kms. from the municipal limits, following which the transfer of the land resulted in taxable capital gain. He computed the capital gain at Rs.45,96,085 and requested that the return be treated as revised to this extent.

While computing the taxable capital gain, the assessee accounted for only sale consideration received in cash amounting to Rs.1,66,37,325. He claimed that the sale proceeds of Rs.1,66,37,325 received in cash alone were chargeable to capital gain under sec.45(1). He contended that the balance consideration of Rs.1,18,92,702 received in kind was not taxable since the industrial plots that he received in lieu of the land transferred amounted to conversion of his capital asset into stock in trade. The capital asset converted into stock in trade would be chargeable to capital gains under sec. 45(2) when the stock was sold. The assessee contended that since the assessee had not sold

the industrial plots, there was no profit which was liable to tax at this juncture.

The AO examined the assessee's claim thoroughly. He noticed that the assessee sold 28.52 acres of land. In return, the assessee received consideration of Rs.1,66,37,325 in cash and 11 industrial plots admeasuring 17004.57 sq. mtrs. The claim that agricultural land of 17004.57sq.mtrs. was converted into stock in trade had no basis at all. What all happened was that the assessee sold agricultural land of 28.52 acres against which consideration was received in cash as well as in kind. The sale deed also specified transfer of land of 28.52 acres and consideration at Rs.2,85,30,027, which was the full consideration. This aggregate consideration of Rs.2,85,30,027, even though part of it was in kind, for sale of 28.52 acres of land, was liable to tax u/s.45(1).

The AO also held that the consideration in kind was in the form of grant of lease over 11 developed industrial plots for a period of 90 years. The assessee did not obtain ownership rights over those 11 plots. He merely obtained leasehold rights over the industrial plots of land. Thus, he exchanged ownership rights over his land for leasehold rights. Such an exchange in relation to a capital asset constituted transfer as per sec. 2(47) of the IT Act. The AO relied upon the decisions in CIT v. Dr. D.A. Irani (1998) 234 ITR 850 (Bom.) and CIT v. Dr. V.V. Mody 218 ITR 1 (Karn.) in this regard.

Some pieces of the land which the assessee transferred during year were received by him on partition and as gifts from others. He claimed indexation of the cost of acquisition from the time the original owners held the land. The AO held that the period of holding by the previous owner was material only for the purpose of determining whether the asset was a short term or a long term capital asset. For the purpose of indexation, the period of holding by the present owner was relevant. Consequently, the AO allowed indexation of the cost of acquisition only from the time the assessee held the asset disregarding the period held by the previous owner. The AO relied upon the decision of the Mumbai Bench of the Tribunal in Dy.CIT v. Kishore Kanungo (2006) 104TTJ (Mumbai) 560 in support of this view.

The assessee stated that he had bought agricultural lands and since the capital gains arose on account of transfer of agricultural lands, he was entitled to deduction under sec. 54B. The AO noticed that the provisions of sec.54B applied only to the land which the assessee or his parent cultivated within a

period of 2 years from the date of their transfer. Since the assessee received some pieces of land as gift from other than his parents or in partition, the said lands did not satisfy the condition that they were tilled by himself or his parent. Thus, the assessee's claim for deduction under sec. 54B was rejected in part.

The assessment made under sec. 143(3) resulted in determining the taxable long term capital gains at Rs.2,82,26,416 as against 'nil' capital gain in the return filed.

Names of officers : Pramod Nikaljee, ACIT, Nagpur
R.P.Chandekar, JCIT, Range 6, Nagpur
K.Chandrahas, CIT-III, Nagpur

FRINGE BENEFIT - LARGE REVENUE

The amount of contribution by the employer to the Approved Superannuation Fund of the employees is a fringe benefit u/s 115WB(1)(c). In the assessment of FBT made on 21.11.2008 in the case of M/s Punjab National Bank for the Assessment Year 2006-07, the AO made addition of Rs.471.42 crore on this score and collected the demand of Rs.201.72 crore in cash in December, 2008. Similarly, in the case of Punjab & Sind Bank also, the bank had not paid FBT on contribution of Rs.66.90 crore by the employer to the approved superannuation fund for employees. The demand of Rs. 29.92 crore was collected in cash in January 2009.

Name of AO : Sanjay Kumar, Addl.CIT, Range 14, New Delhi

REBATE U/S 88E NOT DEDUCTIBLE AGAINST INCOME U/S 115JB

Dividend stripping noticed and loss disallowed - rebate u/s 88E restricted to income from shares - no rebate on tax of other incomes - rebate u/s 88E does not enter computation of income u/s 115JB or tax payable u/s 115JB

M/s BLB Ltd., New Delhi, is a member of BSE and NSE. It is engaged in purchase and sale of shares mostly on its own account. For the Assessment Year 2006-07, it filed the return of income declaring total income of Rs.45,02,31,514 as per the normal provisions and Rs.13,99,86,801 as income u/s 115JB of the IT Act. Subsequently, the assessee filed a revised return declaring total income of Rs.54,11,02,310 as per the normal provisions and Rs.13,99,86,801 as income u/s 115JB. As per the revised return, tax payable as per the normal provisions of the Act is NIL and no tax is payable against the income u/s 115JB.

In the course of scrutiny of the return, the AO noticed that the assessee had accounted for loss on purchase and sale of some shares / units and the said loss attracted disallowance in terms of sec.94(7) of the IT Act. The AO obtained the details of the relevant sales and subjected a sum of Rs.12,95,487, being loss, to disallowance u/s 94(7). The assessee agreed that the said disallowance was called for. The AO also disallowed Rs.18,63,226, being the proportionate interest on the amount borrowed from the assessee's bank OD a/c, on the ground that the borrowed amount was utililised fro payment of donations, interest-free loans to related concerns and to make investments.

The income returned by the assessee under the normal provisions stood at Rs.54,11,02,310. The AO computed the same at Rs.54,66,59,030 after making additions. The assessee did not pay any tax on the income returned on the ground that STT paid on purchase and sale of shares, which was allowable as rebate under sec. 88E against income assessed, was more than the tax payable. The AO, however, restricted the rebate u/s 88E to only such income on which STT was payable. The AO worked out income which had no nexus with STT at Rs.63,83,106 and tax thereon was Rs.21,48,553. Thus, the AO determined the assessee's tax liability under the normal provisions at

Rs.21,48,553 against 'nil' tax worked out by the assessee. Tax on income under sec.115JB, however, was more. The AO, therefore, taxed the assessee on the income computed under sec. 115JB. The assessee contended that rebate under sec.88E was deductible even against tax computed under sec.115JB. The AO disagreed with the assessee holding that the provisions of sec.88E applied only to cases where the total income of the assessee includes income chargeable under the head "profits and gains of business and profession" arising from taxable securities transactions whereas the provisions of section 115JB are applicable to an assessee, being a company, irrespective of the head of income chargeable and that STT paid is not analogous to taxes such as TDS or advance tax or self assessment tax paid under the IT Act. The AO also mentioned that STT has become deductible expenditure owing to insertion of cl. (xv) of sec.36(1) w.e.f. 1.4.2009 while rejecting the assessee's plea that STT be allowed as business expenditure while computing income under sec. 115JB. In the result, the AO calculated tax on income u/s 115JB of Rs.14,05,84,867 at Rs.1,18,30,217. The AO issued a notice of demand for Rs.1,18,30,217 since this demand was greater than the tax payable on income computed under the normal provisions.

Names of officers : T.Vasanthan, Addl. CIT, Range 3, New Delhi
Vijay Sharma, CIT, Delhi-I, Delhi

SALES BY ONE SEZ TO ANOTHER IN INDIA NOT COVERED FOR EXEMPTION U/S 10A

Assessee exporter in Cochin SEZ - claimed exemption u/s 10A of the IT Act on sales to another SEZ unit in Madras SEZ - assessee's claim of deemed export disallowed - held sale proceeds have not been received in convertible foreign exchange

Electronic Controls and Discharge Systems P. Ltd., Kochi is an exporter in Cochin Special Economic Zone (SEZ) claiming exemption u/s 10A on the ground that its sales were only export sales. During scrutiny, the AO found that the export sales included sales to one unit in Madras SEZ. The assessee maintained that sales to another SEZ unit constituted deemed exports as per SEZ Act and hence were includible in export turnover u/s 10A. When asked to produce bank statement evidencing receipt of the concerned export proceeds in convertible foreign exchange, the assessee stated that the sale proceeds from the Madras SEZ unit were received in Indian currency. It was further claimed that, as the final destination for the exports was within India itself, the sale proceeds could be received either in Indian currency or in convertible foreign exchange.

Clause (3) of section 10A clearly provides that, in order to be eligible for exemption under the said section, the sale proceeds of the assessee out of exports made out of India should be received in convertible foreign exchange, within a period of six months from the end of the previous year or, such further period, as the competent authority may allow, in this behalf. In the instant case, in so far as the sales to Madras SEZ unit are concerned, the two conditions viz., 'export made out of India' and 'receipt of sale proceeds in convertible foreign exchange', had not been fulfilled. Observing that the provisions of SEZ Act cannot form the basis for Income-tax assessment proceedings, the AO held that the contentions of the assessee were against the primary requirements for exemption u/s 10A. Consequently, exemption u/s 10A was recomputed, duly excluding the sales to Madras SEZ unit from export turnover.

As the assessee had followed similar method for other assessment years as well, the assessment for the A.Y. 2003-04 was revised u/s 263; the assessment for the A.Y. 2005-06 was completed u/s 147 and the assessment for

the A.Y. 2006-07 was completed under regular scrutiny. The tax demanded and paid so far, for various assessment years, is as under:

A.Y.	Demand Rs.
2003-04	12,38,268
2004-05	48,44,345
2005-06	1,02,58,840
2006-07	20,11,448

Names of officers : Girly Albert, Income-tax officer, Ward 1(1), Kochi
R. Rajagopalan, Addl. CIT, Range - 1, Kochi
V.K. Sridhar, CIT - I, Kochi

TAXATION OF AGENCY BUSINESS - CAPITAL EXPENDITURE & REVENUE RECEIPT

Provision for bad debt claimed as deduction disallowed in assessment - expenditure for buying agency business is capital in nature - receipt for termination of agency is taxable income

GAC Shipping (India) Pvt. Ltd., Kochi filed the return for the Assessment Year 2006-07 declaring a total income of Rs.1,87,18,366. The return was selected for scrutiny. While examining the books of account, the AO noticed that the assessee had written off an amount of Rs. 59,92,074 as bad debts. The AO called for the details of the claim and the assessee complied with this and filed the details. The AO then asked the assessee to explain the nature of its transactions with two parties the debts of which were claimed as written off, viz. (i) Adsteam Agency (I) Pvt. Ltd. and (ii) Target Aviation (P) Ltd. and to state the year in which the amount written off was treated as income in terms of sec.36(2) of the IT Act. The assessee now replied that the amount of Rs.30,94,110 due from Target Aviation (P) Ltd. was only a provision and requested disallowance of the same. In the assessment, disallowance of Rs.30,94,110 was duly made.

The AO perused the assessee's Profit and Loss Account which showed debit of an amount of Rs.68,29,960 as "Business Amortization". The AO asked the assessee to explain the nature of this expenditure. The assessee explained that it was offered a Liner Business of Hamburg Sued Line, Germany by their existing Agent, M/s Adsteam Agency (India) Pvt. Ltd., Mumbai, which the assessee accepted. Consequently, the agency was transferred to the assessee in January 2005. Then, on 30th June 2005, the assessee lost the business of Hamburg Sued Liner Agency. The net loss in this regard came to Rs.68,29,960 which the assessee has written off. The assessee claimed that the expenditure was not capital in nature and that the loss was incurred in the course of carrying on the business and, therefore, it was deductible.

The AO asked the assessee to furnish how it arrived at net loss at Rs.68,29,960. The assessee explained that it paid an amount of Rs.1,30,17,000 on two occasions for the liner business and for termination of the agency

business of Adsteam, the assessee received compensation of Rs.59,69,040. An amount of Rs.2,18,000 was amortized during the F.Y 2004-2005. The assessee stated that the balance amount of Rs.68,29,960 was amortized during the current assessment year 2006-2007. The assessee clarified that since it paid compensation to the previous agent for obtaining the agency and it was paid compensation for terminating the agency, the net difference is in the nature of revenue loss and it has been written off as loss.

The AO analysed the transactions and held that there were two transactions with two different entities in respect of the above deal. One was payment of Rs.1,30,17,000 made by the assessee to Adsteam Agency (India) Ltd. for purchasing the agency rights of Hamburg Sued. This was the amount spent by the assessee for procuring a source of income. This constituted capital expenditure. The other was compensation received from Hamburg Sued for termination of the agency. This was towards compensation for loss of future income. This was a revenue receipt which is taxable specifically under sec.28(ii)(c) as per which any compensation received for termination of an agency or modification of the terms and conditions relating thereto is income. The AO also relied upon the decisions of the Supreme Court in M.K.Brothers Pvt. Ltd. v. CIT reported in 86 ITR 38 and CIT v. Jala Trading Co. (P) Ltd. (1985) 155 ITR 536 in support of her views.

The assessee relied on many decisions to substantiate its stand that compensation received for termination of an income producing asset is a capital receipt but those decisions are of no avail in view of taxation of the receipt as income under sec.28(ii)(c).

Names of officers : T.Prasannakumari, DCIT, Circle 1(1), Ernakulam
A.G. Sriram, Addl. CIT, Range 1, Ernakulam
Anuradha Goyal, CIT

WITHDRAWAL OF DEDUCTION UNDER SEC.80-IB IN 10th YEAR

Deduction u/s 80-IA not justified since assessee not in infrastructure development - not justified since unit not located in industrially backward district - legal opinion furnished - opinion found to be not in consonance with law - claim of deduction u/s 80-IB also rejected

M/s Johnson Matthey Ceramics India Pvt. Ltd. (since renamed as Endeka Ceramics India Pvt. Ltd.), Bangalore filed the return of income for the Assessment Year 2005-06 admitting total income at Rs.8,43,29,703. In the course of scrutiny of the assessment, the AO inquired into the assessee's claim of deduction u/s 80-IA amounting to Rs.2,83,72,567. Form No.10CCB furnished by the C.A. stated that the assessee's undertaking commenced operations in August 1995 and the deduction was claimed under sec.80-IA(7). The provisions of sec.80-IA(7), however, applied to an enterprise engaged in infrastructure development while the assessee was a manufacturer of ceramic products. Consequently, the assessee was not entitled to the said deduction. When this was pointed out, the assessee admitted that there was an error in specifying the section under which the assessee was eligible for the incentive. It informed that the assessee's factory was situated in the 2nd phase of Industrial Estate, Hosur, which is in Dharmapuri district, a notified Industrial Backward District and that the assessee, therefore, was eligible for deduction under sec. 80-IB.

The AO examined the assessee's eligibility for deduction under sec. 80-IB(5) in the context of the assessee's assertion that its factory was situated in an industrially backward district. Section 80-IB(5) requires location of an industrial undertaking in such industrially backward districts as the Central Government may by notification in the Official Gazette specify in this behalf as industrially backward district of category 'A' or an industrially backward district of category 'B'. Dharmapuri district is not listed as a backward district either under Category 'A' or Category 'B' in Rule 11EA read with Appendix III of the I.T. Rules. Further, Dharmapuri is not listed as a backward district by the Central Government in Notification No.S.O.714(E) dated 7th October, 1997

and Notification No. S.O. 440(E) dated 15-6-1999. Thus, the assessee was not eligible for deduction under sec. 80-IB(5) also.

The assessee now stated that the company commenced manufacturing activities in the year 1995 and that since the company had losses up to the assessment year 1999-2000, it did not claim any deduction for those years and that it claimed the deduction for the first time in the return for the Assessment Year 2000-2001, the 5th year of production and thereafter and the claims of deduction were allowed in the assessments made. The present claim of deduction pertained to the last year. The assessee furnished a legal opinion which stated that the assessee set up the unit in August 1995 and till that time the Central Government did not notify the industrially backward districts in the Official Gazette. The Gazette Notification was issued in October 1997 vide No. S.O.714(E) dated 7-10-1997, with retrospective effect from 1-10-1994. Further, section 80-IA(2)(iv)(c) was amended retrospectively with effect from 1-4-1998. The legal opinion states that the assessee could not be divested of the tax concession originally granted by the provisions, as they stood at the time the unit began to manufacture in a backward district area in August 1995, by virtue of a retrospective amendment of the backward district areas introduced in the year 1998, but brought into force w.e.f. 1-4-1995. Though in the retrospective notification, Dharmapuri District of Tamil Nadu was not included as an industrially backward area, such notification could be made applicable prospectively and not retrospectively. The principle of promissory estoppel be invoked against the Government / a retrospective amendment since the assessee, in terms of the provisions of section 80IA(2)(iv)(c), was led into believing that it would be eligible to claim deduction under such provision if it set up a manufacturing unit in a backward area any time from 1st April 1995.

The AO countered the legal opinion by stating that sec. 80-IA(2)(iv)(c), when introduced, stated that the backward districts will be notified by the Central Government in the official Gazette. So, on the date on which the assessee company started its manufacturing activity, there was no Gazette notification giving the list of backward districts. Hence, it is clearly a case of the assessee's presumption and not a promise made by the Government. Further, section 80-IA(2)(iv)(c) talks of backward districts while Schedule VIII, referred to by the assessee, was for certain backward areas. Parts of Dharmapuri district

were not included in that backward areas list. So, it is illogical to assume that the entire district would be declared as a backward district, because part of the district was a backward area. The question of invoking the doctrine of promissory estoppel does not arise as the promise had never been made. Section 80-IB(5) as it exists today (erstwhile 80-IA(2)(iv)(c) clearly states that the concession is available only to those backward districts that are specified in the notification and are either Category A or B districts specified in Appendix III of the I. T. Rules. The assessee, therefore, was not at all eligible for the incentive. Consequently, the AO disallowed the claim of deduction of Rs.2,84,10,867 u/s 80-IA/80-IB. For the Assessment Year 2004-05 also, the assessee claimed deduction u/s 80-IA/80-IB amounting to Rs. 66.85 lakhs. This was allowed in the assessment made. The CIT has since set aside the assessment on this issue u/s 263.

Names of officers : Saraswati Padmanabhan, ACIT, Circle 11(5), Bangalore
M. Ravindra Sai, Addl. CIT, Range 11, Bangalore
N.P. Singh, CIT - I, Bangalore

EMPLOYEES' CONTRIBUTIONS V. EMPLOYER'S CONTRIBUTIONS TO PF, ETC.

Employees' contributions to PF, ESI, Gratuity Fund, etc. are income u/s.2(24)(x). These contributions are allowed as deduction if the said contributions have been credited to the employees account in the relevant Fund on or before the due date as per sec.36(1)(va). If there is a delay in remittance or if the contributions are not remitted, deduction cannot be allowed at any time. Disallowance in this regard is permanent. In the case of employer's contributions, the provisions of sec.43B apply whereby remittance on or before the due date for filing the return of income would suffice.

TAXATION OF CAPITAL GAINS ON TRANSFER OF AGRICULTURAL LAND SITUATE WITHIN 8 KM OF ANY MUNICIPALITY

Sale of agricultural land - situate beyond 8 km from the municipality in the jurisdictional tehsil - but within 8 km from another municipality - liability to capital gains tax

Shri R.S.Kadan, a pensioner, filed his return of income for the Asst.Year 2006-07 declaring taxable income of Rs.25,64,290 comprising 'pension' and 'income from other sources'. During scrutiny assessment proceedings, the assessee was asked to furnish information about purchase and sale of properties during the year. In reply, the assessee furnished a copy of sale deed dated 9.9.2005 pertaining to sale of his property of 5.9625 acres of land at Village Ghata, Tehsil Sohna, Distt: Gurgaon for a consideration of Rs.7,75,12,500 to M/s. Active Promoters Pvt. Ltd., New Delhi. He also enclosed a copy of report from Patwari of the Tehsil of Sohna, certifying that the land in question was located beyond a distance of 15 kms. from the outer limits of Sohna Municipality. It was claimed by the assessee that the sale proceeds of the land in question were exempt from capital gains tax because of the location of the land beyond 8 kms. from the municipal limits of Sohna.

Field enquires conducted by the AO through his Inspector led to the finding that the land in question was closer to Gurgaon Municipality than Sohna Municipality. The actual distance of the property from the local limits of a Municipality is the crucial factor for determining whether the said agricultural land is a capital asset or not. Agricultural land located within 8 kms. from local limits of a municipality is a 'capital asset' u/s.2(14)(iii) of the I.T. Act and sale of such capital asset attracts liability to capital gains tax u/s.45. Therefore, the AO issued a specific letter u/s.133(6) to the Executive Engineer, Municipal Corporation of Gurgaon to exactly state the distance of land in question from the outer limits of Gurgaon Municipality. In response, the Municipal Corporation issued a letter specifically stating that the land in question was located at a distance of 6.6 kms. from the outer limits of Gurgaon Municipality at the time of sale and, that from 02.06.2008 the land came to be included

within the municipal limits of Gurgaon.

In the backdrop of the information as stated above, the AO called for objections of the assessee against treating the land as capital asset under the IT Act. The assessee was also asked to furnish the cost of acquisition of the property sold. In response, the assessee has taken the stand that, as the land was situate in Sohna Sub-division and Tehsil, only the distance from Sohna Municipality which was more than 15 kms. should be the basis and not the distance from Gurgaon Municipality for the purpose of determining as to whether it was a capital asset or not. The assessee furnished letters from Patwari and Engineer, to show that even from Gurgaon Municipality the land was located at a distance of more than 8 kms. After elaborately dealing with the whole issue and each of the objections raised by the assessee, the AO held that the land in question was within a distance of 6.6 km from the outer limits of Gurgaon Municipality and is capital asset as defined in section 2(14)(iii) of the IT Act and hence, sale of such a land attracted liability to capital gains tax.

At this stage, the assessee made one more attempt to thwart the efforts of the AO to levy capital gains tax. This time, the assessee pleaded that the sale itself was still a subject matter of litigation, as, an erstwhile agreement-holder approached court to declare the sale as void. With his detailed counter arguments in the assessment order, the AO nullified the assessee's efforts and also pointed out the fact that the said court case reached finality, without affecting the sale.

Taking note of the information that, in the past, the assessee had forfeited an advance of Rs. 77.51 lakhs consequent to failure on the part of an agreement holder to get the sale deed executed within the agreed time-frame in respect of the very same land, the AO reworked the cost of acquisition as nil, invoking the provisions of section 51 of the Act. This section provides that any advance forfeited in an aborted sale, should be deducted while working out cost of acquisition. The forfeited amount over and above the indexed cost of acquisition has been treated by the AO as income.

As regards the assessee's plea for deduction u/s. 54B on the ground that he had acquired agricultural land for Rs. 1.41 crore out of the sale proceeds, the AO held that the said deduction was not admissible in the assessee's case, as the condition that 'in the two years immediately preceding the date of transfer, the

land must have been used by the assessee or his parent, for 'agricultural purposes' was not fulfilled.

The AO completed the assessment determining the assessee's total income at Rs.8,28,42,803.

Names of officers : D.N.Kar, Addl CIT, Range 41, Delhi.
S.K. Srivastava, CIT - XIV, Delhi

EXCESS CLAIM OF DEPRECIATION UNDER TUF SCHEME

For the Assessment Year 2006-07, M/s SPL Industries Limited, Delhi, made additions to the plant and machinery and claimed depreciation thereon @ 50%. The claim was that higher depreciation @50% is admissible on machinery and plant, used in weaving, processing and garment sector of textile industry, purchased under Technology Upgradation Fund Scheme (TUFS) of Govt. of India TUFS. But higher depreciation under TUFS was exigible for plant and machinery purchased on or after 1.4.2001 but before 1.4.2004 and put to use before 01.04.2004. Since the assessee had purchased the plant and machinery after 1-4-2004, higher depreciation was not available on such plant and machinery. Therefore, the assessee was allowed normal depreciation @ 15% and the excess claim of Rs.5,42,93,162 was disallowed. The assessee admitted that the claim of higher depreciation was inadvertently made.

Name of AO : S.K. Jain, Addl. CIT, Range 9, New Delhi

TRUST'S ACTIVITIES NOT IN ACCORDANCE WITH ITS OBJECTS

Trust runs a hospital - activities charitable but contrary to the objects specified in trust deed - exemption denied on income not relating to objects - depreciation not allowed in respect of application for purchase of fixed assets

Mool Chand Khairati Ram Trust, New Delhi filed the return of income for the Assessment Year 2006-07 showing Nil Income. The assessee manages a hospital popularly known as Moolchand Hospital in Delhi. The assessee was registered u/s 12AA of the IT Act vide order dated 4.12.74 and it has been availing the benefit of exemption u/s 11 since then.

During the course of the assessment proceedings for the Assessment Year 2006-07, the AO examined the objects of the trust. He noted that Lala Khairati Ram in his will bequeathed certain properties to a trust known as Mulchand Khairatiram Trust. The objects of the trust were imparting education in Sanskrit and improving the ayurvedic system of medicine. The will provided that help could be taken from English or Unani or any other system of medicine in order to promote the latter object. It also provided for opening any number of ayurvedic hospitals.

The AO examined the assessee's accounts. He noticed that the assessee was mainly running an allopathic hospital known as Mulchand Hospital. The receipts and expenditure of this hospital also showed this as the major activity of the trust. The receipts and expenditure of ayurvedic research institute were measly Rs.55.41 lakhs and Rs.63 lakhs against the receipts of Rs. 18.98 crore and expenditure of Rs.27.97 crore of the trust. On these facts, the AO prima facie inferred that the activities of the trust were not in accordance with its objects.

The trust submitted that over a period of years, it has developed new techniques in rendering services in ayurvedic medicines and that in order to promote ayurvedic medicines it has taken help from allopathy. It further explained that on the same set of circumstances, the trust had been allowed exemption for the past years. The assessee submitted that the activities of the trust were charitable within the meaning of sec.2(15) of the IT Act. The AO was not convinced with this explanation. The first and primary object of the trust is

imparting education in Sanskrit. This object has never been pursued by the assessee. The only issue is whether the activities of the assessee are covered by the second object. Here again, the object of imparting education in ayurvedic system of medicine was not pursued by the assessee. On the strength of the information supplied, the assessee claimed that it opened a hospital where ayurvedic services are also provided. Thus, at best it can be said that the assessee has undertaken activities in relation to the ancillary objects of the trust. Even in the hospital, the percentage of ayurvedic activities constituted only about 2% of the total activities. Thus, from the details submitted by the assessee, the AO opined that it was apparent that the primary activity of the assessee trust was running of the allopathic hospital. The AO held that the objects of the trust did not provide for running an allopathic hospital. Even though the trust is permitted in the objects to take help from English or Unani or other system of medicine, it is no where permitted to open and run allopathic hospitals. The AO further contended that res judicata does not apply to income-tax proceedings in the context of the assessee's claim that the trust was granted exemption in the earlier years. Conferring exemption erroneously to the trust does not ipso facto confer a right to the assessee for continuance of exemption of the trust's income for the current year. The AO, therefore, held that the assessee cannot be allowed the claim of exemption u/s 11 in respect of the surplus arising in the activities of the allopathic hospital.

While examining the accounts of the trust and the computation of income, the AO noticed that the assessee claimed depreciation of Rs.1,85,58,569 even though the assessee had already claimed the cost of additions to fixed assets as application of income for charitable purposes. The claim of depreciation in the current year would therefore amount to double deduction. The AO relied upon the decision of the Supreme Court in Escorts Ltd. v. Union of India [1993] 199 ITR 43 wherein it was held that when deduction under section 35(2)(iv) was allowed in respect of capital expenditure on scientific research, no depreciation was to be allowed under section 32 on the same asset. The fundamental axiom is that double deduction is not intended unless there is a clear statutory indication to the contrary. The AO also relied upon the decision of the ITAT, Delhi Bench in the case of Prakash Education Society in ITA No. 4730 & 4731/D/2007 in which the Tribunal

upheld the principle that where the capital expenditure has been treated to have been applied for the objects of the trust, allowance of depreciation on the same asset would amount to double deduction. The AO, therefore, disallowed the claim of depreciation of Rs.1,85,58,569.

Names of officers : Jagdeep Goyel, Addl.DIT (Exemption), Range-1, Delhi
S.K. Singh, DIT (Exemption), Delhi

WRONG CLASSIFICATION OF NPA - INTEREST OMITTED AS INCOME

M/s. LIC Housing Finance Ltd., Mumbai filed the return of income for the Assessment Year 2006-07 declaring income of Rs.187,78,55,640. In the course of scrutiny, the AO noticed that the assessee debited to the profit & loss account a sum of Rs.1,23,32,785 on account of interest charged u/s 234B and 234C of the I.T. Act and the same was not added back in the computation of income. In the assessment made, the AO disallowed the claim. Further, the AO noticed that the assessee did not account for interest where the housing loan remained non-performing for 90 days. Clause (b) of sec.43D of the Income Tax Act, which is a special provision, governs the issue. Rule 6EB of the IT Rules has prescribed the categories of bad or doubtful debts. As per this Rule, exclusion of interest is envisaged in a case where the doubtful assets remain non-performing for a period exceeding two years and the interest or instalment remained past due for six months. The assessee, however, did not account for interest if it remained past due for a period of 90 days. This meant that the assessee omitted to account for interest of Rs.23,79,24,764 as income. In the assessment made, the AO added this amount to the income returned. The assessee preferred appeal before the CIT(A) on this issue for the year. The assessee, however, has filed a revised return offering additional interest income on the above issue to the extent of Rs.23,62,30,542 for the Assessment Year 2007-08.

Name of AO : O.P. Yadav, Addl. CIT, Mumbai

PROPERTY DEVELOPER CAMOUFLAGES STOCK-IN-TRADE AS AGRICULTURAL LAND

Assessee a property developer - purchased land during F.Y.1995-96 - incurred huge expenditure on development - no agricultural income up to A.Y. 2005-06 - land sold in F.Y. 2005 -06 - claimed consideration as agricultural receipt not taxable - AO held the land as stock-in-trade and taxed profits as business income

The assessee, M/s New Cochin Developers Pvt. Ltd., filed the return of income for the Assessment Year 2006-07 showing total income at Rs. Nil and agricultural income at Rs.76,500. During the course of scrutiny, the AO noticed that the assessee sold 12.84 acres of land on 13.4.2005 to M/s. Laxmi Paper Industries Pvt. Ltd. for a consideration of Rs.2,24,70,000. However, the assessee declared no income in respect of the said transaction in the return filed. When the AO enquired about the reasons for this, the assessee maintained that the land held was agricultural land and, therefore, the entire consideration was an agricultural receipt not liable to income tax.

The AO conducted detailed enquiries and found that, as per the Memorandum of Association, the main object of the company was to purchase, take on lease or in exchange, hire or, otherwise acquire, develop and dispose of any estate, land or lands in the State of Kerala. It was also seen that the assessee acquired the land in question during the F.Y.1995-96 at a cost of Rs.22,57,500 and over the years the assessee had developed the land incurring a huge expenditure of Rs.1.11 crore. This huge expenditure evidently was incurred for developing the land for real estate business and not for agriculture as the assessee did not cultivate the lands. The assessee never earned any income from the land. The assessee had never declared any agricultural income in the past. The declaration of agricultural income of Rs.76,500, that too for a short period of 12 days (the land was sold on 13.04.2005) in the previous year relevant to the Assessment Year 2006-07 was a ploy by the assessee, aimed at getting the land passed as agricultural land.

After documenting cogent evidence, the AO concluded that the assessee, whose main object was real estate business, had actually held this land as stock in trade. Consequently, the AO treated the entire profit on the sale of

the said land as business profit and completed the assessment on a total income of Rs.87,35,059.

Names of officers : P. Radhakrishnan, ITO Ward 1(1), Kochi
A.G. Sriram, Addl. CIT Range - 1, Kochi
Anuradha Goyal, CIT, Kochi

VALUATION OF IRON FINES

Orissa Mining Corporation Ltd., Bhubaneswar is a Government of Orissa undertaking whose business comprises mining and trading of minerals. On verification of the return of income filed by the assessee, the AO noticed that the assessee valued the closing stock of iron fines, namely, Iron Ore Fines, Chrome Ore Fines etc. at Rs. 1 per tonne considering iron fines as by-product. The assessee was asked to explain the reason for such low value especially since iron fines are being exported regularly at high cost for the last several years. The assessee justified the valuation stating that iron fines have been valued at a nominal amount of Rs. 1/- per tonne as the fines are a by-product of iron ore and chrome ore etc. processing and the cost of such ore is not certain. The AO obtained the cost of production of iron fines and made an addition of about Rs. 26 crore.

The CIT(A) strengthened the addition and the ITAT dismissed the assessee's appeal on this issue.

Names of officers : A.K. Mohapatra, Addl. CIT, Range 1, Bhubaneshwar
Ashok Chatterjee, CIT (A), Bhubaneshwar

INVESTIGATIONS INTO BOGUS PURCHASE OF DG SETS

Claim of depreciation on DG sets - reassessment done - set aside for verification of bills - AO multi-pronged probe - physical inspection - assets different - claim of depreciation found bogus - assessee admits and pays tax and penalty - files petition for compounding the offence

M/s Sanghi Industries Ltd., Hyderabad filed a return in July 1998 showing loss of Rs 2,15,90,930 for the Assessment Year 1996-97. As the return was invalid and inter alia contained a huge claim of depreciation on new Diesel Generator sets acquired with loan from IFCI, the AO reopened the assessment through issue of notice u/s. 148. As the assessee failed to furnish purchase bills and other supporting documents in relation to the claim of purchase of DG Sets, corresponding depreciation was disallowed in the assessment. Penalty proceedings u/s. 271(1) (c) were initiated.

In appeal, the CIT(A) remitted the matter back to the AO with a direction to the assessee to produce the bills before the AO. As the assessee failed to produce the bills, a consequential order was passed on 5-6-2002 rejecting the claim of the assessee again. The assessee accepted this order and therefore the original assessment reached finality.

Rejecting the plea of the assessee that the asset actually existed, the AO levied penalty u/s 271(1)(c) on 27-9-2002. In appeal, the CIT (A) upheld the levy of penalty, taking note of a letter dated18-2-1997 from the Managing Director of the assessee-company to IFCI informing that the borrowed amounts had been diverted to a cement project of the group. The assessee filed appeal before the ITAT against the order of CIT (A) on penalty.

Considering that the assessee had claimed 'interest payable to IFCI' as also 'running expenditure' on non-existent diesel sets as deductions, the assessment was again reopened u/s.148 in March 2003. During a survey conducted by the AO in that month, the assessee showed certain DG sets and asserted that the DG sets actually existed and were being put to use.

At this juncture, there was a change in the AO. The new incumbent launched a multi-pronged probe, instead of merely relying on the non-production of bills, and achieved startling results. The AO found that IFCI had

issued cheques amounting to Rs.13 crore in advance directly in favour of the assessee and not in the name of the supplier of DG sets. The cheques were deposited by the assessee in its current account with Union Bank of India. Soon after deposit, the money was transferred to one Spoorthi Marketing Pvt. Ltd.(SMPL), a news paper agency of the assessee group. The AO detected that the cheques were issued under the signature of Shri Anand Sanghi, who was the cheque-issuing authority, both for the assessee and for SMPL.

As regards the assessee's claim of purchase of DG sets from M/s Wartsila Diesel India Ltd. (WDL), the AO's enquiry u/s 133(6) resulted in complete denial by WDL of receipt of any purchase order for the DG sets from the assessee. The AO's enquiries with IFCI and examination of their inspection reports revealed that the DG sets were not installed. When the AO sought physical verification, the assessee showed certain DG sets. The AO noticed that they were big generator sets but markings about the manufacturer were not clear from outside. The AO was not satisfied and he edged close to the equipment and, after critical examination, noticed certain markings on the engine etc., in German language and copied them verbatim. Similarly, a logo by name "Interface" was also noticed on bus bars components of the equipment. The AO recorded statements on the spot about the markings noticed. Thereafter, using the search and translation facilities available in the Internet, the German words were translated. The search showed that the generator sets were most likely manufactured by SKL Industries of German Democratic Republic. Further, from the markings on the equipment, a company by name Interface Electronics Ltd., Chennai was identified as the supplier of components called bus bars. The AO then issued a notice u/s 133(6) to the Chennai company. The company replied that bus bars for the DG sets were installed by them in 1990-91/1991-92 for M/s Sanghi Polyesters Ltd. (a sister concern of the assessee). Also, as East Germany and West Germany were unified in 1990, there could not have been any DG sets manufactured by a company in a country called German Democratic Republic after 1990. From the information available in Internet, it was also noticed that SKL Industries Ltd. merged into Lampe Group before F.Y. 1995-96.

The AO issued a detailed show cause notice to the assessee. He also passed an order u/s. 2(15) of the IT Act declaring Shri Anand Sanghi as the

Principal Officer of the assessee-company.

The assessee came forward and admitted that the DG Sets which were shown during survey did not belong to the assessee. The assessee agreed for disallowance of depreciation for the A.Y.s 1997-98 to 2000-01 and disallowance of interest payable to IFCI due to diversion of funds for non-business purpose. The assessee also withdrew the appeal before ITAT against penalty and agreed for further levy of penalty for the A.Y. 1996-97, the year of substantive offence. Accordingly, further penalty u/s 271(1)(c) was also levied. The assessee also suo motu filed an application for compounding of the offence on 6-10-2003 and the same is pending.

As the investigations carried out have had effect on various years, the additions and tax effect for various years are tabulated below:

A.Y.	Addition/ amount sought to be evaded (Rs.)	Tax/Penalty (Rs.)	Date of Order
1996-97	9260449	3003495	25-09-2003
1997-98	36698513	0	21-10-2003
1998-99	35563721	0	21-10-2003
1999-00	16960993	0	26-03-2004
2000-01	12809139	0	26-03-2004
2001-02	9539302	0	29-03-2004
2002-03	7212169	0	31-03-2005
Total	128044286		
1996-97 (penalty)	26949709	10847257	27-9-2002 & 7-10-2003

Names of officers : Y.V.S.T.Sai, DCIT, Circle 3(1), Hyderabad
S. Venkateshwaren, Addl. CIT, Range 3, Hyderabad
S.K. Mohanty, CIT, Hyderabad

NON FILING OF RETURNS BY A PRIVATE TRUST - THE CASE OF A FAMOUS TEMPLE

Famous temple managed by a private trust - benefit to specified families - not applied for registration u/s 12AA - tax returns not filed in spite of large income year after year - notices issued and surplus taxed as income

Khatu Shyamji Mandir, Sikar is a renowned temple. The Shyam Mandir Committee Trust owns and runs the temple. A perusal of the trust deed revealed that the membership of the trust is restricted to the heirs of only three families. The management of the trust vested in the representatives of these three families. The trust deed provided for payment of 5% of all types of receipts of the temple to each of the three families to be divided among the members of the family according to their inheritance rights. These expenses named as 'Jeevan Gujara Bhatta' (living expenses) in the trust deed were debited to the income and expenditure account of the trust. The trust deed also provided for life-time pensions to the widows of the families or pensions till their children attained majority. The trust, therefore, is purely a private trust. Obviously, the trust is neither registered u/s 12AA of the I. T. Act nor has it ever applied for registration under sec. 12AA.

The AO gathered the aforesaid information by conducting open enquiry. It was evident that the surplus of income over expenditure of Khatu Shyamji Mandir Committee Trust is not exempt as it is not a public charitable trust and its benefits accrued to only a select few besides being not registered under sec. 12AA. It also was clear that the income of the trust is liable to tax at the maximum marginal rate. Another prima facie conclusion drawn was that 'Jeevan Gujara Bhatta' receipts are also taxable in the case of the recipients. Further, since these amounts are not incurred for the purpose of earning income but are in the nature of application of the income of the trust, they cannot be allowed as deduction out of the income of the trust.

The AO issued notices u/s 148/142(1) of the IT Act to the trust for all the assessment years, wherever permissible subject to the statutory limitations in this behalf, after obtaining necessary approvals. The AO also issued notices u/s 142(1) of the IT Act for the Assessment Years 2007-08 and 2008-09 to the

members of the three families who received 'Jeevan Gujara Bhatta' to tax such receipts in their hands.

The matter was pursued with the trust administration and the recipients of 'Jeevan Gujara Bhatta'. The recipients of 'jeevan gujara bhatta' also paid tax on the amounts received by them. The details of income and tax paid are as below:

Asst.Year	Dt.of filing of return	Surplus Rs.	Gujara Bhatta Rs.	Total income Rs.	Tax paid Rs.
2002-03	23.01.2009	40,767	8,48,326	8,89,093	7,30042
2003-04	23.01.2009	21,11,502	5,15,076	26,26,578	19,76,287
2004-05	28.11.2008	8,56,898	14,18,470	22,75,368	15,66,991
2005-06	28.11.2008	(-)7,462	9,19,756	9,12,294	5,67,106
2006-07	28.11.2008	27,58,008	24,38,119	51,96,127	28,10,660
2007-08	28.11.2008	80,777	66,48,273	67,39,803	30,86,480
2008-09	28.11.2008	1,67,68,508	41,06,595	2,08,75,103	80,15,060
2009-10	Yet to be filed	1,87,00,000 Estimated	20,00,000 Estimated	2,07,00,000 Estimated	70,00,000 Advance Tax
Total		4,13,19,751	1,88,94,615	6,02,14,366	2,30,46,297

Disclosure as above includes payments of 'Jeevan Gujara Bhatta' but does not include pension paid to the widows which would be separately taxed. For the Assessment Year 2009-2010, the accounting period is not yet over and the return is not yet due.

Though the trust has been in existence for several years and the temple it manages is famous, it did not file tax returns nor the department issued notices to the trust. The AO identified the case as taxable after making open enquiries and proper examination of the trust deed and initiated the assessment proceedings. The surplus arising to the trust has been brought to tax. The amounts paid to the beneficiary families towards gujara bhatta have also been treated as income in the hands of the beneficiaries.

Names of officers : G.N.Khatri, ITO, Ward 2, Sikar
Dr. N.C. Swain, Addl. CIT, Sikar Range, Sikar
P.K.Sharma, CIT Jaipur-III, Jaipur

CASE OF USED PLANT & MACHINERY - DEDUCTION U/S 10B DISALLOWED

Deduction under sec. 10B - unit formed after splitting old business - percentage of used plant & machinery in excess of 20% - assessee ineligible for deduction under sec. 10B

M/s Woco Motheroson Elastomer Ltd., New Delhi (WMEL) filed the return for the Assessment Year 2005-06 admitting total income at Rs.96,260. The return was subsequently revised declaring income of Rs.1,37,630. The return of the assessee contained a claim for deduction under sec.10B of the I.T.Act amounting to Rs.6,49,17,798.

In the course of scrutiny of the return, the AO inquired into the claim of deduction under sec. 10B. The assessee justified the claim on the ground that the assessee company had been formed by splitting up an existing business run by M/s Motheroson Sumi Systems Limited (MSSL). A part of the business of MSSL comprising an undertaking which was engaged in manufacturing metal and plastic from rubber was split from the rest of the business of MSSL and sold by it to a newly incorporated company christened as Woco Motheroson Elastomer Ltd.(WMEL). MSSL held 50.01% shares of WMEL and the remaining 49.99% shares were held by M/s Woco, comprising M/s Woco Holding Gmbh and M/s Woco Gmbh, both Germany based companies. The new company, WMEL, was incorporated on 16th March 2004 and the ROC certified that it was entitled to commence business with effect from 30th April 2004.

Although WMEL was newly incorporated, it came into being due to splitting up of the business of MSSL. WMEL, therefore, was not a new undertaking and, therefore, it did not qualify for deduction u/s 10B. Further, section 10B(2)(iii) requires that the undertaking should not be formed by transfer to a new business of plant or machinery previously used for any purpose in excess of twenty per cent of the total value of the plant and machinery. The AO noticed that as per schedule IV to the balance sheet, the value of plant and machinery acquired by the assessee during the year aggregated to Rs.6,37,69,302 and this included pre-used plant and machinery

received from MSSL of a value of Rs.4,45,41,328. The value of used plant and machinery, therefore, was far in excess of the limit of twenty per cent of the total value of the plant and machinery used in the business of the undertaking. Consequently, the condition specified under sec.10B(2)(iii) was violated. This also disentitled the assessee to the deduction under sec.10B.

The main contention of the assessee was that the nature and composition of the elastomer unit remained the same despite the formation of the new company. Such an argument might be acceptable in a case involving an amalgamated or resulting company in a scheme of amalgamation or demerger as provided for in sec.10B(7A). In the case of the assessee, however, the provisions of sec.10B(7A) did not apply. The undertaking in question, therefore, did not qualify for any deduction u/s 10B.

In the assessment made under sec. 143(3) for the Assessment Year 2005-06, the assessee's claim for deduction of Rs.6,49,17,798 under sec.10B was disallowed resulting in raising a demand of Rs.2,97,54,512. The assessee has paid the demand. The assessment for the Assessment Year 2006-07 completed on 3.3.2009 resulted in raising a demand of Rs.1,88,91,132. This demand also has been collected from the assessee.

Names of officers : N.R. Samal, ITO, Ward 18(3), New Delhi
B.K. Rao, Addl. CIT, Range 18, New Delhi
K.C. Jain, CIT - VI, New Delhi

BOGUS LONG TERM CAPITAL GAINS IN SHARE TRANSACTIONS

Investigation by AO of claims of long term capital gains on sale of 'penny stocks' - antedating of purchases proved - assessee proved to be not on shareholder register- address of company not locatable - buyers of shares proved to be promoters & directors of the company - whole transactions stage managed without actual purchase or sale

The Mumbai Investigation Unit conducted search & surveys of share market hawala operators who were involved in arranging artificial LTCG. It was found that some of the beneficiaries were from Bangalore. Consequent to the information received, Bangalore Investigation Directorate conducted searches in respect of the beneficiaries on 20.4.2006. Mangilal Chajjer, one of the beneficiaries, was covered in the search operation.

In response to notices u/s 153A/ 153C, the assessee filed the return disclosing LTCG on sale of shares. It was found that the assessee had purchased physical shares of M/s Fast track entertainment Pvt. Ltd. for Rs.1/- during April/May 2004 and sold the shares electronically through Bombay Stock Exchange (BSE) for Rs55/- to 90/- in May/June 2005. Accordingly, LTCG was disclosed in the return for A.Y.2005-06.

The AO examined the contract note and the confirmation filed by the assessee from the share broker. He made local enquiries through the Investigation Wing at Mumbai and Ahmedabad at the stock exchanges to locate the sub-broker to the transaction. The enquiries established that the persons who had allegedly signed the contract notes were not the same persons who were validly registered with the Stock Exchange at the relevant time. The company M/s Fast track Entertainment Pvt. Ltd., whose shares were traded, could not be located at the given addresses. Enquiry with the C.A. who had signed the balance sheet (obtained from the ROC) resulted in locating an ex-employee of the said company through whom an ex-director was located. The ex-director confirmed that the assessee in question was not one of the shareholders borne on the shareholders register of the company at the relevant time.

Since the company was listed in BSE, enquiries were made with BSE and the details of people who purchased the shares from the assessee groups

were collected. The BSE sent a CD containing all the data pertaining to the sale of shares of M/s FastTrack Entertainment Ltd. during the F.Y. 2004-05 through BgSE, Bangalore. The details showed that all the shares were bought by the then directors of the company and their associates. It also contained the details of the people who traded in the said scrip and generated artificial capital gains, apart from the assessee groups.

Investigation into the buyers of the shares at high prices showed that they were none other than the promoters and directors of the company. The bank account related to these transactions showed credits in cash on proximate dates for the purpose of each purchase. This indicated that the whole transaction was only stage managed within a short period and there was really no actual purchase or sale of shares in the transaction. The documents of the assessee have been forwarded for forensic examination for prosecution purposes.

Thorough investigations were carried out with respect to the flow of money from the assessee's account, his share broker, BSE, the purchaser's share broker to the purchaser's account. Almost 50 bank accounts were verified and it was noticed that huge sum of money in cash was deposited either in ABN Amro Bank or Standard Charted Bank and the same money was given back to the assessee after routing it through various bank accounts of the hawala operators. The whole share transactions were established to be sham. The entire sale proceeds were assessed as the assessee's income under the head 'Other Sources'.

Names of officers : Jayaragavan.B, DCIT, Central Circle 1(3), Bangalore
Sibichen K Mathew, Addl. CIT, Central Range, Bangalore
G.M.Belagali, CIT (Central), Bangalore

SUPPRESSION OF CAPITAL GAINS ON SALE OF IMMOVABLE PROPERTIES

Properties owned by original HUF - claim of oral partial partition of original HUF - properties sold after death of Karta - claimed as not taxable since assessment cannot be framed on non-existing person - assessments made in individual status - assessments confirmed in appeal

A search was conducted on 30.9.2005 in the case of Smt Subbalakshmi w/o Late Anjanamurthy and her two sons Sri Ashok Kumar and Sri Arvind Kumar. The search revealed that they had sold properties in Bangalore during the previous years relevant to the A.Y.s 2000-01, 2004-05 and 2005-06. They also had rental income but they were not assessed to tax.

In the return of income filed in response to the notices u/s.153A, the three assessees declared property income at 1/3rd share each. They did not admit any capital gains on sale of the properties. It was claimed that the properties belonged to the HUF of Late Sri Anjanamurthy, which HUF was not assessed to tax and which was orally partially partitioned on 10.2.96 and 1.12.99. It was contended that as the original HUF was non-existent, it could not be subjected to the assessment and the provisions of section 171(2) were inapplicable.

In the assessment made, the AO accepted the claim of oral partial partition of the HUF in spite of lack of evidence as the Hindu Law recognizes such partition. The AO held that on partition, the HUF was no longer in existence and all the properties of the erstwhile HUF had devolved on the individual members of the HUF who were liable to be taxed on sale of those properties.

The AO obtained the details of sale of comparable cases from the Sub-Registrar to ascertain the cost of acquisition of the properties sold. Long term capital gain was assessed at 1/3rd each at Rs.1,42,10,770 in the hands of Smt Subbalakshmi and her two sons Sri Ashok Kumar and Sri Arvind Kumar.

The CIT(A), after examining the sale deeds, observed that no other members of the HUF, i.e., 4 daughters of first wife and the daughter of the appellant were sellers and only the assessee and her two sons were the real and

legal owners of the properties sold and were individually and separately liable for taxation of capital gain. The assessments for all the years in the case of the assessee and her two sons were confirmed. The CIT(A) also held that had there been no search, the sale of properties and income therefrom would have gone untaxed.

Names of officers : G.M.Nagabhushana, ACIT, CC-1(2), Bangalore
Ajit Korde, Addl. CIT, CR-1, Bangalore
A.K.Agrawal, CIT (Central), Bangalore

INSTRUCTIONS ON MONETARY LIMITS FOR FILING APPEAL UNDER NEW SECTION 268A

Non-filing of an appeal by the Department due to insignificant revenue implications was interpreted as a precedent or a stand of the Department on the merits of the case. It was held by the Hon'ble Supreme Court in the case of Berger Paints Ltd. (256 ITR 99):

"where the Revenue has not challenged the correctness of Law laid down by' the High Court in the case of one assessee, then it is not open to Revenue to challenge its correctness in the case of other assessee without just cause"

A new section 268A was introduced by the Finance Act, 2008 and new instruction No. 5/2008 dated 15/5/2008 was issued u/s 268A(1). The said instruction read with the relevant statutory provision, besides specifying the monetary limits for filing appeals, also enables the Department to file appeals in the same cases in other A.Ys., or in other cases, even though the Department may not have filed appeal on the same issue earlier, on account of the monetary limits.

This has paved way for the Department to reduce litigation in those cases where tax effect is minimal and to concentrate on relevant and important cases, without being hindered by the fear of, non-filing of appeals on account of monetary limits, being treated as a precedent/stand of the Department on merits.

ARTIFICIALLY SPLITTING OF CONTRACTS AND NON-DISCLOSURE OF PE IN INDIA

Survey conducted at Telecommunication Company - documents found established 'fixed place' PE and 'dependent agent' PE in India - revealed artificially splitting of its contract to avoid taxability in India.

The assessee, Ericsson AB, a tax resident of Sweden, is engaged in manufacturing, sale, installation and commissioning of telecommunication equipments worldwide particularly for the cellular operators (ICOs). In India, the Ericsson Group had incorporated a wholly owned subsidiary in the name of Ericsson India Pvt. Ltd.("EIL").

The Ericsson Group has been operating in India since 1995-96. In India, Ericsson AB, supplies equipments to the ICOs directly, whereas, installation and commissioning is being done by EIL. In case of BSNL, the Indian entity M/s EIL takes the contract and procures the equipments from Ericsson AB. The ITAT, Special Bench Delhi, had held in the assessee's own case [95 ITD 269] that the income from supply of equipment and software was not taxable in India.

Survey u/s 133A was carried out on 22.11.2007 at the business premises of EIL and copies of various documents, which included e-mail communication between EIL and the assessee, were taken. The documents indicated:

- that expat employees of EIL were working also for the assessee Ericsson AB
- that the prices of supply of equipment were inflated at the cost of profitability of EIL
- that the prices with the ICOs were negotiated on unit (Erlang) basis but split up into supply of equipment, software and services subsequently though the contracts were negotiated and signed in India.
- That the software for the equipments, which was being claimed to have been supplied from out side of India, was in fact downloaded in India and copies were made for providing the same to the ICOs.

Even after the survey, further inquiries were made during the assessment proceedings for A.Y. 2005-06 from the assessee, EIL and Bharti Airtel Ltd. after taking cognizance of documents found during the survey. The assessee was confronted with the outcome of the inquiries.

On the basis of facts available on record, it was held by the AO, that the assessee had a fixed place PE in India with the office of EIL available to the employees of the assessee. Further, a finding was recorded that the employees of EIL were working for the assessee, for which no separate considerations were paid. EIL was also held to be a dependent agent PE of the assessee in India. Accordingly, attribution of profit to the PE was done by the AO, having regard to Article 7 of the DTAA. A demand of Rs. 238.62 crore was raised.

The DIT(International Taxation)-I, on an application for stay filed by the assessee, had directed the assessee to pay the entire demand, which was challenged before the Hon'ble Delhi High Court twice in writ petitions. The Hon'ble Court directed the assessee to pay Rs. 35 crore and the same was paid.

Names of officers	:	NishtaTiwari, ADIT, Cir. 1(2),New Delhi Sanjeev Sharma, Addl. DIT, Range-1, Int. Taxation, New Delhi K. Ramalingam, DIT(Int. Tax)-I,New Delhi Sanjay Kumar Mishra, DIT(Int. Tax)-I, New Delhi

SUPPORT SERVICES RENDERED BY INDIAN BRANCHES OF FOREIGN BANKS SHOULD BE COMPENSATED AT ARM'S LENGTH

Support services rendered to parent bank - No compensation received -Services not reported as International Transactions in Form 3CEB-TPO investigates and identifies such services-Cost of rendering services computed-Cost Plus Method Applied- Arm's Length profits computed after Benchmarking analysis

Bank of America (BOA) operates in India through Indian branches and is engaged in corporate banking, investment banking, retail banking and wealth management business. It also has business dealings with the head office as well as the other overseas branches.

Assessment Year 2002-03 was the first year of Transfer Pricing assessments. The assessee had filed details of its 'international transactions' in Form No. 3CEB as per the provisions of section 92E of the Income Tax Act,1961, along with the return of income. The AO made a reference u/s 92CA(1) to the Transfer Pricing Officer ("TPO") for determining the arm's length price of the international transactions reported in Form No.3CEB.

During TP investigations, the TPO found that the BOA had not included the transactions relating to provision of services to the overseas branches in Form No. 3CEB and, accordingly, remuneration from these transactions was not reflected in the return of income. After identifying these additional international transactions, the TPO requested the Assessing Officer to make additional reference u/s 92CA(1) in respect of the hitherto unidentified transactions, which included marketing of derivative products and External Commercial Borrowings (ECBs) on behalf of the parent, correspondent banking activities, risk evaluation services etc. rendered to the parent company.

During the course of TP Proceedings, internal documents and correspondence relating to these transactions were obtained from the assessee. Statements of the Heads of Operations of various divisions, particularly, ECBs, correspondent banking activities, derivative products, were recorded u/s 131.On the basis of investigations conducted, the TPO proceeded to compute

the arm's length price of these unreported international transactions using 'Cost Plus Method' for determining the Arm's Length Remuneration for 'Correspondent Banking Activities'. The 'Profit Split Method' was used for determining the Arm's Length remuneration from marketing of derivatives & marketing of ECBs. While applying the 'Cost Plus Method', the 'fully loaded'costs of services (sum total of all direct and indirect costs incurred for rendering the said services) were identified and a 'markup' on costs, computed on the basis of industry average, was added to the said fully loaded costs by the TPO. This 'markup' represented the compensation that the BOA should have received from its foreign parent for rendering the various services not reported in Form No. 3CEB. An adjustment of Rs.25.72 crore was made to the income of BOA. The CIT (A) has confirmed these adjustments in principle though the quantum has been reduced. In the succeeding years the taxpayer has accepted in principle that compensation for these International Transactions should be received at Arms's Length though it has applied only the 'Cost Plus Method'to arrive at the Arms's Length Price.

Names of officers : Sanjeev Sharma, Addl. CIT, TPO-1, Mumbai
Pomela Prasad, DIT, Transfer Pricing, Mumbai

CONTRACTUAL ARRANGEMENTS SHOULD BE AT ARM'S LENGTH

Contractual terms between Associated Enterprises starting point for Transfer Pricing analysis- Imperative of Arm's Length terms - Contractual terms at variance with Arm's Length terms triggers adjustments

The taxpayer, Hindalco Industries Ltd., had purchased copper ore concentrate from its Associate Enterprise (AE) in Australia and the payment for the same was made on the basis of metal content in the concentrate as reflected in the London Metal Exchange price. However, while making the payment, the treatment/refining charges were reduced from the purchase price as the taxpayer had to undertake the activity of treatment/refining to recover metal from the ore. These charges were recovered from the AE at the fixed rate of $ 43 per MT of ore refined / treated for the entire financial year 2004-05 on the basis of internationally accepted treatment/ refining rates fixed by the Japanese smelters in Japan. However, those rates were re-fixed by the Japanese smelters every year on the 1st January of that year. The issue in this case was whether the taxpayer was recovering treatment / refining charges from its Associate Enterprise on the basis of this international 'benchmark' or not.

Benchmarking

A 'benchmark' is a standard by which something can be measured or judged. The term benchmarking was first used by cobblers to measure one's feet for shoes. They would place the foot on a "bench" and mark to make the pattern for the shoes. In 'Transfer Pricing' the term 'benchmarking' is used for performing a financial analysis and comparing the results of a company within a peer group in an effort to assess the overall performance of that company. The exercise of 'benchmarking' enables the TP authorities to gauge the performance of the taxpayer company against comparable independent companies in a comparable industry for the purpose of calculating the Arm's Length Price of the target transactions.

In the year under consideration i.e. 1.4.2004 to 31.3.2005, the taxpayer had entered into contract with its Associate Enterprise in Australia for

receipt of treatment/refining charges @ $ 43 per MT for the whole financial year. However, it was found that the treatment/refining charges fixed in Japan had increased from $ 43 per MT to $ 85 per metric ton from 1.1.2005. Thus, the TPO contended that the taxpayer undercharged its Associate Enterprise for the said treatment/refining charges for the months of January to March 2005. The taxpayer's plea was that its contract with the Associate Enterprise was on financial year basis and not on calendar year basis. This plea did not find favor with the TPO because it was found that the taxpayer's contracts with all the third parties were on calendar year basis. Therefore, while the taxpayer charged higher rate of $85 per MT from the independent parties during the months of January to March 2005 for treatment/refining, it continued to accept lower rate of $ 43 per MT from its Associate Enterprise even after the rate had increased from 1.1.2005. On the basis of these facts, the TPO concluded that the terms of taxpayer's contract with the Associate Enterprise were not at Arm's Length because the same were at variance with those charged from the independent parties. The TPO, therefore, rejected the lower rate of $ 43 per MT charged from the Associate Enterprise and substituted the same with the higher rate of $ 85 per MT charged by the taxpayer from independent parties in respect of treatment/refining done for the period January to March 2005.

This resulted in TP adjustment of Rs 6.03 crore. On the same basis, TP addition of Rs 4.17 crore was also made in the subsequent AY 2006-07.

Names of officers : D A Sheldekar, Addl. CIT, TPO-1(3), Mumbai
V.K. Mangotra, DIT, (TP)-1 Mumbai

STRUCTURING A LOAN TRANSACTION FOR THE PURPOSE OF TAX AVOIDANCE

Loans taken by the Project Office from the Head Office of the International Joint Venture - structured as if the loans were taken from the Partners of the Joint Venture - Joint Venture thinly capitalized - interest payments made to Head Office not deductible - violation of RBI's Guidelines

The taxpayer, Besix-Kier Dabhol S.A., is a Belgian Company having Project Office in India for execution of sub-contracts for Enron Power Projects in India. It is a Joint Venture of Besix S.A. N.V., Belgium and Kier Investments Ltd., UK in the 60:40 ratio. The said Project Office constitutes a Permanent Establishment (PE) in India. The Indian Project Office showed to have taken loans of Rs. 57.09 crore and Rs. 37.01 crore from Besix S.A. and Kier International respectively and paid interest of Rs. 5.73 crore during the A.Y. 2002-03.

Relying on the provisions of Income-tax Act, DTAA between India and Belgium, Commentary on OECD Model Convention, case laws and other materials the Assessing Officer held that the interest payment was actually made by the PE to its Head Office and the same was not a deductible expense in computing the taxable income of the PE. The taxpayer's contention that the loan was not taken from the Head Office but the same was taken from two independent companies was rejected by the A.O. after a detailed factual analysis. It was demonstrated by the A.O. that the loan had been taken in exactly the same ratio as the shareholding ratio of the joint venture partners in the Joint Venture. The two JV partners had not contributed to the capital of the JV but had advanced loans. However, the transaction was structured in such a way that they appeared to be the advances from two independent companies rather than from the Head Office. The A.O. further demonstrated that by structuring the transaction in this way, the Project Office became thinly capitalized, with a debt-equity ratio of 428:1.

The A.O. also pointed out that while granting approval for the establishment of the Project Office in India, the RBI had put a condition that loans could be taken only from the Head Office. Accordingly the alleged loans

from the Joint Venture Partners was in violation of this condition. The interest paid was liable to be disallowed on this ground also.

The CIT(A) concurred with the stand taken by the Assessing Officer and confirmed the addition of Rs.5.74 crore.

Names of officers	:	Rahul Navin, DDIT (Int. Tax), Mumbai Pradeep Mehrotra, Addl. DIT (Int. Tax), Range 3, Mumbai S.P. Singh, DIT (Int. Tax), Mumbai

TREATMENT OF EXCESSIVE ADVERTISEMENT, MARKETING & PROMOTION EXPENSES

Excessive Advertisement & Sales Promotion expenses by Taxpayer - Promotional expenses increased revenue & brand building for Parent owner of brand LG- whether the Parent should share Promotional expenses in commensurate with benefit accrued

LG Electronics India Pvt. Ltd. (LG India) a 100% subsidiary of LG Electronics Inc., Korea (LGEK) is primarily engaged in manufacturing of monitors and in import and resale of finished goods viz., ColourTelevision,Air Conditioners and Refrigerators from its Associated Enterprise. The TPO observed that taxpayer had debited Rs. 242.08 crore towards advertisement, publicity and sales promotion (AMP) in the profit & loss account for FY 2003-04 with a noting that "LG India spends on advertisements and some cost of this is shared by the Parent Company (LGEK)". The TPO further noticed that out of the total AMP expenditure of Rs. 248.59 crore, only an amount of Rs. 6.50 crore was shared by the parent company and reimbursed to the Indian entity. The basis of such reimbursement was not furnished by the taxpayer. It was also brought on record by the TPO that the average AMP to Sales ratio of the taxpayer for 3 years was 5.38% in contrast to average of 1.23% for the industry for the same period. Based on these observations, the TPO concluded that the taxpayer was making extraordinary spending on sales promotion and advertisement but getting only a meager reimbursement from its Korean Parent.

The TPO further noted that the taxpayer, by bringing into existence a formidable market infrastructure of dealer and sub-dealer networks, had developed a 'marketing intangible' the beneficiaries of which were both LG India as well as its Associated Enterprise. The TPO also noted that the AE had revised the royalty percentage payable by the Indian taxpayer from 3% to 5% during the year under consideration, despite the fact that the taxpayer's spending on AMP had increased. The 'benefit test' was applied by the TPO to come to the conclusion that significant AMP expenses made by the taxpayer augmented the revenues and brand perception of the Associated Enterprise. The TPO was of the opinion that the taxpayer ought to have been compensated

by way of enhanced reimbursement of AMP expenses.

The issue before the TPO was whether reimbursement of AMP expenses made by the associated enterprise was sufficient and if not, what should be the share of AE in the AMP costs?

The TPO came to the conclusion on the basis of materials brought on record that the extraordinary expenses incurred by the taxpayer towards advertisement constituted a 'service' by the taxpayer to the parent company, for which the taxpayer should have been compensated at Arm's Length. The AMP cost should have been shared by the AE, in proportion to the benefit derived in terms of revenue. This proportion could also be determined on the basis of the taxpayer's sales and the sales / Royalty receipt of the Associate Enterprise from the taxpayer in India. Based on this ratio, the taxpayer should have been reimbursed Rs. 42.87 crore as against Rs. 6.50 crore done by the Associated Enterprise. Accordingly, the TPO recommended TP Adjustment.

Names of officers : Ganpati Bhatt, TPO-II, Delhi
N.P. Bhagat, DIT, Transfer Pricing, Delhi

TRANSACTIONAL NET MARGIN METHOD SHOULD NOT BE USED IF COMPARABLE UNCONTROLLED PRICES ARE AVAILABLE

Broking Service Providers charging low rate of brokerage from Associate Enterprises - TNMM used to arrive at ALP by taxpayer - TPO identified Comparable Uncontrolled Prices and rejects TNMM - Rejection of TNMM method justified

The taxpayer, M/s ABN AMRO Asia Equities (India) Ltd., Mumbai is a licensed equity broking house registered with the Stock Exchange, Mumbai and the National Stock Exchange and is engaged in the equity broking business. Its customers comprise Foreign Institutional Investors, Mutual Funds, Domestic Financial Institution, Banks, etc.

The taxpayer provided broking service to its Mauritius AE M/s ABN AMRO Asia (Mauritius) Ltd., who was a Foreign Institutional Investor (FII) and charged brokerage rate @ 0.24%. The taxpayer stated that the brokerage earned by it @ 0.24% was at Arm's length because it had earned a Net Profit Margin (NPM) of 24.87% during the financial year ended 31 March 2003 which was higher than the arithmetic mean of 8.65% of Net Profit Margins earned for the year ended 31 March 2003 by 14 broadly comparable independent companies in the same business.

However, during the course of Transfer Pricing proceedings it was seen that the taxpayer had received higher brokerage rates @ 0.408% from its third party FII clients and 0.22% from its non FII clients while from its Associate Enterprise it had received brokerage @0.24% only. Thus it was felt that instead of using the TNMM method and comparing its net profit figures of 24.87% with the arithmetic mean of profits of 8.65% of comparable independent parties, the taxpayer should have compared the brokerage rates of 0.24% received from its FII Associate Enterprise (AE) with the average Brokerage rates @ 0.408% it received from other independent non associate FII enterprises. This average brokerage rates of 0.408% constituted a 'Comparable Uncontrolled price' (CUP) which the taxpayer should have used to compare the brokerage rate it received from its Associate Enterprise with the brokerage rates it received from Non Associate Enterprise. In other words, the taxpayer

should have charged similar rates of 0.408% from its Associate Enterprise also which it charged to its top ten FII clients. Therefore, the issue in this case was whether the brokerage rate received by the taxpayer from its AE (an FII) can be appropriately 'benchmarked' by applying the Transactional Net Margin Method (TNMM) when a CUP is available in the form of brokerage rate charged by the taxpayer to independent FII clients.

The taxpayer took the plea that CUP method cannot be used because in the stock broking business, the brokerage rates charged to different customers vary on account of various factors such as volume of business, expected future business, credibility of customer, etc. for which reasonable and accurate adjustment cannot be made. The taxpayer explained that in case of AEs dealing, its functions were limited to only executing a deal, whereas in case of non-AEs clients it was providing full broking service. Therefore, AEs were charged at a lesser rate. However, the taxpayer could not substantiate its claim and establish how full broking service was provided to only non-AEs clients. In view of this the TPO applied the average brokerage rate of 0.408% charged by the taxpayer to its third party FII clients to 'benchmark' the brokerage rate of 0.24% received by the taxpayer from its Associate Enterprise .

The taxpayer then requested for adjustment of marketing function by stating that in the case of non AEs it was required to spend on marketing while in the case of Associate Enterprise no marketing expenditure was incurred. This request was considered as valid by the TPO and acceded to. It was seen that the taxpayer had spent an amount of Re 0.00048 on marketing, per rupee volume of trade for all transactions (both Associate Enterprise and Non-Associate Enterprise) which, when expressed in percentage terms is 0.048% of marketing expenses per rupee volume of trade. So, an adjustment of 0.048% was considered as reasonable according to the provisions of Rule 10B(1)(a)(ii) of the Act and accordingly reduced from the arithmetic mean of the brokerage of 0.408% earned by the assessee from its top ten FII customers. Therefore, Arm's Length brokerage rate was determined at 0.36 % instead of 0.24% charged by the taxpayer to its Associate Enterprise. This led to TP adjustment of Rs. 2.13 crore. Similarly, TP adjustment of Rs 1.10 crore was made in the succeeding AY 2004-05. The TP adjustment of Rs 2.13 crore made in AY 2003-04 has been upheld by the CIT (A). The taxpayer has not filed appeal on this

issue for AY 2004-05 where TP adjustment of Rs 1.10 crore had been made.

Names of officers : Alpana Saksena, Addl. CIT, TPO -1, Mumbai
V.K. Mangotra, DIT, Transfer Pricing, Mumbai

QUANTITTATIVE TALLY OF SHARES SOLD

JHP Securities Pvt. Ltd., Mumbai, a Member of Stock Exchange, admitted long term capital gain of Rs.1.31 crore for the Assessment Year 2004-05 and paid tax @10% on the gain. The AO called for the details of shares sold. On verification of the quantitative details of the shares held at the beginning and the end of the financial year, the AO noticed that the assessee had 24,200 shares of TELCO as on 31-3-2003 while it sold 34,013 shares of TELCO during the year and admitted profit earned as long term capital gain. When questioned about this, the assessee clarified that it had subscribed to non-convertible debentures of TELCO on 6-1-2001 to which warrants were attached. These warrants conferred a right on the assessee to apply for the shares of the company in future. The assessee surrendered the NCDs and incurred loss of Rs.4973. During the year TELCO allotted 9813 shares to the assessee on exercise of the option attached to the warrants @ Rs.120 per share. The assessee claimed that since the NCDs to which the warrants were attached were acquired on 6-1-2001, the period of holding of the shares should be reckoned from that date. The AO, however, referred to sec.2(42A) and held that in the case of a capital asset being a financial asset acquired on the basis of holding any other financial asset, the period of holding shall be reckoned from the date of allotment of the new financial asset. The AO, therefore, held that the shares constituted short term assets and assessed the gain on sale of those shares as short term capital gains.

Name of AO : Asif A. Karmali, ITO WARD-4(3)(3), Mumbai

THE PILLAR OF ARM'S LENGTH EXERCISE IS A LOGICAL FUNCTION ASSET RISK ANALYSIS

Benchmarking of transactions by using the TNM Method - TPO can reject the 'search process' of taxpayer if found faulty-comparables having 'related party transactions cannot be used-preceding three year's data can be used only in prescribed circumstances-TPO justified in redoing the Transfer Pricing exercise

The assessee, Logica CMG India Pvt. Ltd., is an off shore development center, which handles the design, development and implementation of software solutions and product as well as support management system for its Associated Enterprise(AE) Logica CMG Worldwide. It was remunerated by the said AE at cost plus 10% in the relevant previous year of A.Y.2005-06. The TNMM was used as the most appropriate method for benchmarking. In The TP study, the taxpayer had selected 87 comparable companies and considered the profit margin of the preceding 3 years of such companies to arrive at the arm's length price.

The TPO examined the entire 'search process' adopted by the taxpayer for selection of comparables and also examined suitability of each of the 87 comparables. The search process adopted by the taxpayer was not found to be correct for the following reasons:

- Taxpayer had considered earlier years' data
- Selected comparables having related party transactions
- Applied irrelevant filters such as R&D expenses as a % of cost to eliminate otherwise comparable companies
- Compared units in the software industry in India catering to the export market with units catering to the domestic market.

After examination of all the relevant facts, the TPO found that out of the 87 comparables selected by the taxpayer, 81 were not found suitable. Accordingly, the TP study furnished by the assessee was rejected. The TPO thereafter conducted a detailed FAR analysis of the company as well as the comparables with the help of information available on record as well as information collected from the website of the assessee company. After

applying relevant filters, the TPO selected 17 comparables which included six selected by the taxpayer out of 594 software companies whose data was available on the databases. In certain cases, enquiries under Sec 133(6) were also undertaken to ascertain suitability of the company as a comparable.

The taxpayer was confronted with the search process, the comparables selected by the TPO and the outcome of the inquiries carried out. The TPO arrived at the final set of 17 comparables having an average margin of 26.59% on cost. The TPO allowed working capital adjustment on the lines laid down in OECD guidelines. The TPO had also considered in great detail the taxpayer's claim of risk adjustment (although no computation thereof was supplied by the taxpayer) but denied the same as the TPO found that as against the market risk borne by independent software service provider companies, the taxpayer was carrying no significant risk by way of single customer base.

Moreover, the TPO also found that the taxpayer was neither assured of fixed volume of business nor of any fixed period of business. Thus, the taxpayer was also exposed to the uncertainty of business as much as the comparable companies. Further, the TPO also took clue from the fact that many of the local captive BPO units with the same risk profile as that of the taxpayer showed good profitability ranging from 20% to 80%.

This case analyzed certain crucial features of the software industry viz., export market is not comparable with the domestic market and that onsite service providers cannot be compared with offshore service providers. As far as the methodology of arriving at ALP was concerned this case gave important insights as to how selection of comparables should be done, what filters to apply and how to give / not give adjustments (like working capital adjustment, denial of risk adjustment), and all data should be contemporaneous. ATP adjustment of Rs.17,73,23,636/- was made. The potential revenue effect was of Rs.5.16 crore.

Names of officers : Narendra Kumar, Addl. CIT, TPO-1, Bangalore
D.K. Gupta, DIT, Transfer Pricing, Bangalore

INTERNAL PRICE LIST DOES NOT CONSTITUTE CUP

Internal price list of a group does not constitute CUP- Cost plus method not valid for benchmarking when costs include substantial related party purchases- TNMM applied after aggregation of transactions

The taxpayer, Tata Yazaki Autocomp Ltd., is a joint venture between an Indian company and Yazaki Corporation Japan and is in the business of Automobile & auto parts. For benchmarking its international transactions with its Associate Enterprise the taxpayer adopted the CUP and Cost Plus Method.

The CUP Method applied by the taxpayer for benchmarking transactions of import of raw materials, spares, plant and machinery and royalty was rejected by the TPO because the taxpayer could not produce evidence of any comparable uncontrolled prices or details of any transaction which the AEs may have undertaken with the third parties. The AE had relied only on an internal price list of the group companies and a letter from Yazaki Corporation - its joint venture partner. As the price list applicable for the affiliate group entities does not constitute an "uncontrolled price" (CUP) the TPO rejected the same.

In case of royalty, the TPO observed that Yazaki Corporation charged royalty @ 3% on sales in case of majority of other affiliates, whereas in case of the taxpayer, it was at 5% of net processing fees. Further, approximately 2/3rd of the royalty paid was in respect of exports which were made to Yazaki Corporation, Japan, to whom the royalty was also paid.

The 'Cost Plus Method' was applied by the taxpayer for benchmarking its transaction of export of goods by relying on internal comparables. However, the TPO observed that the internal comparability by way of split financials in respect of the other than associated enterprises had a sizable quotient of related party purchases / imports due to which the said comparables became "tainted" and hence could not be used.

The TPO then aggregated all the transactions as all these transactions were closely interlinked and applied the TNM Method for benchmarking them. The TPO gave an opportunity to the taxpayer to conduct a TNMM analysis. Thereafter, the TPO accepted the list of the comparables (except one company)

selected by the taxpayer. The arithmetic mean of the profits of the accepted set of comparables came to 3.56% while the taxpayer had suffered a loss of (-) 8.3%. Accordingly, applying the profit margin of 3.56%, the income of the taxpayer was enhanced by Rs. 14.09 crore.

Names of officers : Charanjit Singh Gulati Addl. CIT, TPO-I Pune
Manoj Dubey DIT, Transfer Pricing, Pune

WEIGHTED DEDUCTION UNDER SEC. 35(2AB)

In the return filed for the A.Y. 2005-06, M/s. Ind Swift Laboratories Ltd., Chandigarh claimed to have incurred an expenditure of Rs.28,03,29,027 on research and development and claimed weighted deduction thereof at Rs.150% u/s.35(2AB). Deduction u/s.35(2AB) is admissible if the Secretary, Department of Scientific and Industrial Research, the prescribed authority for the purposes of sec.35(2AB), certifies the expenditure incurred on in-house research facility in Form No.3CL and approves the expenditure by passing an order in writing in Form No.3CM. The assessee did not have the approval of the prescribed authority in Form No.3CM. Consequently, the A.O. disallowed the claim of weighted deduction amounting to Rs.14,01,64,514 while allowing normal deduction @100 under sec.35(1).

Name of officer : Harinder Kumar, Addl. CIT, Chandigarh

STRICT COMPARABILITY IS ESSENCE OF CUP METHOD

Standard of comparability under CUP Method- Product or service characteristics critical - Averaging out the Comparable Uncontrolled Prices over the year does not constitute Arm's Length Price

The taxpayer, Global Wool Alliance P Ltd., was engaged in the business of wool, toys, polyester tops, yarn and fabrics. During the TP proceedings for AY 2005-06, the TPO observed that the taxpayer had benchmarked its transactions of purchase of greasy wool and sale of yarn and fabric of different microns by applying Comparable Uncontrolled Price Method (CUP) without considering the difference in quality, the time of transaction or the geographical and market conditions of the two parties that were being compared. The TPO also observed that the taxpayer had worked out its average annual price taking into account the entire quantity of greasy wool/ yarn purchased or sold to the AE and had compared the said prices to similar averages of prices charged to Third party.

Comparability & the 'Comparable Uncontrolled Price Method

Under the arm's length principle referred to in the OECD Transfer Pricing Guidelines, transactions between associated enterprises should take place under terms and conditions that are comparable to those that exist between independent enterprises engaged in comparable transactions in comparable circumstances. The OECD favours the 'Comparable uncontrolled price method' as one of the best methods to establish comparability.

The CUP method compares the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances. As per the OECD guidelines the five factors determining comparability are

- *characteristics of the property or services transferred;*
- *functions performed by the parties (taking into account risks assumed and assets employed);*
- *contractual terms;*

- *economic circumstances of the parties; and*
- *business strategies pursued by the parties*

A transfer pricing study should compare attributes of the transactions or enterprises that would affect conditions in uncontrolled transactions and establish the degree of actual comparability and, if necessary, make appropriate adjustments to establish arm's length conditions, or a range of such conditions.

The TPO further noted that the transactions with AE were not at Arm's Length and that the purchases from the AE were at a price 8 to 10% higher than the purchases from non Associated Enterprises. Similarly, the sales to the AEs had been made at a price 13.36% lower than sales to non-AEs (although the yearly average sale price to AEs was higher than to sales made to Third Uncontrolled Parties).

The TPO concluded that the CUP method adopted by the taxpayer for bench marking was not the most appropriate method in terms of section 92C as annual averages of prices and that too of non identical items cannot constitute a CUP. The TNMM was held to be the Most Appropriate Method for determining the ALP under the given circumstances. The TPO short listed independent comparable companies and observed that the arithmetic mean of their net profit margins was 3.38%, while taxpayer had incurred a loss of -1.23%. As the net profit margin of the taxpayer was less than those of the comparable companies, an adjustment of Rs.4.75 crore was worked out by the TPO and the income of the taxpayer was enhanced after applying the profit rate of 3.38%.

This case reiterated the fact that average prices of non identical items cannot constitute a CUP. Comparisons can be done only item wise, date wise and geographical market wise. In other words, strict comparability standards have to be followed while using CUP for determination of Arm's Length Price.

Names of officers : Ankur Garg, Addl. CIT, TPO-I(3), Mumbai
VK Mangotra, DIT, (TP) -1, Mumbai

DETECTION OF UNDISCLOSED INTERNATIONAL TRANSACTIONS EVEN IN ABSENCE OF 3 CEB REPORT

Taxpayer not disclosing International Transactions of purchases - AO detects transactions of Rs 100 crore - refers case to TPO who finds inflation of purchase price by Rs. 2.95 crore

The Assessing Officer selected the case of M/s Vipin Enterprises (Delhi) for scrutiny and during the course of the assessment proceedings discovered that the taxpayer had not reported its international transactions with its Associate Enterprise (AE) M/s Chirag Pvt. Ltd., Sri Lanka. These transactions were of import of ferrous metals from the associated enterprise for Rs. 99.27 crore. The Assessing Officer also noted that the taxpayer had not filed Form No. 3CEB report along with the return of income for the A.Y. 2005-06 as required by law to file in case the taxpayer had international transactions with its AE. Thereafter, the A.O. referred the case u/s 92CA(1) of the IT Act, 1961 to the TPO for determination of arm's length price of the international transactions involved in this case.

Even during the course of TP proceedings the taxpayer did not file report in Form No. 3CEB. The TPO examined the case and applied the CUP method and concluded that the AE had sold the raw material to the taxpayer at higher prices than what it sold to unrelated parties resulting in the taxpayer making an excess payment of Rs. 2.95 crore for its purchase from its AE. The income of the taxpayer was thus enhanced by Rs. 2.95 crore.

Names of officers : P.K. Prusty, Addl CIT Range 9, Delhi
Ganpati Bhatt, TPO II(4), Delhi
Arvind Kumar, DIT(TP) - II, Delhi

MISUSE OF DEDUCTION U/S 10A DETECTED BY TPO

Taxpayer making sales to German Associated Enterprise at exorbitant price - earns unusually high net profits of more than 200%- Making wrong claim of exemption u/s 10A

The taxpayer Schmetz India Pvt. Ltd. (Mumbai) is making sale of industrial needles to its Associated Enterprise in Germany. On these sales, the taxpayer had shown abnormally high operating profit of 218.23% on its costs as against average profit of 1.3% only shown by the comparable companies. The taxpayer had itself considered these companies as comparable. The TPO concluded that the taxpayer had shown abnormally high profits to claim the same as deductible u/s 10A.

The Transfer Pricing Officer in his order dated 08/12/2006 alerted the jurisdictional Assessing Officer of this misuse of exemption u/s 10A. The Assessing Officer was requested to take action in view of the provisions of section 10A(7) read with section 80-IA(10) to restrict the exemption u/s10(A). The DIT(TP), Mumbai also apprised the jurisdictional CIT of the facts of this case by his letter dated 12/12/2006. The Assessing Officer by his order dated 28/12/2006 for the A.Y. 2004-05 disallowed deduction u/s 10A to the extent of Rs 6.83 crore out of deduction of Rs 20.53 claimed by the taxpayer. Disallowance of Rs 6.83 crore has been confirmed by the CIT(A) by his order dated 24/08/2007. Similar disallowance of Rs 4.18 crore would arise in AY 2005-06. Further, this issue arises for all the years in which the taxpayer has claimed exemption u/s 10A.

Names of officers : Shravan Kumar, TPO -3, Mumbai
VK Mangotra, DIT (TP), Mumbai

DETECTION OF UNDISCLOSED INTERNATIONAL TRANSACTIONS DURING TRANSFER PRICING PROCEEDINGS

Undisclosed international transactions in preceding four years discovered by TPO - Suo motu inquiries conducted - Revised returns filed for preceding four years - Taxes paid.

Reference u/s 92CA(1) in the case of M/s Roche Scientific Company India P Ltd. had been received in the TP charge of Mumbai for AY 2006-07. In this case the taxpayer had shown an International Transaction of 'Marketing Support services' rendered to its foreign Associate Enterprises. The amount of transaction was Rs 15.98 crore in the AY 2006-07 on which it had declared a profit margin of Rs 1.59 crore. During the course of TP proceedings of the said year it was found that the taxpayer had not disclosed any international transactions in the earlier four years even though the assessment records with the Assessing Officer revealed identical International Transactions in these years also and the taxpayer should have disclosed the same to the Income Tax department through Form No. 3CEB which is supposed to be filed by the taxpayer every year.

As a result of exhaustive transfer pricing investigations, the taxpayer filed revised returns in respect of AYs 2002-03 to 2005-06 disclosing total international transactions of Rs 40.89 crore in these four years, admitting income of Rs 4.09 crore on the same and paid tax and interest of Rs 2.49 crore on the above income on 28.03.2009.

Names of officers : U Anjanyelu, TPO-II(3), Mumbai
Alpana Saksena, DIT(TP) II, Mumbai

WRONG CLAIM OF DEDUCTION OF PROFITS OF STP UNIT

Assessee claimed deduction u/s 10A - software developed by a different unit was shown as sold by the STP unit - diverting profits of the domestic unit to the STP unit most of the expenses were booked in domestic unit where profits taxable - showing losses in the domestic unit and huge profits in STP unit - extensive enquiries including survey u/s 133A - claim of exemption held bogus

The assessee M/s. Softlink International Pvt. Ltd. claimed export of software from its STP division which in fact had not been developed by the STP division. The company had come into existence in January 1997 and it was developing software in the medical field like HCP (Heart Care Plus) and HCP (Dicom). The functionality of these products was that they could view data which was in the form of images. The company was also executing contracts for software companies abroad and was showing export income from these contracts. On March 28, 2000, the company registered itself as an STP unit. For the three remaining days of March 2000, the company showed that it had exports of Rs.15 lakhs. The company had neither taken any new contract nor developed any new product after this date. The contracts which were taken earlier were shown in STP division. In the F.Y. 2000-2001 (A.Y. 2001-02), the company claimed that it developed a new product and named it HCP Dicom Net and the entire export sales from this product were shown in the new division which was called the STP division and the domestic sales were shown in the old division. During the A.Y. 2002-03 also the company was claiming that it had two separate divisions. The old division was showing the domestic sales of the product HCP Dicom Net and the new STP division was showing the exports from this product. It was found that the receipts and expenses were apportioned in such a manner that there were losses in the main division where the income was taxable and there were abnormally high profits in STP division where the income was claimed to be exempt. The assessee was avoiding furnishing information on one pretext or the other. Therefore, survey u/s 133A was conducted on 23.02.2005 for collecting the information essential for completing the time barring assessment.

During the course of survey, statements of the software engineers who

were engaged in software development and the managing director were recorded. The evidence gathered during the survey proved that HCP Dicom Net which was claimed to be a new product and developed by new division was in fact an improvement over the earlier product HCP Dicom Viewer. Functionality of both the products was the same. Evidence was also gathered to show that the expenditure to develop the so-called new product was, in fact, incurred in the old division and the receipts were shown in the new division. The assessee admitted that the books of account maintained by it were not complete and no apportionment of expenses had been done on the date of the survey for the current year.

It was established that the STP division was not a new undertaking. The provisions of section 10A require that the company should not only be a newly established undertaking but also should not be formed by reconstruction. On the basis of the enquiries, it was established that the STP division was not a newly established undertaking and it did not have any product of its own from which it could earn income. Income from export sales of an existing product was booked in the hands of the new unit to claim benefit of section 10A. The other requirements of section 10A were also not fulfilled. The company had filed return for A.Y.2002-03 at a loss of Rs.26 lakhs and the assessment was made at an income of Rs.12,03,986. With the modus operandi followed the company would not have paid any tax till 2010. Now the company would have taxable income right from the A.Y. 2000-01. The assessments for the A.Y. 2000-01, 2001-02, 2003-04 and 2005-06 were reopened and the exemption claimed by the assessee was withdrawn. The CIT (A)-II, Pune has confirmed the order of the AO for the A. Yrs. 2000-01 to 2003-04.

Names of officers : Bhim Kunwar, ACIT, Pune
S.G. Deshmukh, ACIT, Pune
Naval Jit Kapoor, Addl. CIT, Range 6, Pune
S.K. Jha, CIT-III, Pune

APPELLATE ORDERS

APPELLATE ORDERS

EXEMPTION U/S 11 CANNOT BE SOUGHT FOR THE FIRST TIME IN APPEAL

JNPT filed return admitting business income - obtained registration u/s 12AA later - in appeal, additional ground raised seeking exemption - whether exemption u/s 11 can be claimed for the first time before the CIT (Appeals) during the course of appellate proceedings by filing additional grounds of appeal - held, exemption u/s 11 is not automatic with registration u/s 12AA

The appellant, Jawahar Lal Nehru Port Trust (JNPT), is engaged in port related activities. Its income was exempt u/s 10(20) until 31.3.2002. After the amendment of section 10(20) w.e.f. 2003-04, the income of JNPT became taxable. JNPT filed its returns for the Assessment Years 2003-04, 2004-05 and 2005-06 admitting income under the head 'profits and gains of business' and paid tax also. The AO completed the assessments raising additional demand of Rs. 312 crore. The assessee preferred appeals against the assessment orders.

JNPT had applied for registration u/s 12AA. The CIT had refused registration. The ITAT, however, following the judgment in the case of CIT v. Gujarat Maritime Board 295 ITR 561 (SC), held that the activities of JNPT were charitable. Pursuant to the order of the Tribunal, the CIT granted registration u/s 12AA to the assessee.

After obtaining the order of registration u/s 12AA from the CIT, the assessee filed an additional ground of appeal and requested the CIT(A) to allow exemption u/s 11 to the assessee in view of registration u/s 12AA.

The CIT (A) considered the request of the assessee in appeal. He observed that exemption u/s 11 did not follow automatically with registration u/s 12AA. He held that for availing exemption u/s 11, the assessee had to first make a claim of exemption in the return of income after complying with the conditions specified under sections 11, 12 and 13. He held that the assessee that had filed its returns of income admitting taxable income in accordance with the provisions of sec. 28 to sec.43D could not seek exemption u/s 11, 12 and 13 and more so after completion of the assessments. The CIT(A) also relied upon the judgment of the Supreme Court in the case of Goetze (India) Ltd. v. CIT (284 ITR 323) in support of his view that the assessee was not entitled to make a

new claim otherwise than by way of revised return. The CIT (A) held that as the time for filing the revised return had expired and the issue of exemption had never been taken up before the AO, the additional ground of appeal before the CIT (A) could not be admitted. The CIT (A), therefore, held that the assessee was not entitled to exemption u/s 11 and confirmed the orders of the AO. These orders involved tax effect of Rs. 200 crore for the Assessment Years 2003-04, 2004-05 and 2005-06.

Name of officer : A. Vasanthakumar, CIT (A)-II, Thane

BORROWED MONEY NOT FOR PURPOSE OF BUSINESS - INTEREST DISALLOWED

Assessee borrowed money from directors and shareholders - paid high rate of interest - borrowed money invested in fixed deposits earning lower interest - loans held not to be for business purpose

The assessee company, M/s J.P.Tobacco Products Pvt. Ltd. over the last many years had been raising loans from the directors and share-holders on interest @ 22% (interest @18% in the year under consideration). Interest payment by the company had been increasing year after year. The assessee company was making investments in FDRs and this amount too was increasing year after year. The investment in the FDRs was more than the loans raised from the directors. There, however, was no apparent purpose for which the loans were being raised from the directors at an interest rate of 22% except to make investment in FDRs which yielded to the assessee average rate of interest of 6-7%. The AO, therefore, held the loans raised from the directors to be not for any business purpose and disallowed interest of Rs.8.35 crore paid to the directors.

In appeal, the assessee argued that there was a contingent liability of about Rs.34 crore on account of revision made by the Karnataka Govt. in the minimum wages payable to the workers and the investment in the FDRs was of the nature of a provision against this liability. Hence, the loans raised from the directors were for the purpose of the assessee's business.

In the course of hearing, the CIT(A) noticed that the liability that the assessee provided for was disputed and was not at all enforceable since the Supreme Court had stayed the Notification of the Karnataka Govt. on the issue. Moreover, the Notification revising the minimum wages was issued only a few years ago whereas the assessee had been raising loans and making investment in the FDRs even before this period, thus belying the assessee's contention that the loans were for the purpose of meeting an anticipated liability.

The assessee then took the plea that it was settled law that the assessee was the best judge as to how to run his business and the department could not step into his shoes. The CIT(A) countered by observing that a prudent businessman would not think of creating a provision for a highly disputed and

un-enforceable liability by raising loans @ 22% and investing the borrowed funds in securities earning interest @ 6% thereby incurring a cost of more than Rs.5 crore in a year. The CIT(A) held that the claim of creating a provision was only a ruse and the real purpose was to accept loans from the directors at a very high rate of interest in order to benefit them. He held that those funds were not at all required for any business purpose. He demonstrated that the loans were not raised for the purpose of business. The pre-requisite for allowing interest as deduction u/s 36(1)(iii) thus was not fulfilled. The CIT(A), therefore, upheld the AO's order of disallowance of interest of Rs. 6,24,75,574 on loans from the directors and shareholders.

Name of officer : Subhash Kumar, CIT(A)-I, Jabalpur

DEDUCTION U/S 42 DISALLOWED

Deduction u/s 42 - plain language of section 42 - deductions claimed not part of contracts - manner of expenditure has to be specified in the agreements - agreements did not contain these - income enhanced - Tribunal upheld disallowance

The appellant, Niko Resources Ltd., a foreign company, is engaged in drilling and exploration of oil & gas. From the A.Y. 1998-99 onwards including the A.Y. 2001-02 (the year under consideration), the assessee had been claiming deduction u/s 42 of IT Act. In the A.Y. 2001-02, the claim amounted to Rs. 27.40 crore, out of which the AO disallowed Rs. 21.72 crore considering that the same were expenses on assets used for production and accordingly not covered within the phrase "in connection with drilling and exploration activities". The explanation given by the appellant during the appellate proceedings (as also before the AO) regarding the exact and detailed nature of these expenses indicated that these expenses could not be said to have been covered within the aforesaid phrase, as this phrase starts with "in connection with" which is wider than the term "for".

The CIT(A) examined the issue of disallowance u/s 42 from an entirely different angle. He questioned the assessee's eligibility for deduction u/s 42. As per section 42, only those expenses/ allowances are deductible which are specified in the agreement entered into between the assessee and the Central Government. The assessee had 5 production sharing contracts/ agreements (in short, PSC) with the Government of India. Copies of all these contracts were called for by the CIT (A) from the assessee. All these PSCs were found to be similar. On careful scrutiny of these contracts, the CIT (A) noticed that the deductions claimed had not been specified anywhere. The CIT (A), therefore, held that since these deductions had not been specified in the PSCs, as required u/s 42(1), none of the capital expenditure claimed as deduction was allowable.

Section 42 also stipulates that such allowances shall be computed and made in the manner specified in the agreement. Since the PSCs did not mention any such expenditure, the question of its computation did not arise.

Thus, on these altogether new grounds, the CIT (A) disallowed the

entire claim of deduction u/s 42 of IT Act. This led to enhancement of income by Rs.5.68 crore.

The CIT (A) supported his findings by referring to the decisions of the Supreme Court in the case of Navopan India Ltd. v. Collector of Central Excise and Customs 1994 (73) ELT 679(SC) and Pandian Chemicals Ltd. 262 ITR 278 wherein it has been held that the rules of interpretation would come into play only if there is any doubt with regard to the express language used in the provisions. Further, the Supreme Court decision in the case of Petron Engineering Construction P. Ltd. v. CBDT 175 ITR 523 (SC) was also referred to wherein the Court held that liberal interpretation cannot be resorted to by doing violence to the plain meaning of the provisions of the statute.

The ITAT in its order dated 29/2/2008 has confirmed the decision of the CIT(A). The ITAT has allowed depreciation on the capital assets generated out of capital expenditure disallowed u/s 42 of the IT Act.

On account of the decision of the CIT (A) in the A.Y. 2001-02 that the assessee is not eligible for deduction u/s 42 of IT Act, the assessments of the earlier three assessment years, i.e. 1998-99, 1999-2000 and 2000-01 were reopened on the same grounds and disallowance u/s 42(1) was made amounting to Rs. 8.37 crore, Rs.17.39 crore, Rs. 4.58 crore respectively. These disallowances have been confirmed by the CIT (A) as also by the ITAT. Additional aggregate demand raised amounted to Rs. 12,96,35,175 in the case.

Name of officer : A K Jain, CIT (A) -V, Baroda

COST OF FILMS NOT EXHIBITED CANNOT BE ALLOWED AS DEDUCTION

The assessee acquired exhibition rights of 3 feature films - assessee claimed cost as deduction - films not exhibited or distributed - Rule 9B - cost held as not allowable as deduction

The assessee, M/s Malayala Manorama, claimed deduction under Rule 9B(4) in respect of cost of acquisition of the satellite, TV broadcast, DTH broadcast, direct satellite service, terrestrial television broadcast and all other rights connected with three Malayalam feature films. These rights were acquired in the F.Y.200304 but the assessee did not exploit the rights either in the F.Y.2003-2004 or in the F.Y.2004-2005 (relevant to the A.Y. under consideration). The AO disallowed the claim of deduction under Rule 9B(4) as well as the claim of depreciation and held the deduction could be claimed only in the year in which realization from the films was credited in the books of account. Since the appellant had not credited any income from distribution of the films in the previous year relevant to assessment year 2005-06, the deduction was not allowed.

In appeal, the CIT (A) discussed in detail the provisions of Rule 9B, which deal with deduction in respect of expenditure on acquisition of distribution rights of feature films in the hands of the distributor. Rule 9B(1) mandates that the cost of acquisition shall be allowed in accordance with sub-rules (2) to (4). Sub-rules (2) and (3) allow for deduction of cost of acquisition when the film distributor sells the rights of exhibition of film or who himself exhibits the film. Sub-rule (4) applies to cases where the film distributor does not himself exhibit the film, and also does not sell the distribution rights, and then the entire cost of acquisition shall be carried forward to the next following previous year and allowed as a deduction in that year. Sub rule (5) starts with a *non obstante* clause that notwithstanding anything contained in the foregoing provisions of Rule 9B, the deduction shall not be allowed unless the amount realized by exhibiting the film, or by selling the rights of the film, has been credited in the books of account maintained by the distributor in respect of the year in which the deduction is claimed.

The appellant claimed that the provisions of sub-rule (5) of Rule 9B did not apply to sub-rule (4) of Rule 9B. The CIT(A) distinguished the Supreme Court decision relied upon by the appellant. The CIT(A) relied upon the Mumbai High Court decision in the case of CIT v. Prakash Pictures reported in 260 ITR 456 wherein the High Court has dwelt upon the scope of Rule 9B and specifically the nature of relationship between Rule 9B(4) and Rule 9B(5). Accordingly, the CIT (A) held that Rule 9B(4) cannot be de-linked with Rule 9B(4) since in the computation of income assessable to tax, the accounting principles have to be followed. The CIT (A) upheld the action of the AO in disallowing the claim of deduction under Rule 9B(4). The CIT (A) also upheld the AO's decision in disallowing the claim of depreciation involving additional demand of Rs. 72, 84,895.

Name of officer : Susie B. Varghese, CIT(A)-IV, Kochi

DEDUCTION U/S 80-IB(10) DISALLOWED

Assessee claimed deduction u/s 80-IB(10) - CIT(A) made site inspection - detected contravention of conditions specified u/s 80-IB(10) - project commenced before the specified date - claim of deduction held not valid

The assessee, Parmar Properties Pvt. Ltd., claimed deduction u/s. 80-IB(10) of the Income-tax Act amounting to Rs.4,09,79,023/- for the Assessment Year 2003-2004 from its profit as builders and developers. The project consisted of 4 nine - storeyed buildings and 3 other buildings. On the basis of the statements of the directors, site engineers and sales executives as also eight customers, the AO held that deduction u/s 80-IB(10) was not allowable to the assessee as (i) the development of the project had commenced prior to 01-10-1998 (ii) construction of the project was in violation of the norms of the local authority and (iii) there was violation of limit of built up area of 1500 sq.ft.

In appeal before the CIT(A), the assessee stated that the construction was not started prior to October, 1998 as the expenses included in the work in progress were towards purchase of material used for fencing, compound wall, landscaping, plantation, watchman cabin, etc. to safeguard the property from encroachment. Regarding the tenements including the row-houses sold, those were stated to be of built up area of less than 1500 sq.ft. as the AO either considered saleable area or built up area as per revised definition from the AssessmentYear 2005-2006. Regarding shopping plaza in one building near the entrance having carpet area of 2576 sq.ft., the assessee stated that it was earlier used as a site office which was later on converted into three flats as per the sanctioned plan and then sold. All the buildings / row-houses were stated to be constructed according to the sanctioned / approved plan.

The CIT (A) carried out site inspection jointly with the director of the assessee-company, who was reluctant to co-operate. The inspection revealed that the shopping plaza near the entrance of the housing project was constructed in violation of the sanctioned plan and had remained so even on the date of inspection in March, 2008. Only agreements for sale were entered into with friends / relatives on paper but no structural changes were made in the

plaza. The claim of the director that 3 flats were later on constructed instead of site office and sold as residential units was found to be false.

As per the approved plan and as per the assessee, the row-houses in buildings C1 and C2 were claimed to be 16 flats. On site inspection, it was found that in buildings C-1 and C-2, there were only 8 residential units / row-houses as against 16 units / flats claimed. The built up area of each of the units exceeded 1500 sq.ft. There was only one electric meter. Unit-I and Unit-II were together even though an internal wall between these two flats was shown in the sanctioned plan. The row-houses were already completed in March 2003. As per the completion certificate, it was confirmed that no structural changes had been made and that Unit-I and Unit-II were already internally connected when purchased except that the assessee had entered into two agreements. Similar was the position in building A-1 where, as per the sanctioned plan, there were 66 flats but on actual verification only 33 flats were found.

In building C-3, which was claimed to consist 6 residential units, the approved plan showed 4 flats on the ground floor whereas on site verification, it was found to be a bungalow admeasuring 6500 sq.ft. Certain *ad hoc* modifications appeared to have been made recently whereby the entire ground floor hall had been divided laterally by erecting 5 inch thick wall with further alterations to make it look as if those were separate units, even though the construction of the building was shown to have already been completed in March, 2003. The 5 inch thick wall without plastering and finishing again was in violation of the local authority's sanction plan. Such lateral erection of the wall left two attached bath rooms with the same bedroom with no kitchen in one flat while there was no bathroom in the other flat!

Regarding the commencement / development of the project prior to 1.10.1998, the documents impounded at the time of survey were thoroughly scrutinized and it was found that the development work had started in 1997 when the first development plan was got sanctioned on 1.8.1996. The director's report for the A.Y.1997-98 and the statements of the appellant's engineers fortified this conclusion. The assessee had demolished the old structure, surveyed ground water and installed bore well, water pump and water storage facility. Electricity connection from MSEB was obtained in March 1997. Development hoardings were installed in March, 1997 and

advertisements in the newspapers were published in February 1997. Invitations for Bhoomipujan were printed and Bhoomipujan was actually performed in February 1997. Further, brochures were printed in October, 1998 showing building plan and floor plan and even advances were received from buyers for purchase of flats and row houses prior to 1.10.1998.

The CIT (A) held that the project had commenced development prior to 1.10.1998. The CIT(A) disallowed the claim of deduction u/s 80-IB(10), thus confirming demand raised amounting to Rs. 1,94,23,027.

Name of officer : Tejinder Singh, CIT(A)-II, Pune

DEPRECIATION ON LICENSED SOFTWARE

Whether SAP based accounting system can be said to be ready for use even if the software was put to use in the next year - whether a "licensed" software introducing SAP based accounting system is revenue expenditure

A 'licensed' software by introducing SAP based accounting system for Rs.2,92,37,387/- was installed and claimed as revenue expenditure by the appellant M/s Sakal Papers Ltd. The AO held that as per Rule 5, Appendix I, entry III(5) read with Note No.7 below the table of the Income Tax Rules, 1962 w.e.f. the Assessment Year 2003-2004, computer software was also included in computer and, therefore, depreciation @ 60% was allowed.

In the appellate proceedings, from the details of software development expenditure, the CIT (A) found that a large part of the expenditure was incurred in the next Assessment Year on account of consultancy charges for particular milestones completed. The CIT (A) remanded the issue to the AO with specific directions. After verification of the party installing the software, information was received that the implementation was completed only in the Assessment Year 2005-2006 and that the software was not ready for use before 31st March, 2003. The Pune ITAT in 108 TTJ 28 held that "licensed software" was covered under intangible assets on which depreciation @ 25% only was allowable.

The CIT(A) distinguished between the expression used u/s 32(1) being "used for the purpose of business" and "installed" as used in section 32A(1), and disallowed the entire depreciation. He held that a software is ready for use only when it can be transmitted, transferred, settled, stored and possessed and when it is capable of abstraction, consumption and use. A software programme may consist of various commands which enable the computer to perform a designated task. It is the intellectual property which has been incorporated on a medium for the purposes of transfer. The installation or purchase of the media / CD which is of very little value is of no consequence till the software programme enabled the computer to perform the tasks. The appellant had not purchased and paid for the disk or the media but had paid for a 'licence' to use the intellectual property and not the media. The fact that such

cassette or CD was paid for would not make the software ready to use. This resulted in enhancement of income by Rs. 1,75,42,432/-

Name of officer : Tejinder Singh, CIT(A)-II, Pune

TAXATION OF UNEXPLAINED ADVANCES - PEAK CREDITS ADDED

Unexplained advances - assessee had no explanation - CIT(A) found further credits noted in pencil peak - added as income

M/s P.R.Fuels Pvt. Ltd. filed appeal before the CIT(A) challenging, *inter alia*, addition of Rs. 2,00,99,071/- u/s 68, being the amounts said to have been received from customers as advances. The AO held that the sources of these advances had not been proved. During the pendency of the appeal, the assessee moved an application u/s 264 before the CIT who set aside the assessment. Simultaneously, the CIT(A) passed an *ex parte* order dismissing the appeal and confirming the addition. Then, the CIT withdrew his order u/s 264 by passing an order u/s 154. On an appeal filed against the order of the CIT(A), the Tribunal set aside the order of the CIT(A) and remitted it to the CIT(A) for *de novo* adjudication.

In the appellate proceedings that ensued, the CIT(A) observed that out of the sum of Rs.2,00,99,071/-, an amount of Rs.85,22,720/- represented opening balance of creditors brought forward from the earlier years. An amount of Rs.1,58,79,789/- was received during the year. An amount of Rs.43,03,348/- was adjusted towards sales during the year and that amount had been offered to tax as sales. To verify the genuineness of the balance credits, the assessee was requested to produce the books of account and relevant vouchers, documents to substantiate the claim that the amounts were received as trade advances and that subsequently coal was supplied to the parties against such advances, etc. The assessee was also given an opportunity to substantiate the genuineness of the credits by establishing the identity of the parties, sources of the money and the genuineness of the transactions. Based on the evidences produced by the assessee, an amount of Rs. 23,34,000/- was treated as explained. The amounts appearing as opening balances were held as not assessable during that year and out of the amounts received during the year, an amount of Rs. 1,28,66,477/- which could not be explained was held as not genuine and the addition was sustained to this extent.

During the course of the examination of the books of account, the cash

book in particular, the CIT(A) noticed that substantial amounts were credited in the books on various dates without any narration. The amounts were recorded in pencil. Similarly, some amounts were shown as repaid during the year. The CIT (A) further noticed that but for introduction of these amounts, the assessee would not have had enough cash balance to meet the payments recorded in the books of account. Since the origin and the source of these amounts credited in cash book were not available, a show cause notice was issued to the assessee as to why such amounts should not be treated as unexplained cash credits and the assessment not be enhanced. After availing of a number of adjournments, the assessee eventually contended that in a set aside proceedings, the CIT(A) could not propose enhancement. On merits, the assessee had no explanation at all and submitted that all the credit amounts could not be brought to tax but only the peak credits might be taxed.

The CIT(A) held that the he had the authority to enhance the assessment in set aside proceedings. The CIT(A), however, accepted the contention of the assessee that all the amounts credited should not be brought to tax since there were incomes and outgoings and the peak of Rs. 82,50,000/- was brought to tax. Penalty proceedings u/s 271(1)(c) of the I. T. Act were initiated in respect of enhancement of income of Rs.82,50,000/- in the appellate proceedings. The assessee did not offer any worthwhile explanation in response to the penalty notice. A penalty of Rs. 50 lakhs was levied u/s 271(1)(c).

Name of officer : K.V. Chowdary, CIT(A), Varanasi

UNEXPLAINED ADVANCES - ADDITIONS CONFIRMED

Search revealed receipt of money from persons- appellant refused to identify the lenders as also persons to whom loans were given- onus on the appellant to identify lenders and prove their credit worthiness

The appellant, Shriram H. Soni, is a broker and financier. During the course of search, material showing receipt of money from persons with abbreviated / code names was found and seized. The seized material further showed that this amount was given on loan to persons with abbreviated names. The total amount advanced as loan exceeded Rs.60 crore for all the assessment years. In the returns filed, the appellant showed brokerage income from these transactions. The appellant refused to identify the persons from whom money was received. Two investors who allegedly gave the appellant money for being advanced as loan were searched along with the appellant. In the case of both these investors, the appellant appeared before the AO as their witness and affirmed that these two persons were not the investors from whom the appellant got money in cash for being advanced as loans. The appellant refused to identify the persons from whom money was claimed to have been received. He also refused to identify the persons to whom money was given as loan.

The AO assessed an amount of more than Rs.60 crore on protective basis in the hands of the appellant and a small part of this amount was assessed on substantive basis in the hand of the two investors who were searched along with the appellant. But most of Rs.60 crore was not assessed on substantive basis in any case.

During the course of the appellate proceedings, the CIT (A) required the appellant to identify all the 58 parties from whom he claimed to have received money for being advanced as loan. The assessee refused to do so. The entire amount was received in cash and given in cash and represented untaxed amount. In view of this, the CIT(A) dealt with, *inter alia*, the following issues in his order:

- Whether it is a legal obligation of the appellant to prove the existence and identity of persons against whom receipt of money is shown and whose names are written some times in full and most of the times in short by using code, abbreviated names and pseudonyms?

- Whether the appellant can place himself in a better position by not maintaining books of account properly and by not writing full names and by not identifying the so called investors as compared to an assessee who writes books of account properly and identifies the investors?
- Whether the appellant can be said to be the owner of funds in respect of which the promissory notes were found and seized from the premises?
- Whether a person who is engaged in doing business with unaccounted and untaxed money can get away with writing coded names whether existent or not and thereby claim that such money belongs to third parties whom it refused to identify?

Since the entire amount of Rs.60 crore received in cash represented untaxed money, the CIT(A) held that addition u/s 68 of the Income Tax Act, 1961 was mandated if the assessee refused to prove the existence of the person whose name was mentioned in code word and his capacity to advance the money. He further held that if the appellant failed to prove the existence of code named persons, he would be deemed to be the owner of the money u/s. 69. Since, admittedly, the entire money advanced as loan was in cash and unexplained and the appellant refused to identify the lenders, both sections 68 and 69 of the Income Tax Act were invoked and the entire amount was assessed in the case of the appellant on a substantive basis.

Further addition of more than Rs.12 crore was made in case of the appellant on the basis of post-search enquiries and by getting the cash flow statement prepared during the course of appellate proceedings. The fund flow statement showed that in respect of the part of loan claimed to be advanced to the appellant, there was no outgo of interest and thus, the appellant was established to be the owner of this fund.

Since the loans were held to be unproved and the entire amount was held to be owned by the appellant, his claim for interest was disallowed and this resulted in substantial enhancement for all the assessment years.

Further, penalty proceedings u/s 271(1)(c) were initiated in respect of the enhancement made in the appellate orders and penalty amounting to more than Rs. 6 crore has since been imposed.

Name of officer : A. C. Shukla, CIT (A)-1, Pune

TAXATION OF JOINT VENTURE AS AOP

Five parties joined by agreement to form a JV - earned commission of income - claimed commission distributed among members - AOP not taxable - CIT(A) held AOP taxable

Five entities joined together and constituted a JV known as M/s Pradeep Agency, Delhi. The JV was based on an agreement. During the previous year relevant to the Assessment Year 2003-04, the AOP procured orders of supply of PTA to M/s Indorama Synthetics India Ltd. from M/s Reliance Industries Ltd. M/s Reliance Industries Limited paid commission to the AOP amounting to Rs.2,40,61,937. After some expenses, the AOP earned profit of Rs.2,37,55,912 which was distributed among the members of the joint venture in their profit sharing ratio. The AOP filed the return of income at 'nil' claiming that the income of the joint venture was not assessable to tax as an AOP in as much as the said income had been distributed and taxed in the hands of members of the JV.

The AO asked the assessee to explain as to why the income of Rs.2,37,55,912 should not be charged to tax in the status of AOP in accordance with the provisions of section 167B(2) of the IT Act. In reply, the assessee reiterated that the profit had already been distributed among its members and since the share of profit of each member of the AOP was defined in the agreement, the provisions of section 167B(2) would not apply. The AO did not agree and determined the income of the AOP at Rs.2,37,55,912 and subjected the same to tax at the maximum marginal rate.

The assessee preferred appeal to the CIT (A) in which it urged that the AO erred in assessing the AOP on income of Rs.2,37,55,912. The assessee relied upon several decisions, including the decision of the Supreme Court in CIT v. Murlidhar Jhawar & Purna Ginning & Pressing Factory (1966) 60 ITR 95 and the Board's Circular No.75/19/191/62-ITJ dated 24-8-1966 in support of its contention.

The CIT(A) examined the joint venture agreement and concluded that the members of the AOP put in joint efforts and earned the income jointly. He relied upon the decision of the Supreme Court in the case of ITO v. Ch. Achtaiah (1996) 218 ITR 239 wherein the Apex Court held that under the

Income Tax Act, 1961, the AO has to tax the right person unlike under the 1922 Act which allowed an option to the AO. Thus, the CIT(A) held that the AO rightly assessed the entire income in the hands of AOP.

The assessee preferred an appeal to the ITAT against the decision of the CIT(A).

On a difference of opinion, a Special Bench of the Tribunal was constituted. The ITAT, Delhi Bench "G" (Special Bench) in their decision [since reported in (2007) 18 SOT 12 (Delhi) (SB)] debated the position of law regarding chargeability of tax on AOP and its members under the provisions of the IT Act, 1961. The Tribunal stated that prior to the decision of the Supreme Court in the case of Ch. Atchaiah (supra), there was a legal controversy on the issue as to whether the AO has option either to assess AOP or its members under the IT Act, 1961 as it was under 1922 Act as held by the Supreme Court in the case of Murlidhar Jhawar Purna & Ginning & Pressing Factory (supra).

The Tribunal held that the legal position in this regard has been set at rest by the Supreme Court in the case of Ch. Atchaiah (supra) as per which it is clear that there is a marked difference in the provisions relating to assessability of AOP and its members as contained in the IT Act, 1922 and in the IT Act, 1961. There is no option available to the AO to assess the members of AOP and the assessment of members of AOP cannot stand in the way of assessment to be made on AOP which is the right person to be assessed under the IT Act, 1961. The Tribunal, therefore, held that the AO rightly assessed the AOP as held by the Supreme Court in the case of Ch. Atchaiah.

Name of officer : P.V. Rao, CIT(A)-XXV, New Delhi

OBJECTIVE COMPARABILITY ANALYSIS IS FOUNDATION OF TRANSFER PRICING ADJUSTMENT

Comparability analysis - selection of comparables - initial onus of taxpayer to make the right selection - use of loss-making companies as comparables - analysis of related party transactions - use of representative samples as comparables - critical evaluation of transfer pricing report

Lucent Technology India (LT India) was designated as a captive software developer for the Lucent group and worked as a contract service provider undertaking software development work for group companies on a cost plus basis.

During the assessment proceedings for the Assessment Year 2004-05, the AO noticed that a compensation of Rs. 131,16,49,052/- was made by the group companies to the assessee on account of software development services which was considered arm's length compensation by the appellant in its transfer pricing report.

The TPO, after going through the transfer pricing documentation and other details filed by the appellant during the proceedings u/s 92CA, came to the conclusion that 1 out of 24 comparables chosen by the assessee was not comparable. The assessee had used financial data of the F.Y.2002-03 for computing the profit margin of the comparable companies, citing non-availability of current year data. While observing that only current year financial data to be used for computing the arm's length price, the TPO rejected 7 more comparables due to non-availability of current year data. The arithmetical mean of operating profit to total cost of the remaining 16 comparables for the current financial year worked out to 16.05%. Since the average profit margin of 16.05% of the comparables was higher than the assessee's profit margin of 6.61%, the TPO recorded a finding that the assessee's international transactions had not satisfied the arm's length standard. Accordingly, TP adjustment of Rs. 13,22,71,294/- was proposed by the TPO.

The CIT(A) observed that since the core issue in this appeal revolved around the comparability analysis, it would be appropriate to have an analytical framework for proper evaluation of the comparability analysis done by the

appellant and part rejection of the same by the TPO, leading to TP adjustments. The analytical framework used by the CIT(A) had the following components:

- Importance of Functional Analysis
- Deductive Approach to Identify Potential Comparables
- Rule 10B & Adjustments
- Aggregation Vs. Disaggregation of Transactions
- Treatment of High Loss & Profit Making Comparables
- Representative Sample & Sampling Distribution
- Use of Cross-sectional Data
- Interpretation of Comparability by Judicial Authorities

Applying above analytical framework to the facts of the case, the CIT (A) noticed that the following were the defects in the taxpayer's transfer pricing report and the initial onus cast on the taxpayer to come up with the right comparables was not discharged:

(i) Functional analysis of the tested party had not been done in a detailed manner to understand the functioning of the appellant so that appropriate comparables could be chosen. Various attributes of the tested parties and the value drivers are required to be highlighted for meaningfully conducting the benchmarking analysis and for locating the right set of comparables.

(ii) Special features of the software industry in India were not taken into account in the analysis. The functional analysis of the appellant was carried out without taking into account the functional diversity of the software development industry and the positioning of the appellant in the industry. The FAR analysis of the comparables was also devoid of any such analysis.

(iii) Reasons for rejecting comparables were not exhaustive.

(iv) Rejection of comparables for having related party transactions was not grounded on logical analysis in the absence of actual examination of the impact of these transactions on the operating margin of the comparables.

(v) Rejection of companies for making persistent operating loss without ascertaining the reasons for incurrence of losses.

(vi) The TP report while conducting the benchmarking analysis for the current financial year did not consider the set of comparables selected by it in the immediately preceding year. It was expected that the process of selection of the comparables should start with an evaluation of the comparables chosen in the immediately preceding year. If after conducting the FAR analysis for these comparables, it was found that they were no longer comparable, those could be rejected with a note for the reasons thereof. This was required to maintain consistency.

(vii) There was no detailed FAR analysis of the finally selected comparables; the value drivers of these companies could be different from those of the tested party.

(viii) There seemed to be a disconnect between the search for comparables and the comparability analysis. It appeared that a mechanical approach was followed for selecting comparables from the electronic database without examining the comparability factor contained in Rule 10B(2) of the Rules.

(ix) The prerequisites of TP documentation were not met. The compensation model should be in tune with the market realities and the evolution in the performance of services, such that the value addition contributed by the Indian enterprise is fairly remunerated. The emphasis should be on the actual conduct of business, and less on theoretical economic models for the purposes of remunerating the Indian enterprise.

The CIT (A) further held that even the TPO's comparability analysis was not objective enough for determination of correct arm's length price.

Accordingly, the entire set of comparables selected by the TPO was subjected to a more detailed comparability analysis by looking at the related party transactions more closely after calling for information from the taxpayer. Only 13 comparables out of 24 listed by the taxpayer and 16 accepted by the TPO were found to be truly comparable by the CIT (A) after subjecting these comparables to the analytical framework. The CIT(A) also rejected the ad hoc methodology followed by the TPO in the preceding assessment year of making adjustment for difference in risk profile between the taxpayer and the comparables. Arm's length price was calculated accordingly using the average

OP/TC ratio of 15.91% and TP adjustment of Rs. 13,03,09,390/- was confirmed though on the basis of a different comparability analysis.

Name of officer : Nilimesh Baruah, CIT(A) XX, New Delhi

LOOKING BACK

February 4, 2009 was a momentous day. Mavlankar Hall, New Delhi wore a festive look. MOS (Finance) released the public version of 'Let us Share' while the Chairman released the departmental version of 'Let us Share'. The Public Relations and Knowledge Management portal was launched by the Revenue Secretary. The contributors to the book were issued a certificate of recognition along with a memento.

The Book Release Function was indeed memorable.


Let us Share
S S KHAN


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TIMES OF INDIA 6th February 2009

vaders beware! Taxman is watching your every move

ch System Keeps Minute-To-Minute Track Of I-T Suspects

Pradeep Thakur | TNN

i: Officials of the air intelli-
at Delhi's IGI Airport recent-
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What's 360-degree profiling?
It's a database of suspected money launderers, criminals and corrupt officials that tracks their activities and transactions in minute detail through synergy with various agencies and service providers

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Thursday, Feb 05, 2009
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Industry & Economy - Income Tax
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I-T dept launches book on best practices

— Ramesh Sharma

The Minister of State for Finance, Mr S.S. Palanimanickam, with Mr P.V. Bhide, Revenu at the book release in New Delhi on Wednesday.

Our Bureau

New Delhi, Feb. 4 The Income-Tax Department's move to share its best practices and order the public is in line with the objective of the Right to Information Act, the Minister of State for Mr S.S. Palanimanickam, said here on Wednesday.

Releasing a book of the Tax Department titled "Let Us Share", Mr Palanimanickam lauded the department's revenue collection efforts. "Last fiscal, the direct tax collections exceeded the indir tax collections for the first time ever. The Income-Tax Department deserves credit for this," he sa

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MoS(R) asks Income Tax to gear up to meet sophistic
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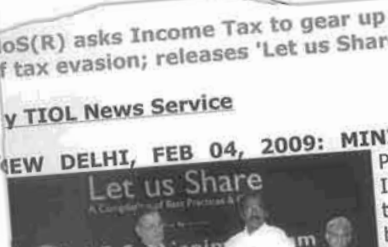

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MoS(R) asks Income Tax to gear up to m
f tax evasion; releases 'Let us Share'

By TIOL News Service

EW DELHI, FEB 04, 2009: MINISTER of St
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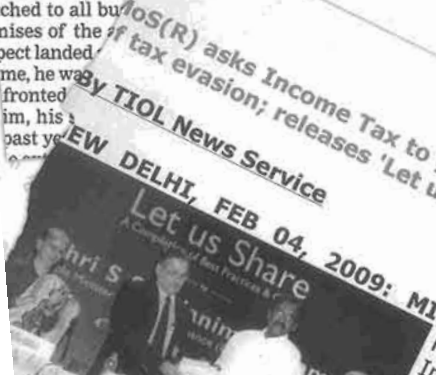

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Thursday, February 5, 2009

TIMES OF INDIA

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What law says: As per I-T Act. TDS can b

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et us 'care' for CBDT's new slogan 'Let us Share'!

TIOL - COB(WEB) - 121
FEBRUARY 05, 2009

By Shailendra Kumar, Editor

YESTERDAY was a red-letter day for t
Tax Department. It was an important
taxpayers' angle as well. If the Netizens
terms of any tax relief, then they need
look at the concept of relief. A fiscal relie
welcome news even for taxmen in their
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In a first of its kind initiative, income tax investigations, which remained under shrou
now, will be available with toenail details as the Income Tax Department has compil
numerous past high profile tax evasion cases. The recent Vodafone case, in which th
Supreme Court had asked the cellular operator to respond to the I-T department notice
pertaining to alleged tax evasion, has also been included in the compilation. The compilatio
of more than 250 pages, including searches and surveys, assessment orders. TDS orders a
surveys since year 2004 named as 'Let Us Share', will be released by Minister of State
Finance S S Palaniimanickam tomorrow, which would then be available to the public al
with chartered accountants and tax lawyers. The readers can "find out how the depart
seized huge cash at the airport from a taxpayer on the basis of his cell phone number
ITPS, a data mining tool...within just an hour," a glimpse from the compilation reads.
the compilation brings together the best practices for the department officers, it also a
tool to be used for deterrent action against evaders and will help in increas
outstanding demands and TDS collections by way of value addition to officers.
Board of Direct Taxes (CBDT) Member (Revenue) Saroj Bala told reporte
compiling this information, it was found that a large number of cases w
successfully contested in the country's courts by the department received
assistance" from the officers themselves positively enabling their
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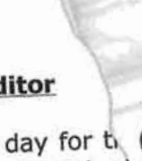

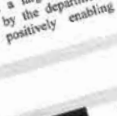

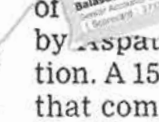

TDS ORDERS & SURVEYS

TDS ORDERS & SURVEYS

NON DEDUCTION OFTDS U/S. 194J ON PAYMENT OF TRANSMISSION CHARGES

Payment of transmission charges by power companies for transmission of electricity - non deduction of tax at source - held liable for TDS u/s 194J

A survey under section 133A was conducted on 29.07.2008 in the case of M/s. Jaipur Vidyut Vitaran Nigam Ltd.(JVVNL), which is a power distribution company. This company pays huge amount to M/s. Rajasthan Rajya Vidhyut Prasaran Nigam Ltd. (RRVPN) every month for transmission of electricity. These amounts are paid in the form of wheeling charges and SLDC charges. "Wheeling" means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined. Similarly, State Load Dispatching Centre (SLDC), another arm of RRVPN, is collecting consideration at a fixed rate from the generating companies, which is called SLDC charges.

The AO was of the view that these amounts were being paid for technical services provided by RRVPN and were hence liable to TDS under section 194J of the Income Tax Act. Transmission of electricity is a technical service because it requires constant involvement of a technical system consisting of sophisticated instruments and human interface in the form of technical ability and knowledge to operate and maintain the system. All these require help of science and technology and technically competent manpower such as qualified engineers, etc.

The AO issued a show cause notice and after considering the reply of JVVNL, order u/s. 201 and section 201(1A) was passed. In the order, it was held that JVVNL was liable to deduct tax at source u/s. 194J on the wheeling and SLDC charges amounting to Rs. 970.61 crore paid from financial year 2004-05 to Sep. 2008 to Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur. A demand of Rs. 23.34 crore was raised. The same has been confirmed by the CIT (A), Jaipur.

The total estimated amount of transmission charges paid by all the above companies including JVVNL amounted to Rs.2205 crore on which tax

was to be deducted under section 194J but no tax was deducted. Further, there would be a huge tax effect on account of disallowance of transmission charges u/s 40(a)(ia) in all these cases. Addition of Rs. 204.83 crore has already been made u/s. 40(a)(ia) for the assessment year 2006-07 in the case of Jaipur Vidyut Vitaran Nigam Ltd., Jaipur.

Jaipur Charge was the first to take up this issue in the country. It was brought to the notice of DIT (TDS) who circulated the same all over the country. On the basis of the order passed in this case, similar action has since been taken in other cases. In Delhi Charge, in the case of M/s. Delhi Transco Ltd., M/s. BSES Rajdhani Power Limited and BSES Yamuna Power Limited, short deduction of TDS of Rs. 100.33 crore was detected. In Ahmedabad Charge, in the case of Gujarat Urja Vikas Nigam Ltd., Baroda, additional TDS of Rs. 50 crore was collected. In Chandigarh Charge, in the case of M/s. Uttar Haryana Bijli Vitran Nigam Ltd., PKL and M/s. Dakshin Haryana Bijli Vitran Nigam Ltd., Hisar, TDS demand of Rs. 126.45 crore was raised out of which Rs. 70.48 crore has already been collected. In Pune charge, in the case of M/s. Reliance Infrastructure Ltd., and DTPS, Dahanu, TDS default of Rs.76.13 crore was detected.

Names of officers : Rakesh Kumar Singhal, ITO (TDS-2), Jaipur
Sanjiv, Addl. CIT (TDS), Jaipur
R. M. Garg, CIT (TDS), Jaipur

TREATY BENEFIT AVAILABLE TO BENEFICIARY OF INTEREST ONLY

Assessee remitted interest on loan to Standard Chartered Bank (SCB), Mauritius branch without deduction of tax at source in view of article 11 of DTAA- held that interest was neither derived nor beneficially owned by SCB, Mauritius- hence assessee liable to deduct tax at source

APR Packaging Ltd., which merged with Ballarpur Industries Ltd. had obtained loan from Standard Chartered Bank (SCB), Singapore Branch. Ballarpur Industries Ltd. (BIL) was deducting tax on the interest paid as per the provisions of tax treaty between India and UK (as SCB Plc. is a tax resident of UK). As the cost of loan was high, Ballarpur Industries Ltd. expressed its eagerness to repay the loan. The Standard Chartered Bank, New Delhi branch, which acted as arranger and security agent devised an arrangement by which the loan was transferred from Singapore branch to SCB, Mauritius. Due to this, the interest rate was reduced and also BIL stopped deducting taxes on the strength of Article 11 of tax treaty between India and Mauritius.

Detailed investigations indicated that BIL neither repaid the loan to SCB, Singapore nor availed a fresh loan from SCB, Mauritius. It continued to pay interest to SCB, New York Branch after the alleged transfer of loan. The loan agreement with SCB, Singapore Branch was neither terminated nor a new agreement with SCB, Mauritius was entered into. Neither the BIL nor the Standard Chartered Bank had any correspondence relating to the transfer of loan except one single letter from SCB, New Delhi branch to BIL indicating assignment of the existing loan. The e-mails and the internal documents maintained by BIL indicated that the alleged transfer of loan was nothing but an arrangement to avoid tax, devised by the BIL along with the New Delhi Branch of SCB.

As per Article 11(3)(c) of the tax treaty between India and Mauritius, interest arising in India shall be exempt from tax in India, if the same is derived and beneficially owned by a bank resident of Mauritius carrying on a bona fide banking business. This provision is unique to India-Mauritius tax treaty. After detailed investigations, the AO held that there was neither a transaction of loan

nor of interest between BIL and SCB, Mauritius. Interest was neither derived nor beneficially owned by SCB, Mauritius. All the ingredients of the loan transaction between BIL and SCB, Singapore continued even after the alleged transfer of loan.

The claim of the assessee regarding exemption from tax of interest income of SCB was rejected. It was held that the assessee was deemed to be in default with regard to the tax not deducted and order u/s 201(1) and 201(1A) of the Act was passed raising a demand of Rs. 7.57 crore.

Names of officers : Rajan Khanna, ITO, TDS (Intl. Tax.), W-I(1), New Delhi
Sanjeev Sharma, Addl. DIT, Intl. Tax, Range 1, New Delhi
Sanjay Kumar Mishra, DIT, Intl. Tax-1, New Delhi

NON DEDUCTION OFTDS U/S 194H ON COMMISSION PAIDTO CONCESSIONAIRES

Company selling milk and other products through concessionaires from booths owned by it - difference MRP and bill value held as commission paid liable for deduction u/s 194H

M/s. Mother Dairy India Ltd., Delhi is engaged in the procurement, processing, storage, and marketing of milk and other products. During the course of survey under sec. 133A on 9.12.2004 at the business premises of M/s. Mother Dairy Food Processing Ltd., Delhi, a group company, it was found that tax was not being deducted at source on the payment of commission made to the agents/concessionaires who are selling milk and other products from the booths owned by the company.

On the basis of survey, the case of M/s. Mother Dairy India Ltd., Delhi was selected for deep verification. In the course of verification proceedings, it was contended by the assessee company that it sold the products to the concessionaires on a principal-to-principal basis. The AO procured copies of two circulars issued by Mother Dairy to the retailers/concessionaires offering revised commission rate. The circulars clearly established that the assessee was paying commission to its concessionaires/agents. The assessee was confronted with these circulars. The assessee contended that the circulars were issued by the Marketing Division and that the word "commission" had been used generically. The AO examined the contentions of the assessee in the light of the various clauses of the agreements entered into by the assessee company with its concessionaires and after a careful consideration of the practice adopted by the assessee towards sale of milk and other products through the booths owned by it, the AO gave a finding that there did not exist any principal-to-principal relationship between the assessee and the concessionaires and that they were the agents of the assessee appointed by the assessee to sell its milk and other products through the booths owned by the assessee. The AO held that the difference of bill value and retail price fixed by the assessee could only be categorized as commission on which the assessee failed to deduct TDS u/s. 194H of the IT Act. The order passed by the AO was upheld by the CIT(A)

and the entire demand raised of Rs.1,15,00,000/- was collected.

Names of officers : R.C. Singh, ITO (TDS), Delhi
Sheela Chopra, Addl. CIT (TDS), Range-50, Delhi
Arti Handa, CIT-XVII(TDS), Delhi

TDS QUESTIONNAIRES - A UNIQUE INITIATIVE

With non-intrusive investigation gaining significance, issuance of sector- specific questionnaires to various TDS deductors is a novel technique to augment TDS collections. The questionnaires have evolved over time with the content being regularly reviewed from time to time after incorporating replies received. This method practised in Pune has distinct advantages:

- The method is non-intrusive
- A large number of deductors could be covered simultaneously
- Cost of collection is very low
- Replies to the questionnaires provide ample material for selection of cases for meaningful surveys
- Country-wide replicability

CCIT, Pune charge

TDS ON PAYMENT MADE TO HOSPITALS BY THIRD PARTY ADMINISTRATORS

Payment to hospitals by third party administrator for treatment of patients- non deduction of tax at source - AO held such payments liable for TDS u/s 194J

The assessee company, M/s Good Health Plan Ltd., Hyderabad, is engaged in medical insurance processing on behalf of various insurance companies. It entered into agreements with various insurance companies for providing services to their mediclaim policy holders. It also entered into agreements with various hospitals for cash-less treatment of mediclaim policy holders (patients). It was the responsibility of the company as third party administrator to provide medical treatment to mediclaim policy holders on behalf of the insurance companies. It was found that the assessee was making payments to hospitals not merely as a channel to pass funds. The assessee was accepting bills, making financial and medical scrutiny of these bills and finally making payments. A large part of the work of the insurance company was handled by the assessee. Thus, the assessee was a person responsible for making the payment as defined in section 194J of the Income Tax Act.

During the financial year 2007-08, the assessee had made payments of Rs. 17,22,78,428/- to various hospitals for rendering medical services to the enrolled policy holders on which no tax at source was deducted. The AO held that these payments were in respect of professional services rendered by the hospitals liable to TDS under section 194J of the Income-tax Act, 1961. Consequently, he raised demand against the assessee under sections 201(1) & 201(1A) for the financial year 2007-08 amounting to Rs. 11.33 lakhs. On a similar issue, the DCIT (TDS), Bangalore also raised a demand of Rs. 107.54 crore for the financial years 2002-03 to 2008-09 by passing orders under sections 201(1) and 201(1A) in the case of M/s TTA Health Care TPA (P) Ltd., Bangalore. Similarly, in Delhi, TDS default of Rs. 36.66 crore was found on the same issue in the case of M/s E. Meditek Solutions Ltd.

Names of officers : R.M. Mujumdar, ACIT, Circle 15(2), Hyderabad
K. Krishnamurthy, Addl. CIT, Range-15, Hyderabad
S. Mohapatra, CIT(TDS), Hyderabad

TDS ON PAYMENTS MADE TO STATE ELECTRICITY BOARDS FOR CONSTRUCTION OF TRANSMISSION LINES

Payment by Railways to State Electricity Boards for construction of transmission lines - non deduction of tax at source - payments held to be liable for TDS u/s 194C

During the course of survey conducted in the case of Chief Project Manager, Railway Electrical, Indian Railways, Ambala Cantt., it was noticed that payments were made to various State Electricity Boards for construction of transmission lines for providing power to railway traction sub-stations. However, no tax at source was deducted although these payments were subject to deduction of tax at source under section 194C of the Income-tax Act, 1961. It was claimed by the deductor that there was no provision in the Income-tax Act under which tax is to be deducted at source out of payments made by one government organization to another government organization. The deductor also sought clarification in this regard from the CBDT through the Ministry of Railways. The CBDT vide its letter dated 25.11.2008 clarified that TDS is attracted in such cases. The AO passed an order under sections 201(1) & 201(1A) raising a demand of Rs. 1,41,98,110/- for the assessment years 1999-2000 to 2007-08.

Names of officers : A. K. Tyagi, ITO (TDS), Panchkula
Kartar Singh, Addl. CIT (TDS), Gurgaon
P. C. Mody, CIT (TDS), Chandigarh

NON-DEDUCTION OFTAX ON ADVERTISEMENT PAYMENTS

Assessee made payment for space provided by another party for advertisement of its products- did not deduct rax at source-AO held the same liable forTDS u/s 194C

The CIT (TDS), Kolkata passed on information that M/s Sahara India Commercial Corporation Ltd., Lucknow and M/s Sahara Air Lines, Lucknow had entered into a contract for providing publicity to the former's products on the latter's space such as boarding passes, tickets, baggage tags, news papers, hoardings, etc. and a payment of Rs. 1727.80 crore was made for this purpose for the assessment years 2003-04 to 2007-08 without deduction of tax at source.

The AO examined the issue and held that the provisions of section 194C of the Act were clearly applicable to such payments. The orders u/s 201 and 201(1A) of the Act were passed by the AO and a demand of Rs. 26.57 crore was raised out of which the assessee has already paid a sum of Rs.10 crore.

Names of officers : Bimal Prakash Srivastava, ITO,TDS, Lu cknow
Abha Kala Chanda, Addl. CIT (TDS), Lucknow
Sujata Pant, CIT (TDS), Lucknow

TDS ON PAYMENTS MADE FOR SUPPLY, ERECTION AND INSTALLATION OF WINDMILLS

Company making payments for supply, erection and installation of windmills- no deduction of tax at source- AO held these payments as liable for deduction of tax u/s 194C

The assessee, Abhilash Garments and Estates (P) Ltd., Bangalore, had applied for certificate under section 197 of the Act. The AO noticed huge depreciation claim debited in the P&L account. Further examination revealed that the depreciation claim was with respect to windmills installed by the assessee. Subsequently, survey under section 133A was carried out and it was found that the assessee had not deducted tax at source on the payment made to the windmill manufacturer, M/s ENERCON (India) Limited. Six different purchase orders for supply, erection and installation and civil and electrical work for windmills issued to the supplier were analyzed and the AO concluded that all the purchase orders were inter-dependent on each other making the entire work of installation of windmills a composite contract which was liable to TDS u/s 194C of the Act. The AO raised a total demand of Rs. 11.33 lacs in this case.

Names of officers : Pradeep P. Aspatwar, ACIT (TDS), Bangalore
Sibichen K. Mathew, Addl. CIT, Range 16, Bangalore
K.K. Mishra, CIT (TDS), Bangalore

CONSIDERATION FOR LICENSING OF DATA TREATED AS ROYALTY

Assessee made payment for purchase of dataset- did not deduct tax at source treating it as purchase-AO held it was payment of royalty liable for TDS

GVK Oil and Gas Limited, Hyderabad is engaged in the business of oil and gas exploration. The Company bid for the oil & gas exploration blocks offered under the NELP VII by the Government of India. During the course of bidding for various blocks, the company was required to understand the geological and seismic quality of the blocks in order to minimize the risk of exploration. In order to evaluate various blocks, the company required some geological and seismic data. GX Technology Corporation, USA (GXT) and GGS Spectrum, UK (GGS) are the leading providers of a comprehensive range of advanced seismic Data and Derivatives. The assessee entered into an agreement with GXT and GGS (Master Geophysical Data Use License and Supplemental Agreements) by which GXT and GGS agreed to grant non-exclusive license/right to use certain Data and Derivatives in consideration for an agreed license fee. The company made a payment of US$ 14,43,140.70(=INR 6,16,92,821.78) and US $ 1,05,845.6(=INR 45,42,893.15) to GXT and GGS respectively without deduction of tax at source as required u/s 195 of the income-tax Act, 1961.

The assessee's argument was that the payment was made towards purchase of Dataset which amounted to purchase of a copyrighted product and hence there was no requirement to deduct tax at source. The AO observed that Dataset is an information/knowledge on the hydrocarbon geology of the east and west coast of India and is derived by GXT/GGS from its experience in the field of exploration/hydrocarbon geology and geophysics. Dataset is a proprietary tool and a trade secret of GXT/GGS and as such it is not divulged to the public. Thus, Dataset or the Data and Derivatives constituted information concerning industrial, commercial or scientific experience. The payment made by GVKOGL to GXT/GGS by way of licence, therefore, constituted consideration for the information concerning industrial, commercial or scientific experience and this was held to be 'royalty'. The AO

held the payment to be of the nature of royalty, as the same constituted consideration for the use or right to use copyright of scientific work. Income by way of "royalties" arising to a non-resident in India is taxable in India as income deemed to accrue or arise in India as per section 9(1)(vi) read with section 5(2)(b) of the Income-tax Act,1961 and as per the applicable DTAAs. Accordingly, order u/s 201 of the Income-tax Act was passed raising a demand of Rs 72.83 lakhs and Rs. 5.36 lakhs in respect of the payments made to GXT, USA and GGS, UK, respectively.

Names of officers : A. Srinivasan, ADIT (Int. tax.)-I,, Hyderabad
Gangadhar Panda, Addl. DIT (Int. Tax), Hyderabad
S.P. Swain, DIT (Int. Tax), Bangalore

NON REMITTANCE OF TDS DEDUCTED

Loss making company not filing quarterly e-TDS returns- survey conducted- tax deducted was not deposited for two years- collected

Duncans Industries Ltd., Kolkata is engaged in the business of manufacture of fertilizers, chemicals and growing of tea. The AO found that the company was not filing e-TDS returns and it was disclosing huge loss in the returns of income. Therefore, survey under section 133A was conducted and it was found that the assessee had deducted tax on salaries and other payments, but the same was not deposited into the Government account. The assessee admitted default of non-deposit of TDS even after two years of deduction. The entire demand of Rs.3,99,88,717/- pertaining to the financial years 2005-06, 2006-07 and 2007-08 raised under section 201(1)/201(1A) was recovered in instalments within six months of the survey.

Names of officers : Satyendra Mohan Das, DCIT, Circle-57, (TDS), Kolkata
D. Loyi, Addl CIT, Range-57, Kolkata
N.P. Sinha, CIT(TDS), Kolkata

TDS ON TRANSMISSION CHARGES FOR DISTRIBUTION OF GAS

Payment of transmission charges for distribution of gas - TDS liable to be deducted u/s 194-I

The assessee, GAIL India Limited, was supplying natural gas to KRIBHCO through the pipeline owned and maintained by ONGC. The assessee was paying monthly transmission charges to the ONGC but tax was not being deducted on such payments. The provisions of section 194-I as amended with effect from 13.7.2006 are clearly applicable to the case of the assessee. The amended provision expands the list of items as provided in the existing definition of 'rent' by inclusion of machinery, plant and equipment for the purposes of deduction of tax at source under section 194-I. After the survey under section 133A, the assessee deposited TDS of Rs. 80,09,490/- on the amount of Rs. 7,06,92,800/- paid to ONGC.

Names of officers : K.Z.A. Jaleel, ITO, (TDS), Ward-1, Surat
Sameer Vakil, Joint CIT(TDS), Surat
K. L. Maheshwari, CIT(TDS), Ahmedabad

TDS U/S 194C INSTEAD OF SECTION 194-I ON PAYMENT OF HIRING CHARGES

Payment of hire charges of tankers for transportation of oil and oil products- TDS made u/s. 194C - AO held these payment liable for TDS u/s 194-I being payment of rent

A spot verification was conducted on 9-2-2009 in the case of M/s. Indian Oil Corporation (Marketing Division), Mathura Refinery, Mathura, which has an oil refinery and is manufacturing petrol, diesel and other petroleum products. The said products were being transported from the refinery to the market at various destinations through tankers. During the course of verification, it was observed that the assessee had been making payment of hire charges to the operators from whom the assessee had taken tankers on hire for transportation of oil and oil products from its refinery to various customers in the market and deduction of tax at source was being made u/s. 194C of the I.T. Act @ 2%.

On perusal of various terms and conditions of agreement made between the assessee and the tanker operators, the AO noticed that the that this payment was in the nature of payment of hire charges for hiring of tankers. After amendment of section 194-I w.e.f. 1.6.2007, payment of hire charges for the use of any machinery or plant or equipment is liable to TDS under the provisions of section 194-I and not under section 194C. Consequently, tax at source was to be deducted under section 194-I of the Income-tax Act, 1961 from 1.6.2007 @10%. The assessee, however, had deducted tax at source @2% u/s 194C resulting in short deduction of TDS. The assessee was held liable for short deduction of Rs.6.24 crore in the financial year 2007-08 and of Rs.4.88 crore in financial year 2008-09 (till Dec., 2008) and, accordingly, demand under sections 201(1) and 201(1A) was raised.

Names of officers : Kailash Chandra, ITO (TDS), Mathura
Ratan Singh, Addl. CIT(TDS), Mathura
Kavita Jha, CIT(TDS), Kanpur

SHORT DEDUCTION OF TDS LEADING TO DETECTION OF CONCEALED INCOME BY DOCTORS

Remuneration to doctors in the garb of 'fee for service' - only 60% payments by cheques which were subjected to TDS - balance 40% drawn through bearer cheques on which no TDS collected - post survey, AO held entire amount taxable - revised returns filed by doctors

Specific information was received regarding non deduction/short deduction of tax at source on professional charges/salaries paid to the doctors/employees by M/s. BGS Apollo Hospital, Kuvempunagar, Mysore. A survey u/s.133A was conducted in the case of the hospital as well as two doctors. On examination of books of account and documents, it was noticed that the hospital authorities failed to deduct tax at source on 40% of the professional charges/salaries paid to doctors/consultants/employees. Accordingly, the TDS certificate was issued only for 60% of the professional charges/salaries paid to the doctors/consultants/employees. The modus operandi adopted by the hospital during the F.Ys. 2002-03 to 2005-06 was that 60% of the amount was paid by account payee cheques and the balance amount of 40% was paid by bearer cheques. However, in the books of account and in the Income & Expenditure Account the entire amount was accounted for as expenditure and the individual doctor's account was also credited by the full amount.

A thorough investigation of the books of account revealed that initially the doctors were appointed as salaried employees for a fixed period with minimum guarantee money. Later they were required to shift to "Fee for Service" option and the remuneration was paid on a percentage basis of their earnings. In the initial period of service as salaried employees, certain portion of the amount paid was booked under "Business Development Expenses". These amounts were paid to the doctors/consultants in the guise of reimbursement of conveyance allowance and the same was not reckoned for the purposes of TDS. After shifting to "Fee for Service" option also, the remuneration paid to in - house consultants was not fully reckoned for TDS purposes even though the amount was credited to individual consultants' account. The journal entries

made in the books of account and the voucher for making TDS clearly indicated that a portion of the payments did not suffer TDS. The hospital not only violated the provisions of TDS but also facilitated the doctors/consultants in concealing their true income by not effecting TDS on 40% portion of professional charges/salaries paid. The scrutiny of returns of income filed by the doctors/consultants revealed that all of them disclosed only 60% of the consultation charges/salaries as per the TDS certificate issued by the hospital.

As far as the hospital was concerned, the person incharge responsible to deduct tax at source had been treated as "assessee in default" u/s.201 (1) in respect of TDS portion amounting to Rs. 41 lakhs. Also, interest u/s. 201(1A) for delay in remittance had been charged amounting to Rs. 14 lakhs. The assessee has paid the entire interest portion of Rs. 14 lakhs and requested to consider reduction of TDS demand of Rs. 41 lakhs as the doctors have already remitted the taxes subsequent to survey.

Surveys u/s. 133A were conducted in cases of two doctors, Dr. T. N. Balakrishna Gowda, Orthopaedecian and Dr. N. Girish N. Kulkarni, ENT Surgeon. It was found that the untaxed portion, i.e. 40% of consultation charges received by way of bearer cheques, was deposited in their savings bank accounts. On scrutiny of returns of income of the doctors, it was further found they had not offered such untaxed amount of 40% of the professional charges received from M/s BGS Apollo Hospital, Mysore. The doctors filed revised returns disclosing the untaxed portion of 40% of the professional charges and paid taxes. Additional Income offered by these two doctors amounted to Rs. 50.60 lakhs and additional tax recovered amounted to Rs. 23.0 lakhs.

Action has been initiated against all the doctors/consultants who had indulged in concealment of income to the extent of 40% of their professional charges/salaries received from the hospital during the F.Ys. 2002-03 to 2005-06. In response thereto, all the doctors have disclosed their true income, filed the returns/revised returns disclosing unaccounted income detected by the department and paid the taxes immediately. Assessments u/s. 143(3) and 147 of the IT Act have been completed in respect of all these doctors. The total amount of concealed income detected by the department has been quantified at Rs. 5 crore.

Names of officers	:	S. Srinivas, ITO (TDS), Mysore M.K. Biju, ACIT Circle-2(1), Mysore P. Chandrashekar, Addl. CIT, Range-2, Mysore R.L. Rinawma, CIT, Mysore

SEARCHES & SURVEYS

SEARCHES & SURVEYS

PAGE NO.

IRON ORE MINING: INFLATION OF EXPENSE OF 'RAISING CHARGES' – ACCOMMODATION ENTRIES BY CONTRACTORS

Profits from iron ore mining reduced through accommodation entries by contractors – ingenious method of pre search information collection – admission of undisclosed income

The investigation wing of Bhubaneshwar used ingenious method to collect pre search information against one M/s Sirajuddin & Company group of cases. Assessee group functioned in a very secretive manner. The address of the chartered accountant was given as registered office of many concerns of the group. Surveillance was maintained on principal members of the group and their vehicles were regularly followed by the Income Tax Inspectors. This exercise revealed several concealed locations of the group. The telephone call details of the members of the group and their trusted brokers were collected from mobile operators and the numbers called by them frequently were identified.

1. The officers approached one of the brokers posing as a purchaser and extracted assessee's modus operandi from him. It was revealed by the broker that cash component was involved in each sale in addition to payment of commission at the rate of Rs 150 per metric ton prior to negotiation of the sale deal.

Searches were conducted in May 2008 at several inaccessible places including mining quarries, offices inside mines which were totally incommunicable through telephone, discreet stockyards of iron ore and number of railway sidings containing huge stock of 'iron ore fines' without demarcation or sign boards, etc.

2. Incriminating evidence found during the course of search clearly established the complicity between the mine owners and their contractors. The contractors provided accommodation entries in the form of inflated 'raising charges' and received payment by cheque. The amount in excess of actual expenditure (which worked out to nearly 50% of the cheque payments) was subsequently returned in cash. The assessee group decided to avoid compliance during the post search enquiries. As a result, another search was conducted against the group in september 2008. During this search the contractors disclosed the exact amount of the cash that they returned back to the assessee. They admitted that Rs. 320 crore was returned back by them in cash. Large quantum of undisclosed assets in the form of stock of 'fines', policies, mutual

funds, property & bank deposits were identified.

The partners of the mine owner firm admitted undisclosed income of Rs 90 crore and paid tax of Rs. 23.69 crore. Assets worth Rs. 11.18 crore were also seized. Extensive post search investigation revealed undisclosed income exceeding Rs 550 crore and resulted in payment of Rs. 23.69 crore as tax.

A search action on 22.02.2007 had also been conducted by the Bangalore DGIT (Inv.) Region on similar line of business of HOTHUR VESCO group which besides being engaged in extraction of iron ore and its exports to China along with local sales, was also having interests in transportation, running of film theatre, petrol pumps, garments and Hyundai Cars. Pre-search enquiries included gathering of mining data from Director, Mines & Geology, Indian Bureau of Mines, transport details from South Western Railways and export details from Captains of Ports of Madgao, Mangalore, Karwar, and Visakhapatnam. During the course of search, unaccounted cash, incriminating documents showing unaccounted stock, payment to mine owners outside books, expenses incurred outside the books under various heads (including expenses which are not allowable u/s 37(1) Explanation of the IT Act) were found. The assessee group has filed returns of income disclosing the additional income of Rs. 33.75 crore declared during the search. In the assessment proceedings the AO has further raised demand by Rs. 2 crore. The assessee has paid entire taxes. No appeals were filed. The cases of the lessors of the mine were also covered and the lessors also offered the money received outside books for taxation in their hands. Thus, there was an additional income of Rs. 8.75 crore offered during the course of post search action.

Names of officers : **Bhubneshwar Unit**
: M.C. Katheriya, DGIT (Inv), Kolkata
: AK Behera, (DIT(Inv), Bhubaneshawar
: B.D. Mishra,Addl DIT (Inv), Bhubaneshawar
: Sambit Mishra, Addl DIT (Inv),Bhubaneshawar
Bangalore Unit
: B.R. Sudhakara, DGIT(Inv), Bangalore
: Abhay Kumar, DIT(Inv),Banagalore
: T.S.N. Murthy, ADDL DIT(Inv), Bangalore
: Suresh R. Bhandage, DDIT(Inv), Bangalore

CASE OF CROSS BORDER MONEY LAUNDERING

Claim of assessee and his wife (who own a few race horses) of earning income from betting in race horses is not substantiated- cross border money laundering in collusion with others proved.

Information was received that the assessee Shri Hassan Ali Khan was residing at Pune and leading a lavish lifestyle and owning a number of imported cars. His ostensible source of income was from buying of horses for races and betting in horse racing but there were no returns of income filed at Pune or at the given address of Mumbai.

Pre-search inquiries revealed collusion with one Shri Kashi Nath Tapuriah of Kolkata in operating a bank account in Sweden. These facts were corroborated by using new data mining technology of the department.

Search at Pune in January, 2007 revealed that a laptop claimed to be belonging to Shri Phillip Anand Raj, a Swiss passport holder, who was residing at assessee's Pune residence at the time of search, being a friend of Shri Hassan Ali Khan, contained data in German language. The said data in German language was converted into English by the investigation wing with the assistance of Asian Institute of Computers. It revealed some scanned documents which were confirmation letters from Union Bank of Switzerland confirming total deposits of USD 8 billion in account held and operated by the assessee. A CD found during search revealed cross border financial dealings of the assessee through Shri Kashi Nath Tapuriah. Simultaneous search at the residence of Shri Tapuriah at Kolkata led to the recovery of a pen drive containing transfer instructions issued by Shri Hassan Ali Khan to Union Bank of Switzerland for transfer of funds to various beneficiary accounts across the globe. Besides this, documents from the Union Bank of Switzerland indicating 2 million dollars each payable to three parties as instructed by Shri Hassan Ali Khan at Singapore & India were also recovered.

Two bank accounts of the assessee and his wife in ABN Amro Bank, Pune having cash deposits of Rs. 1.17 crore were placed under Prohibitory order u/s 132(3) of IT Act 1961. Simultaneous search of residence of Shri Sayyed Abbas Naqvi at Mumbai revealed his complicity in cross border money

laundering by assessee & ShriTapuriah.

Information was shared with Enforcement Directorate (FEMA) on real time basis. They have obtained letter rogatory from Mumbai Court and submitted them to Swiss authorities. Investigations on cross border financial transactions are in progress and possible complicity of various persons is being examined. The assessee could not have single handedly earned 8 billion USD from winnings from horse racings as he did not own any horse of high pedigree. As such FEMA is probing other illegal links of the assessee which may reveal money laundering of a greater magnitude and perhaps crime money stashed in Swiss banks.

The search has revealed that the assessee was holding multiple passports for which passport authorities have initiated separate action. The assessee and his wife have admitted acquisition of several imported motor cars, trips to Switzerland and other European countries, number of race horses, palatial house at Pune and a flat in Mumbai, besides cash deposits, none of which were disclosed to the department. Posing as descendant of Nawab of Hyderabad the assessee in connivance with Shri Tapuriah & Shri Phillip Anandraj, a Swiss citizen, entered into MOUs to purchase properties abroad. The assessee has admitted concealed income of Rs 4.93 crore and Shri Sayyed Abbas Naqvi has admitted undisclosed income of Rs 25 lacs.

Names of officers	:	SSN Moorthy, DGIT (Inv), Mumbai
	:	T.K Shah, DIT (Inv) -1, Mumbai
	:	Nitin Gupta, Addl DIT (Inv)-VIII, Mumbai
	:	K R Iyengar, Addl DIT (Inv) UnitVIII (2), Mumbai
	:	A.J. Khan, DIT (Inv), Pune
	:	Avdesh Kumar Mishra, Addl DIT (Inv), Pune
	:	Abhay Damle, Addl DIT (HQ), Pune
	:	B.Y. Chavan ,ADIT (Inv), Pune

MISUSE OF SCHEME OF DEDUCTION IN RESPECT OF PROFITS FROM INDUSTRIAL UNDERTAKINGS U/S 80-IB(10)

Unprecedented growth in real estate sector—wrong claims of deduction u/s 80IB(10)— cash transactions in purchase of land and non disclosure of capital gains for taxation

M/s Mantri Developers P. Ltd. (MDPL) is one of the leading builders in Bangalore City. M/s Abhishek Developers, Suraj Developers, Classic Developers and Plaza Developers P. Ltd. were other sister concerns of MDPL, all of whom were involved in construction activity and had claimed deduction of Rs 57.05 crore u/s 80-IB(10) for various years.

A painstaking reconnaissance involving several decoy visits made to the apartments constructed by these builders to know the dimension / plan of apartments in each floor clearly showed the incorrect nature of claims. Surveillance of the main persons of the group was also mounted to record their day to day activities and transactions.

A search action u/s 132 of the IT Act, 1961 was conducted on 08.02.2006 and unaccounted cash of Rs.39 lakhs was found and seized from the corporate office of M/s MDPL.

Verification revealed that in each tower of an apartment complex, the assessee-builder had constructed pent house exceeding built-up area of 1500 sq.ft, i.e. the maximum built-up area permissible for claim of deduction u/s 80-IB. The assessee had split the Sale Deed wherever the built-up area exceeded 1500 sq.ft. The assessee finally withdrew the incorrect claim of Rs.57.05 crore.

Seizure of incriminating documents from residence of Shri Sushil Mantri, MD of M/s MDPL, revealed purchase of land at B'lore and Pune in which payments were made in cash over and above the accounted payments.

The land owners who sold the land to the concerns of Mantri Group did not declare the capital gains for taxation purposes e.g. two firms, M/s Asha Housing Enterprises and M/s Kishan House Builders Association, did not disclose an amount of Rs.27.48 crore of capital gains. On enquiry it was found that the managing partner of these firms had left Bangalore for good and had permanently settled in Mumbai. After being summoned he finally declared the

entire capital gains and paid the resultant taxes.

The search also unearthed the mechanism of bypassing local legislation which prohibits a non-agriculturalist or a company from purchasing agricultural land in the state of Karnataka. Land agents/dealers were appointed who procured large tracts of land from land owners/farmers wherein the funds were provided by the assessee. After converting the land for non- agricultural purposes, it was transferred to the assessee builder for taking up construction activities. Several land agents had either not filed their return of income or had not declared the exact receipts for taxation purposes. The undisclosed income in some cases of these land owners/agents were found to be as under –

Names of the persons	**Undisclosed Income**
KV Shiva Kumar & family	Rs.2.8 crore
K M Nagaraj	Rs.8.35 crore
R Manjunath	Rs.8.40 crore
D U Mallikarjuna	Rs.1.99 crore

Incriminating documents in the business premises of M/s MDPL containing notings of "I OweYou" were also seized being slips given by certain employees of Mantri Group on receipt of cash from them. This cash was meant to be paid to various mediators/agents of lands. Finally, it was found that a total sum of Rs.1.03 crore was paid to the mediators of land outside the books of account.

The search action resulted in a total disclosure of Rs.115.06 crore and tax of Rs.25 crore (approx.) stands collected.

Names of officers : Sunita Kaila, DGIT (Inv), Bangalore.
: N P Singh, DIT (Inv), Bangalore
: Ronmoy Das, Addl DIT (Inv), Unit II, Bangalore
: K Meghanath Chowhan, ADIT (Inv), Unit II (2), Bangalore

TAX EVASION BY DIAMOND TRADERS TURNED BUILDERS

Unaccounted transactions in diamond trade – Inflated labour expenses – huge stock discrepancy. Investment in land in benami names - Receipt of 'on money' on sale of flats / bungalows

Shri Gopal Kumar Dokania, Shri Manhar Kakadia and Shri Jayparkash Aswani are leading builders of Surat (Gujarat). They were connected with partners of firm M/s Balar Exports, a leading manufacturer and exporter of polished diamonds in Surat. They were associated in land deals and had amassed substantial unaccounted income in business of construction and sale of residential and commercial complexes. Shri Dokania had floated a cooperative housing society and had purchased land from different parties including partners of M/s Balar Exports. Construction contract was given to M/s Evergreen Industries Pvt Ltd. in which Shri Gopal Kumar Dokania and his wife were the only two directors.

All the three builders were known to have earned substantial cash over and above the consideration recorded in the regular books.

The firm M/s Balar Exports was known to have earned huge unaccounted income from its diamond business by inflating local purchases and labour expenses.

The investigation wing gathered information of their flourishing real estate business between 2005-2008 and found that Shri Dokania & Shri Kakadia had voluntarily submitted letters to the CIT concerned claiming to have earned some unaccounted income in the projects. The income so 'disclosed' was estimated by the Investigation Wing to be only about 2% of their actual unaccounted earnings.

In a small city like Surat, gathering specific information discreetly against the leading builders was a daunting task. They themselves kept close watch on movements of investigation wing officers. Several days of 'morning walks' to project sites and visit with family in disguise of a genuine buyer led to gathering of information about the extent of 'on- money' being collected. The DIT (Inv) received anonymous postal information cautioning about inquiries underway. Visit to office premises of M/s Balar Exports was difficult as CCTVs

were installed. Several problems were faced in the search covering 42 search warrants and 11 surveys. A survey had already been conducted by the AO before search at the business premises of Shri Jayprakash Aswani yielding disclosure of Rs 6.25 crore. Even though it was ensured a day prior to the search conducted on 14th Feb 2008 that the targeted parties were available in the city, Shri Dokania & Shri Aswani managed to abscond on the date of the search. Data stored in 6 computers at office premises of Shri Kakadia was also found deleted.

Despite these initial setbacks, substantial evidence of huge amounts of 'on money' received by Shri Dokania & Shri Kakadia in residential units being constructed by them was gathered. Entries in diaries and rough pads revealed the extent of 'on money' being charged. From residence of Shri Aswani, land documents were found in original which evidenced utilisation of 'on money' collected in acquiring of large plots of land in benami names.

The search resulted in seizure of unaccounted assets worth Rs. 2.36 crore and payment of taxes of Rs 24.61crore by 31st March 2008 on unaccounted income admitted at Rs 81 crore.

Names of officers	:	S.P. Pandey, DGIT (Inv), Ahmedabad
	:	B.N. Dutta, DIT(Inv), Surat
	:	U.B Mishra,Addl DIT (Inv), Surat
	:	P.V Muraleedharan, ADIT (Inv), Surat

CONCEALED INCOME EARNED BY GOVERNMENT SERVANT THROUGH ILLEGAL MEANS

Government servant amasses huge personal wealth - siphoning of government money in connivance with suppliers to the medical departments and the store keeper.

Dr Yogiraj Sharma during his posting as Director, Health & Family Welfare Dept, Bhopal, Govt of MP, had over a period of 7 to 8 years amassed huge wealth. The main suppliers to the said government department i.e Shri Ashok Nanda and Shri J. Sachdeva and the entry providers Shri Sunil Agarwal and Shri Rajesh Jain and a store keeper, Shri Basant Shelke were searched on 7th Sept 2007 and cash of Rs1.13 crore was found and seized besides some foreign currency. Cash was found in drawers, bathroom and even below the bed mattresses. The source of unaccounted money was commission and bribes given by various suppliers to the health department. The commission percentages were fixed and a select few suppliers were favoured.

Dr Sharma had built huge capital in two companies in the name of his wife and his son (who had just finished his education) by bringing in bogus share capital and share premium in their books. One entry provider, Shri Sunil Agarwal of Indore, accepted having provided entries after taking commission. The inquiries relating to introduction of bogus share capital had a cascading effect and revealed a chain of bogus concerns which were not doing any substantive business but were acting as source or conduit for providing entries. Inquiries have also revealed certain bank accounts of persons who are not in a position to explain the deposits.

Instances of Government funds routed into books of companies of DrY Sharma through the suppliers' accounts have been found. The unaccounted money earned by Dr Sharma and Shri Ashok Nanda, supplier, found its way to construction of a school named International Public School.

A core group of inspectors had been involved from pre search stage and in recce surveys. During the search operation, the premises were allotted to the same inspectors.

Extensive post search inquiries from banks, financial institutions, registrar of properties, postal dept, PSUs, and also at Kolkata, Indore and

Mumbai have revealed concealment of more than Rs 118 crore, though assessee had suo motu made disclosure of only Rs 10.04 crore and paid Rs 1.13 crore as tax.

Name of officers	:	M.K. Moghe, DGIT (Inv), Bhopal
	:	A.K. Singh, DIT(Inv), Bhopal
	:	Anup Kumar Dubey,Addl DIT (Inv), Bhopal
	:	Raj Kumar Ghosh DDIT (Inv) -1, Bhopal

CONCEALMENT OF INCOME BY SELLING UNACCOUNTED IRON ORE THROUGH SEVERAL ENTITIES

BCTT inquiries reveal fictitious addresses – surveys u/s 133A reveal 10 concerns at one premise – location of substantial unaccounted cash – survey converted to search – various trading concerns floated in names of family members relatives/employees - used for making substantial cash payments

BCTT inquiries in case of SV Logistics Group of Hospet (Karnataka) revealed that fictitious addresses were given to banks and some assessees were not traceable at the given addresses. Information regarding opening of bank accounts without proper introductions or without obtaining PAN etc led to conduct of survey u/s 133A at premises of one assessee M/s Balaji Minerals, who could be located only through local inquiries. The survey further revealed 10 concerns of the Logistics Group who were conducting business activities from the same premises. Unaccounted cash of Rs 49.30 lacs out of Rs 50.24 lacs found was seized.

The assessee group had floated many trading concerns including M/s Bharat Ores & Minerals whose given premises were searched. The main person in those concerns, Mr K Azghar Khan had floated 3 trading companies and 7 transport companies in the names of family members and employees who were mainly found to be dummies. The trading concerns claimed to be purchasing iron ore, but there was no evidence in its support. Neither any books of account were maintained nor any returns of income were filed for AY 2008-09. The concerns had maintained details of cash transactions under coded account showing cash payments of Rs 500 crore to various traders and mine owners for expenses apparently prohibited u/s 37(1) Explanation thereof. The names of parties were in encrypted form and apparently transactions were not recorded in the books of relevant third parties who have subsequently declared substantial additional income and paid taxes thereon.

Assessee declared undisclosed income of Rs 6 crore initially and another Rs 10.58 crore subsequently, making total admission of Rs 16.58 crore . Third party assessees also admitted undisclosed income of Rs 22.56 crore in post search investigations. Tax of Rs 2.41 crore was paid in Feb 2009

and another Rs. 3.3 crore by 30th March 2009.

Names of officers	:	K. Madhavan Nair, DGIT (Inv), Bangalore
	:	P.R. Dayal, DIT (Inv), Bangalore
	:	TSN Moorthy, Addl DIT (Inv), Belgaum
	:	B.Y. Chavan, DDIT(Inv), Belgaum

LARGE SCALE TAX EVASION BY EDUCATIONAL INSTITUTIONS

Educational Institutions claming exemption u/s 11,12 & 13 of IncomeTax Act, 1961 - activities found to be against the charitable objects of the trusts.

Searches and surveys conducted in the cases of more than eight educational institutions in July 2005 at Pune revealed large scale tax evasion by these institutions along with evidence of violation of provisions of sections 11,12 & 13 of the Income Tax Act, 1961 due to their involvement in activities which were against the charitable objects of the trust. These trusts accepted cash donations, collected capitation fees for admissions without issuing receipts, sold quota seats to the highest bidder, and collected excess fees over and above the amounts permitted by Shikshan Shulk Samiti. All collections were kept out of books and the illicit funds were diverted to investment in properties and acquisition of luxurious vehicles for personal use of trustees. Some of these institutions had not filed returns for three years. After detailed inquiries & investigations all these Trusts were assessed as normal AOPs and taxes of over Rs. 35 crore were collected from them.

Names of officers : S.K. Sharma, DGIT (Inv), Pune
: A. J. Khan, DIT(Inv.), Pune.
: Avdesh Mishra, Addl. DIT(Inv.), Pune.
: Hitendra B Ninawe, ADIT(Inv.)-2, Pune

SUPRESSION OF SALES BY HOTEL USING CUSTOMIZED BILLING SOFTWARE

"Restaurant Management System" software to decide the percentage of daily sales to be accounted and balance to remain hidden – mirror images of computer hard disks taken through forensic software "ENCASE" - hash value certificates obtained for evidentiary value in court of law

Search was mounted on 12th March 2008 in the Hotel Empire group of cases of Bangalore where pre search reconnaissance work revealed that in the business of running hotels, restaurants and lodging, computer generated bills were being returned to cashier. He was befriended over a period of time and this led to obtaining the contact number of the software person maintaining the software for the entire group of restaurants. The alibi of setting up a new chain of restaurants which required similar software package finally led to the information that the package installed at the Empire Hotel group was structured to suppress sales. The suppressed data would be periodically deleted. The officials of the Central Forensic Lab, Hyderabad were contacted and forensic experts from Mumbai were called. Twenty hard disks, having a capacity of 80 GB each, were kept ready to clone all the hard disks of the assessee group.

During the course of search, the technical person working with the group was interrogated. He revealed that the customized billing software, "Restaurant Management System", gave the assessee an option to decide the percentage of sales to be accounted. The assessee would make use of the option on a daily basis and account for only a certain percentage of sales while the rest would be hidden and later deleted.

During the course of search, mirror images of all computer hard disks found in all branches of the hotel were taken by using forensic software called "ENCASE". The hard disks carrying the mirror images were seized along with the hash value certificates.

Post search, the deleted sales data were retrieved from the mirror images by using forensic software. The modus operandi was established by collating the retrieved data and the suppressed sales and the concealed income

was quantified financial year wise. The assessee admitted a sum of Rs.10.57 crore as undisclosed income spread over a period of time, from assessment years 2005-2006 to 2008-2009 and paid Rs.3.50 crore as taxes. The modus operandi fully established that unaccounted income generated by suppressing the sales was being applied in construction of new hotels.

Names of the officers	:	B.R. Sudhakara, DGIT(Inv), Bangalore
	:	Abhay Kumar, DIT(Inv), Bangalore
	:	Dr. S.V.S.S. Prasad,Addl. DIT(Inv) Unit-I, Bangalore
	:	B. Jayaragavan, DDIT(Inv), Unit-I (2), Bangalore

Hash Values

Hash functions play an important role in secure cryptographic systems (see cryptography), where authentication is as important as hiding the data from third parties.

Hash algorithms are one-way mathematical algorithms that take an arbitrary length input and produce a fixed length output string. A hash value is a unique and extremely compact numerical representation of a piece of data. MD5 produces 128 bits for instance. It is computationally improbable to find two distinct inputs that hash to the same value (or ``collide''). Hash functions have some very useful applications. They allow a party to prove they know something without revealing what it is, and hence are seeing widespread use in password schemes. They can also be used in digital signatures and integrity protection.

BANK DEPOSITS IN FICTITIOUS NAMES REPRESENTING UNDISCLOSED INCOME

Irregularities in account opening forms and failure to follow the banking procedure — identification of bank deposits in fictitious names — foreclosure of the same

A search on 02.7.2005 in case of K Subramaniam of Tiruchengode led to enquiries being made with Tamil Nadu Mercantile bank about deposits in fictitious names said to have been made by that assessee. During the course of these inquiries, similar deposits made by other persons belonging to other nearby towns were also found. Failure to follow the procedure in accepting the deposits and irregularities in account opening forms were noticed. Further investigations with the alleged depositors resulted in their acceptance of having made deposits in fictitious names. Consequently the amounts were seized.

Foreclosure of fictitious deposits was objected to by the bank as being prohibited without production of original deposit receipts and specific requests for foreclosure of deposit. Nearly 7000 deposits were foreclosed after obtaining consent letters from 75 depositors in different branches of Tamil Nadu Mercantile bank and a total of Rs 27.12 crore was seized.

Names of officers	:	P.K. Sridharan, DGIT(Inv), Chennai
	:	A. Das, DIT(Inv), Chennai
	:	C.H. Omkareshwar, Addl DIT(Inv), Chennai
	:	M. Murugabhoopathy, ADIT(Inv), Chennai

DETECTION OF TAX EVASION IN MANUFACTURING OF SPONGE IRON

BCTT information leads to pre-search direct enquiries – suppression of quantity of iron ore excavated – under invoicing of sales, suppression of production and sales of sponge iron – Conduct of wide searches in 'NAXAL' affected areas of Jharkhand & biggest cash seizure in that area.

Information was received under BCTT which led to direct enquires being made about the activities of SAO Group of Chaibasa (Jharkhand) who were engaged in the mining of iron ore in the Keonghar district of Orissa, manufacturing of sponge iron in Rourkela, and in crushing of iron ore in factories located in other towns, besides trading of liquor in Jharkhand and Orissa.

Widespread searches were successfully conducted on 23.11.2007 in very remote areas of Jharkhand at Chaibasa, Hata, Jamshedpur (all in the 'NAXAL' affected belt), at Kolkata (West Bengal), and Joda in Rourkela (Orissa).

The cash seizure of the area was made at Rs. 1.87 crore. Incriminating hard disks/CPU were seized. Search and post search enquiries revealed that the group suppressed its production and turnover figures, received cash on sales over and above the sale prices recorded on sale bills and inflated its expenses to reduce actual profit. The unaccounted income was introduced as bogus capital.

Conclusive establishment of the above modus operendi, with supporting evidences has led the Group to disclose Rs. 27 crore as additional income, which is the highest disclosure made so far in the states of Bihar & Jharkhand. Complete taxes thereon at Rs. 9.87 crore stand paid upto 31st March, 2009.

Names of officers	:	Ajai Singh, DGIT(Inv), Patna
	:	S. D. Jha, DIT (Inv), Patna
	:	VismitaTej, Addl DIT (Inv), Patna
	:	S. K. Mishra, ADIT (Inv), Jamshedpur

EVASION OF TAX BY NOT DISCLOSING PERMANENT ESTABLISHMENT

The assessee has a fully owned subsidiary in Singapore, whose operations are handled by the assessee based at Mumbai –The Mumbai office has all the ingredients of PE within the meaning of DTAA.

Information was received in this case stating that M/s Tech Pacific India Ltd., Mumbai, had a wholly owned subsidiary by name M/s. Tech Pacific India (Exports) Pte. Ltd. registered in Singapore (TPIEPL). M/s TPIEPL was subsequently renamed as Ingram Micro India Exports Pvt. Ltd. (hereinafter referred to as IMIEPL) on takeover of Techpac group by Ingram Micro Inc, a US based global company.

Information was also received from the Directorate of Income tax (Inv.), New Delhi that during the course of the search in the case of one Shri S.K. Gupta, CA, it was found that he had issued bogus bills towards services to M/s. IMIEPL during the year relevant to A.Y.2007-08, on the basis of which inquiries in respect of IMIEPL were initiated.

Pre-search inquiries also revealed that M/s. IMIEPL / TPIEPL had its permanent establishment (PE) in Mumbai. The returns of income of this PE had not been filed, though the said PE had substantial income.

During the course of the search on 17.09.2007, it was found that there had been constant deliberations through e-mail between the Singapore entity and CEO of the Indian entity at Mumbai about the existence of the PE in India wherein revenue implications to the tune of USD 1.7 million were discussed. This fact was confirmed by employees and the CEO himself in their statements on oath during the course of the search and related survey actions. The computers / laptops / note books in which the emailed deliberations were downloaded were identified and cloned. All evidence pointed to the existence of a PE in India . The analysis of the documents seized established the fact that TPIEPL / IMIEPL did have PE within the meaning the Article 5(1) of DTAA with Singapore.

During the course of the search it was also found that both M/s. IMIEPL and M/s TPIEPL were in the process of being merged and were awaiting approval of

Karnataka High Court. No returns were filed by both the above companies after assessment year 2005-06 and it was found that even the accounts for the year ended 31.03.2006 was not complete, in spite of the fact that the turnover for the said year was more than Rs.5700 crore.

It was also found that the assessee had booked bogus expenses to the tune of more than Rs.8 crore in F.Y.2006-07.The digital evidence in respect of such bogus expenses were also found out in the form of email received from the personnel of Oracle India Ltd. which was confirmed by the assessee in his statement on oath. Since then, the assessee has paid the taxes due on such bogus expenses, although under protest.

The Annual Report for year 2004 of Ingram Micro Inc, the US based company, which was seized during the course of search revealed that the said company had acquired the outstanding shares of Tech Pacific, one of Asia-Pacific's largest technology distributors, for 730 million Australian Dollars (approximately USD 554 million at closing date). Payment was made in cash and on assumption of debt. TPIEPL also belonged to the Techpac group. The CEO of IMIEPL argued that as the transactions took place outside India, there was no accrual of capital gains in the hands ofTPIEPL / IMIEPL. However, in view of the Mumbai High Court's decision in the case of M/s. Vodafone Essar Ltd., the AO was of the view that long term Capital Gains accrued in this case during the A.Y.2005-06.This fact came to notice because of search action in this case.

Though the aggregate revenue of TPIEPL / IMIEPL Singapore was USD 5,656,180 (equivalent to approximately Rs. 25,45,28,100/-) the returns of income of the said PE were not filed from A.Y.2001-02.The assessment for A.Y. 2001-02 in the case of the PE M/s IMIEPL has been completed on a total income of Rs 427 crore against nil returned income.The tax effect in this case will be around 4 million USD by way of income tax, interest u/s.243A/ 234B and penalties for A.Y.2001-02 to 2007-08, besides the taxes on the bogus purchases.

Names of officers : S.S.N.Moorthy,DGIT(Inv.),Mumbai
T. K. Shah, DIT(Inv.)-I, Mumbai.
Dr. Ashwani Kumar Mahajan, Addl.DIT (Inv.)- VIII, Mumbai.
K.R. Iyengar, ADIT(Inv.), Unit-VIII (2), Mumbai.

CONCEALMENT OF INCOME BY MARBLE & GRANITE DEALERS

Gate passes of stock delivery containing instructions for dispatched goods to be either accounted or not accounted / sold in cash - Gate passes being periodically destroyed – Negative stock balance representing unaccounted purchases

M/s Marble Centre International Pvt. Ltd. group (MCIPL) of Bangalore along with its sister concern M/s RPG Pvt. Ltd. and M/s Hindustan Marble & Granite group (M/s HMG) were major players in the trade of marble & granite.

In case of MCIPL, the accountant of the business concern played crucial role in the day to day financial activities and his identity and residential address was revealed by a pan shop owner near the business premises of M/s MCIPL. Searches were conducted on 8th March 2007 in both the above groups. An amount of Rs.4.6 crore in cash was found and seized from the accountant of MCIPL. Rs 1.31 crore was seized from the residence of Managing Director of M/s HMG Group.

In the business premises of MCIPL, gate passes showing cash receipts on sales which were available only for 20 days were seized. Gate passes were being regularly destroyed by the assessee. The accountant marked the gate passes with codes 'A' or 'B'. In some gate passes "by cash" was clearly mentioned. A daily summary sheet was also recovered which revealed that the amounts under 'B' and 'By cash' would never get entered into the final books. On extrapolation of pattern for 20 days it was found that only 55% of the total receipts were being accounted. Detailed stock taking revealed excess stock of 3.06 lakhs sq.ft in M/s MCIPL (valued at Rs.4.12 crore) and 2.74 lakhs sq.ft. in M/s RPG Pvt. Ltd. (valued at Rs.1.4 crore).

M/s MICPL had purchased a listed company by name M/s Exim Finance Ltd. in which it had paid Rs.2.9 crore over and above the accounted consideration to the Directors of that company.

In M/s HMG, a negative cash balance of Rs 71 lacs besides a negative stock worth Rs 22.76 crore recorded in trial balance was found. These were the unaccounted purchases including cash purchases and the total suppression of income of Rs 9.9 crore was calculated which was admitted by the assessee. In its

100% export oriented unit, difference in stock between books and physical stock led to further declaration of Rs 45 lacs.

The searches resulted in a cash seizure of Rs.4.97 crore in MICPL and Rs 1.63 crore in case of HMG. The total disclosure of Rs.20.25 crore was made in the case of MICPL and of Rs 16.86 crore in case of HMG. An amount of Rs.4.99 crore in tax stands collected in MICPL and 1.58 crore in case of HMG.

Names of officers	:	B.R.Sudhakara, DGIT (Inv), Bangalore.
	:	Abhay Kumar, DIT (Inv), Bangalore
	:	Ajith Korde, Addl DIT (Inv) Unit II, Bangalore
	:	K Meghanath Chowhan, DDIT (Inv) Unit II (2),
	:	Bangalore

OPULENT LIFESTYLE OF DIRECTORS FUNDED BY UNDISCLOSED INCOME OF EXCAVATION, MINING & SUPPLY OF COAL

Inflation of 'Excavation & Transportation expenses' - accommodation entries by "Jamakharchi" companies –funds ploughed back as huge unsecured loans, application money with dummy companies of EMTA Group, land and property.

The Eastern Mineral Trading Agency (EMTA) group entities of Kolkata were engaged in excavation, mining and dispatch of coal and were the main contractors performing all job works relating to mining operations and dispatch of coal to the state electricity boards and power development corporations. They were also engaged in aviation and mining/export of granites.

Pre search inquiries confirmed that excavation and transportation expenses were being inflated on a huge scale through accommodation entries provided by "Jamakharchi" companies.

A survey conducted by assessment wing on one of these "Jamakharchi" companies established absence of any business activities. Case records of M/s EMTA revealed huge unsecured loans in the balance sheet, besides huge share application money received by some companies of EMTA group. It was understood that these companies were used to plough back the unaccounted money of the group into its regular books of account and that funds were being transferred to the said companies from related "Jamakharchi" companies of Kolkata in the form of share application money. Market sources further revealed huge unaccounted investment in land/property in Kolkata, Asansol and nearby areas and the opulent lifestyle of the promoters and directors of the group.

Search & survey were conducted on 15.01.2009 in which cash of Rs.1.02 crore and unaccounted jewellery of Rs. 4.54 crore were seized and all the modus operandi of concealment like inflation of expenses and ploughing back of this undisclosed income in the garb of share capital and unsecured loans besides unaccounted personal expenses and investment in jewellery were confirmed. The EMTA group made a voluntary disclosure of Rs. 80 crore and

are paying due taxes in monthly instalments of Rs. 5 crore each beginning March 2009.

Names of officers : M.C. Katheriya, DGIT (Inv), Kolkata
Ronmoy Das, D.I.T. (Inv.), Kolkata
J.K. Mishra, Addl. D.I.T.(Inv.), Unit-IV, Kolkata
Shallong Yaden, D.D.I.T.(Inv.), Unit-IV(2), Kolkata.

LEADING DOCTORS IN DIFFERENT SPECIALIZATION AREAS COVERED IN SEARCHES

At Nagpur, 9 doctors who were leading names in their areas of specialization and who were believed to be not maintaining prescribed books of accounts or disclosing correct incomes were searched simultaneously on 10th April 2008. Hospitals located in different hubs of city were covered. Primary records e.g. operation register, appointment register, consent form for surgery etc and other books of account revealed huge discrepancies. Cash seizure of Rs 2.5 crore was made and additional incomes offered at Rs 12 crore. Bogus purchases of plant and machinery were also noticed. The ripple effect was felt in that the number of medical practitioners filing returns between Rs. 5-10 lacs and above Rs. 10 lacs increased by 133% & 153% respectively.

Name of officers : Shailesh Thakur, ADIT (Inv). Nagpur
IRS Probationers of 60th Batch
V. Sreekar, Addl. DIT (Inv), Nagpur
K.V. Chowdary, DIT(Inv), Nagpur

TAX EVASION BY REAL ESTATE BROKER TURNED DEVELOPER

Unaccounted real estate transactions – BCTT inquiries - secret premises located by tracking assessees movements – books of account not maintained- significant papers seized resulting in consequential surveys

Local media advertisements & discreet information gathered revealed that one Shri G. Mohan, of Tirupur under DGIT (Inv) Chennai Region, who was earlier real estate broker in 1990 and had become developer in 2004, was currently very active in real estate transactions. He was earlier acting as commission agent and arranging transactions between the land owners and purchasers. Information was received that currently he was making direct purchases of land where substantial 'on money' was being received/paid as advance while the properties were being registered at much lower amounts. He was also having interest in petrol outlets, mini buses and plastic business.

Special mobile team was placed to track the assessee's movements and identify his secret locations where all important documents, power of attorneys or agreements were kept. A large number of agreement copies were thereby seized.

Though the assessee did not maintain books of account, the department made substantial efforts to computerize the physical data which was available in the form of various copies of purchase deeds, sale deeds, agreements and powers of attorney to find out year-wise investments / expenses.

The assessee surrendered Rs 7.7 crore as unaccounted income. Above data was then used to conduct further surveys and enquiries on purchasers or sellers or agreement holders etc resulting in admission of Rs.23.06 crore of additional unaccounted income. Taxes of Rs 3.68 crore have been paid upto date.

Names of officers	:	G. Muthuramakrishnan, DGIT (Inv), Chennai
	:	S. C. Kabra, DIT(Inv.), Chennai
	:	V. K. Pandey, DIT(Inv.), Chennai
	:	S. Jayaraman,Addl.DIT(Inv.), Coimbatore
	:	S. R. Karuppusamy,ADIT(Inv.), Coimbatore

BOGUS FREIGHT PAYMENTS BY COAL TRADERS

Trading of domestic and imported coal – transportation by a group concern –huge past liabilities of unpaid freight- no corroborative evidence.

The Bhatia International Ltd. group of Indore was engaged in trading of coal both domestic as well as imported. Transportation of the coal was done by a group concern called M/s Associated Transport Company, which was a proprietary concern of Shri Surender Singh Bhatia who was also one of the Directors of assessee company. The group had coal washeries in Maharashta, Chattisgarh & Orissa. The group was found to have claimed huge liabilities on account of unpaid freight payable to M/S Associated Transport Company for last 3-4 years. No details and supporting evidences regarding these transactions were available.

Search conducted on 25th Sept 2007 confirmed the bogus freight payments claimed by the group through Associated Transport Company.

Coordinated action was taken at Katni, Surat, Nagpur, Chennai, Chandrapur, Thane etc besides head quarters of the group at Indore. Proper coordination at search stage led to admission of concealed income of Rs. 16.15 crore which was increased to Rs. 26.15 crore as a consequence of post search inquiries. The assessee has paid tax amounting to Rs. 8.50 crore.

Names of officers : M.K. Moghe, DGIT (Inv) Bhopal
A.K. Singh, DIT(Inv), Bhopal
Hareshwar Sharma, Addl. DIT(Inv.), Indore
Akhilesh Bidalia, ADIT(Inv.), Unit-II, Indore.

TAX EVASION BY UNDERVALUATION OF IMMOVABLE PROPERTY AND UNACCOUNTED INVESTMENT IN PROPERTY

Assessee builder in Gurgaon – part of sale procceds in cash – information collected from ROC & FIU - substantial cash deposits in bank accounts controlled by key persons

The assessee M/s Spaze Towers Pvt Ltd. of Gurgaon (Haryana) was engaged in Real Estate Business and was known to be earning unaccounted income by accepting unaccounted cash from customers. Discreet inquiries made from FIU revealed substantial cash deposits made in bank accounts controlled by key persons of the group. Search was conducted on 29.04.2008 resulting in seizure of Rs 4.63 crore including cash seizure of Rs 4.43. crore.

Initially no information about lockers or cash was forthcoming but diligent work revealed two lockers and several secret places in the house where incriminating documents were found which contained recording of the unaccounted advances for purchase of land.

One document seized from residential premises of Shri Vipin Sharma & Shri Aman Sharma showed agreement to sell commercial land situated at Badshahpur, Gurgaon by M/s K.K. Designer Towers Pvt Ltd. to the assessee group for Rs 97.65 crore. An advance of Rs 15 crore was given of which Rs 8 crore paid in cash represented unaccounted income. The party M/s K.K. Designer Towers Pvt Ltd. had shown the entire amount as advance received in its books of account. Further the minutes of meeting of Board of Directors revealed that the project "Spaze Edge" was complete upto 60% and revenue realized was Rs 60 crore whereas as per the books of accounts, construction was shown as only 50% completed and revenue realized at Rs 50 crore only.

The assessee admitted undisclosed income of Rs 8 crore being the payment of advances in cash, and Rs 10 crore being undisclosed investment in construction activity for FY 2007-08. M/s Spaze Group made voluntary disclosure of total Rs 27 crore, the highest disclosure in NWR Region at that time.

Documents seized revealed that an independent builder M/s Vipul Ltd.

had constructed a commercial complex at Sohna Road, Gurgaon. Complete details of customers, brokers, and the cheque/cash payments received was recovered. One of the Directors of the assessee company was also broker of M/s Vipul Ltd. The information was passed on to DIT (Inv), New Delhi resulting in a survey which further led to disclosure of Rs 19 crore as unaccounted income.

Names of officers	:	Vinita Chopra, DGIT (Inv), Chandigarh M.P. Singh, DIT (Inv), Chandigarh AKTripathi , Addl DIT (Inv) Unit 1, Faridabad Munshiram, ADIT (Inv) Unit I, Gurgaon

LEADING ADVOCATES OF PUNE PRIVY TO UNACCOUNTED DEALS IN LAND TRANSACTIONS

MOUs entered between Land sellers and Builders kept in custody of Parwani Group – Cash component of transaction and dates of payment duly noted therein - post dated cheques kept as security for return on completion of deal

Mr Chandan Parwani, a leading advocate of Pune, had a very good reputation amongst prominent builders and land sellers of Pune. Information gathered revealed that Parwani group comprising of several leading advocates of Pune were privy to unaccounted dealings in transactions between land sellers and builders etc. Search conducted on 26th June 2007 resulted in seizure of undisclosed assets of Rs 6.19 crore.

The builders and land sellers, with active assistance and participation of these advocates in executing land transactions, involving substantial undisclosed amounts, executed MOUs wherein unaccounted cash component was mentioned along with its schedule of instalment payments. These MOUs were kept in custody of Shri Chandan Parwani till the deal was complete in all respects. As a security measure, until the entire cash payment was received by the seller, the buyer deposited post dated cheques with the Parwani Group. When the entire cash component was received, the post dated cheques were returned to the buyer and the MOUs was also returned / destroyed.

During the course of search, various sealed envelopes containing MsOU and post dated cheques were found revealing details of the deals.

Post search inquiries involving various transacting parties led to detection of undisclosed income of Rs 16.82 crore of which Rs 14.37 crore stands admitted. Tax payment of Rs 6.25 crore has been made by different parties.

Names of officers	:	V.K. Sridhar, DGIT (Inv), Pune
	:	S.K. Sahu, DIT(Inv), Pune
	:	Abhay Damle, Addl DIT(Inv)- Unit II, Pune
	:	H.B Ninawe, ADIT(Inv)- Unit II ,Pune

UNDISCLOSED PROFITS EARNED ON SALE OF OFFICE / RESIDENTIAL SPACE BY BUILDERS

Exclusive selling agent of builder – revenue sharing in bookings made above particular amounts - unaccounted cash receipts

M/s AMR Infrastructure Ltd. and M/s ARN Infrastructure India Pvt Ltd., leading real estate companies based in Delhi, which were developing IT Parks / Shopping Malls in NCR Region, were indulging in heavy advertising for booking of spaces in various real estate projects launched by them. Discreet enquiries carried out by assuming dummy identities revealed their readiness to accept 40% – 50% of total sales consideration in cash.

The group had adopted a unique modus operandi. One exclusive selling agent M/s Real Gain Estates Pvt Ltd. was engaged who would share the revenues generated with the searched assessee if the bookings were above a particular amount as also for underwriting the project.

Surveys at 6 premises, including two offices of M/s Real Gain Estates Pvt Ltd. were conducted on 20.11.2008. These surveys resulted in impounding of innumerable evidences indicating receipt of huge unaccounted cash. The accounts were yet not settled between the selling agent and the builders. Confronted with insurmountable evidences, the assessee accepted Rs.26 crore as additional undisclosed income which is one of the highest disclosures as a consequence of survey operation.

Till 31.3.2009, Rs.4.42 crore of tax has already been paid by the assessee.

Names of officers	:	Shri Milap Jain, DGIT (Inv) Delhi
	:	Shailendra Handa, DIT (Inv.) – I, Delhi
	:	Sudesh Garg,Addl. DIT (Inv.)Unit-I, Delhi
	:	Rajesh Kumar, DDIT (Inv.) Unit I (1) Delhi

FALSE CLAIMS U/S 35(2AB) AND MISUSE OF SECTION 80-IC

Pharmaceutical industry –false claim of weighted deduction u/s 35(2AB) – General testing and quality assurance / quality control set up passed as R&D set up –factory established in area covered u/s 80IC – income diverted to subsidiary for incorrect claim

The INTAS Pharmaceutical Group of Ahmedabad was engaged in manufacturing and sale of pharmaceuticals and export thereof. A subsidiary firm was started at Dehradun to take advantage of deduction u/s 80IC .

Search at 15 premises including factory premises at Ahmedabad and Dehradun were conducted on 23rd October 2007. Surveys were also conducted at Ahmedabad, Mumbai and Dehradun.

Search revealed that there was no R&D set up and general testing and quality assurance / quality control equipment was being passed as R&D setup. Expenses incurred on outsourcing were claimed under the same head. Mandatory procedural requirements of Sec 35(2AB) and Rule 6 were not adhered to.

There was diversion of income from main companies to the subsidiary firm at Dehradun enjoying ineligible tax exemption u/s 80IC.

The asseesee disclosed Rs 14.44 crore on account of weighted deduction u/s 35(2AB) and paid tax thereon of Rs. 3.48 crore approximately. Revenue implication relating to claim u/s 80IC is being examined by the assessment wing.

Names of officers	:	Ms.J.D. Sahay, DGIT (Inv), Ahmedabad.
	:	Mukesh Bhanti DIT(Inv), Ahmedabad
	:	B N Dutta, DIT(Inv), Ahmedabad
	:	S C Tiwari, Addl DIT(Inv), Unit II, Ahmedabad
	:	Vivek Sharma , ADIT (I nv), Unit-II(1) , Ahmedabad

UNACCOUNTED INCOME EARNED AS BENAMIDAR OF GOVT CHECKGATES & PARKING LOTS

Substantial undisclosed income converted into 'white' by showing Agricultural income in partnership firm – further invested in names of various concerns of family members / associates

One Shri Birendra Chowdhary of Guwahati was believed to have earned substantial unaccounted income as a 'benamidaar' lessee of Government check gates & parking lots. This income was not disclosed in the returns of income filed. Instead, the unaccounted amounts were routed through another firm M/s Phankanchow Society showing agricultural income of approximately Rs 3 crore in a year and in investments made in businesses of automobiles, contracts, brick industry and land properties etc in his name and in the names of different business allies, relatives and family members.

Search in the case was conducted in the remote areas of North East Region. Cash seizure of Rs 1.01 crore was made. The assessee made no disclosure during search. However, due to effective post search enquiries made the assessee finally disclosed income in the return filed u/s 153A of the I.T. Act and paid taxes of approximately Rs. 3.61 crore.

Names of officers	:	Rampriya Sharan, DGIT (Inv), Kolkata
	:	Bharti Mandal, DIT(Inv) NER, Guwahati
	:	RajuTayang, Addl.DIT(Inv),Guwahati
	:	T.H. Chakravorty, DDIT (Inv), Guwahati

UNACCOUNTED MONEY LENDING BUSINESS

Assessee engaged in money-lending business – survey resulted in detection of unaccounted promissory notes of Rs.4 crore and unexplained cash of Rs.21 lakhs. – assessee surrendered Rs.4.21 crore and paid tax

Shri Bihari Lal Kukreja and ShriVikas B. Kukreja are engaged in money lending business. Information was gathered with regard to the practices followed by them in their business. It was learnt from market sources that the assessees were engaged in money lending business in cash, charging huge rate of interest and not accounting for the same in the books of account. The AO conducted reconnaissance by posing as a potential borrower and contacted the assessees and ascertained the details. Once the modus operandi of the assessees was ascertained, it was decided to conduct a survey action in the above cases.

During the course of survey operation, unaccounted promissory notes worth Rs.4 crore were found relating to the current Financial Year 2008-09. The survey team worked hard in finding and recovering the unaccounted promissory notes as they were hidden and scattered at many places in the business premises of the assessee. Some of the promissory notes were even hidden in the secret drawers of the almirahs and in the tables. The survey team carried out the cumbersome exercise of matching each promissory note with the books of account.

The assessees were then confronted with the evidence. They were examined in detail and intensive interrogation on the evidences found was carried out. As a result of the sustained interrogation made and intelligent questioning, the assessees were left with no option but to admit that they carried on unaccounted money lending business. They declared total undisclosed income of Rs.4.21 crore. This included a sum of Rs.4 crore as unaccounted receivables for the F.Y. 2008-09 besides unexplained cash of Rs.21 lakhs found in the premises of the assessees which was not recorded in the books of account and for which no explanation was offered. Thus, a total undisclosed income of Rs.4.21 crore was detected during the course of survey u/s 133A, which the assessees accepted and declared as additional income. The

entire tax liability of Rs.1,38,60,000/- pertaining to the undisclosed income was recovered.

Names of officers	:	P.S. Chhina, CIT-IV, Bangalore
	:	Sant Saran Mantri, Addl.CIT Range-8, Bangalore
	:	P Ramachandra, ITO, Ward 8(2), Bangalore
	:	Gangashanaiah, ITO, Ward 8(3), Bangalore

NON-EXISTENT UNITS – FALSE CLAIM OF DEDUCTION U/S 80-IB

Deduction claimed u/s 80-IB on profits of non-existent industrial undertakings by showing nominal expansion of the already existing industrial undertaking – surveys carried out at multiple locations –forged audit reports in respect of all the three industrial undertakings - two units did not exist - claim of deduction disallowed.

The original manufacturing unit of the assessee, M/s FIL Industries Ltd., was set up at Jammu during the year 1993-94. After completion of 5 years, the assessee claimed to have set up another unit, namely Unit –II, during the year 1998-99. Again, after completion of 5 years of Unit-II, the assessee claimed to have set up Unit –III during the year 2003-04.

Simultaneous surveys were conducted at Srinagar, Jammu, Gurgaon and Delhi and the books of account were impounded. The premises of the Chartered Accountant firm M/s K.S. Agrawal & Co. who had purportedly prepared and signed the Audit Reports and reports in Form No.10CCB were also surveyed. It was established from the evidence gathered during the survey proceedings that the assessee had used manipulated, false and forged documents in order to falsely claim deduction u/s 80 - IA/IB in respect of Unit Nos. II & III, which were never set up as separate industrial undertakings but were only additions to and expansion of the already existing original unit.

During the survey proceedings, evidence was found to establish that the assessee submitted forged Audit Reports in order to make false/inadmissible claim of deduction u/s 80- IB of the Income Tax Act, 1961. Mr. K. S. Agarwal, partner of M/s. K. S. Agarwal & Co., aged 79 years, categorically stated that M/s. Agarwal & Co. had never audited the books of account of M/s FIL Industries Ltd. He denied having any knowledge of any of the directors of the company. He also denied to have signed the Audit Reports and reports in Form No. 10CCB filed by the assessee company along with the returns of income.

Names of officers : Virendra Singh, CIT, Jammu
Hemant J. Lal,Addl.CIT, Range-1, J&K,Jammu
Gulshan Raj,Addl.CIT, Range-3, J&K, Srinagar

TRANSFER OF PROFITS FROM ONE UNIT TO ANOTHER REVEALS FALSE CLAIM U/S 80-IC

Assessee group operating two units - one in tax exempt area and another in non-tax exempt area — modus operandi - to show high profits in the unit eligible for deduction u/s 80-IC by transferring profits of the unit located in non-exempt area - survey resulted in assessee accepting false claim

M/s. Synergy group is engaged in the manufacturing of telecommunication related equipment. The group was operating two units - one in tax exempt state of Himachal Pradesh under the name M/s. Synergy Telecommunication and a non-exempt unit at Mohali under the name M/s. Sigma Punch. The latter was supplying components to the former. M/s. Synergy Telecommunication is eligible for deduction u/s 80-IC. The main allegation against the group was that it was showing inflated profits in M/s. Synergy Telecommunications, which was enjoying exemption u/s 80-IC and was manipulating accounts by showing low profits in the unit located in non tax exempt area.

It was seen during the survey that there was a great difference in the profitability of the two companies. The group had shown very low profitability in the non tax exempt unit (G.P. Ratio: 6.34%) and very high profitability in the tax exempt unit (G.P. Ratio 55.16%). M/s. Synergy Telecommunications was receiving manufactured goods from M/s Sigma Punch and was selling these items to the Telecom Companies without any major value addition. The erection and installation of the shelters was being done by M/s. Moonlight Properties Pvt. Ltd. (a sister company with common directors).

The manufacturing processes of all the units of the group were mapped and analyzed stage wise. The production capacity of each unit and the number of employees engaged in different production processes were verified. Different firms and companies of the group were compared on different parameters like sales, number of employees, purchases, capital employed, profitability ratio etc. ABC analysis of the revenues and product mix of the group was carried out. The Managing Director of the group was confronted with the various documents impounded and the various discrepancies detected and as a result he

disclosed additional income of Rs.16.92 crore in A.Y. 2009-2010 with tax effect of Rs.5.75 crore. The disclosure in M/s. Sigma Punch was made on the issue that income will be transferred from M/s. Synergy Telecommunications to M/s. Sigma Punch by increasing the purchase price of incoming goods purchased from M/s. Sigma Punch w.e.f. 01.08.2008. By this mechanism a transfer of income of Rs.16.22 crore would take place from M/s. Synergy Telecommunication to M/s. Sigma Punch. The assessee also undertook that the increased GP of 14.7% for M/s. Sigma Punch would be adopted for future years also. Thus the department would get additional tax not only in this year but in future years also on a recurring basis.

Names of officers : Manjit Singh, JCIT, Range-VI, Mohali
Poonam Khaira Sidhu, Addl. CIT-R-IV, Mohali
Chetan P.S. Rao, DCIT, Circle-6(1),
Mohali Ashok Gupta, ITO, Ward-4(2),
Chandigarh

INCORRECT CLAIM OF DEDUCTION U/S 80-IB (10)

Developing & building flats - deduction u/s 80-(IB) claimed - survey u/s 133A revealed sale of large plots of land with small construction of 30 sq. mt. only - some plots without any construction and other plots with huge bungalows found - claim u/s 80-IB(10) not admissible - additional income of Rs. 16.01 crore admitted.

The assessee M/s. Vyom Developers, Ahmedabad is a builder and developer of real estate. The assessee had claimed deduction u/s 80-IB (10) of the Act. In a discreet enquiry it was found that the assessee was constructing very small structures admeasuring approx. 30 sq. mtrs. on very large plots of land ranging from 750 sq. yds. to 3500 sq. yds. It was also found that basically the assessee was selling large plots of land after constructing a small structure thereon. In this way, the assessee claimed deduction u/s.80-IB(10) on the profits of the entire so-called residential projects.

A survey action u/s. 133A was conducted and it was found that the assessee was engaged in development of Vraj Garden scheme, which was launched in the year 2005. In it there were about 438 plots ranging from 750 sq. yds. to 3500 sq. yds. on which constructions of 30 sq. mtrs. only were made. It was also found that in 14 plots, huge bungalows were constructed. On measurement of the built up area of these fully constructed bungalows with the help of District Valuation Officer, it was found that the built up area of the two bungalows was 1570.10 sq. ft. and 1524.43 sq. ft. No construction at all was found made in 9 plots. Further, it was found that none of the so-called dwelling units (units of 30 sq. mtrs.) were occupied by the members of the scheme. The assessee's claim u/s. 80-IB(10), therefore, was not correct because the conditions laid down therein were not satisfied. As a result of survey action, the assessee admitted additional income of Rs. 16 crore.

Names of officers	:	SamirTekriwal, JCIT, Range - 9, Ahmedabad
	:	M. J. Paul, DCIT
	:	T. Satyanandam, ACIT D. C. Gehlot, ITO
	:	RishirajYadav, ITO Pradeep Kumar, ITO

INFLATION OF EXPENSES IN MANUFACTURE AND ERECTION OF TRANSMISSION TOWERS

Business of erection of transmission towers for cellular industry - business all over the country - some works sub- contracted - payment by cheques - TDS effected substantial outstanding amounts - survey conducted - impounded documents verified- assessee surrendered Rs. 15 crore for two years

Axis Engineers, Hyderabad is a partnership firm engaged in the business of fabrication and erection of transmission towers. The towers are fabricated at Hyderabad and sent in completely knocked down condition to the work sites, where the towers are to be erected in various places across the country. The towers are assembled and the erection and civil works are carried out at the designated sites. The assembly and erection works include civil works such as preparing the foundation for the towers, building the DG set room, painting of the towers, etc. The assessee sub-contracted assembly and erection works to the local persons / contractors.

Although the cellular industry was in a boom over the preceding three years and the assessee's turnover increased, its profit did not register commensurate growth. The AO was of the view that the assessee had inflated the expenditure.

The survey conducted on 30-10-2008 revealed that the assessee deducted tax at source on the works entrusted to the sub-contractors. It was also noticed that as at 31-03-2008, an amount of Rs.38 crore was shown as outstanding from sundry debtors, an amount of Rs.18 crore was shown as payable in respect of purchase of steel and an amount of Rs.10.77 crore was shown as outstanding towards erection and civil works. The creditors were spread across the country and the amount payable to each of them was of the order of Rs.20 to Rs.40 lakhs. Only some nominal amounts were shown as paid up to the date of survey.

The AO examined the purchase invoices and the documents relating to sub contract payments. Several suspicious features like non existent telephone numbers on some of the invoices and shabby preparation of the invoices coupled with the fact that the payments were not cleared for a period exceeding

60 months made the AO suspect the genuineness of the transactions. The AO, therefore, impounded the invoices and the documents for further verification.

Initial verification of purchases of steel did not reveal any discrepancies in as much as the payments were made by cheques. Even in respect of the sub contract payments, it was prima facie found that the amounts were paid through cheques, TDS was effected and a majority of the sub-contractors were assessed to tax. The assessee also filed letters of confirmation from the sub-contractors.

The AO suspected the genuineness of the sundry creditors under the head 'reworks' and he made efforts to locate some of the parties. He also made a further analysis of the impounded documents which showed that the assessee had booked similar expenditure on erection of towers for the earlier year as well. He noticed that the total expenditure under the head was about Rs.15 crore. Even though the assessee claimed that the payments were through cheques and TDS was effected on these payments, the AO still was certain that the expenditure was inflated and, therefore, he conducted enquiries to ascertain the genuineness of the transactions. At this stage, the assessee surrendered additional income of Rs.9 crore and Rs.6 crore respectively for the Assessment Years 2007-08 and 2008-09 and paid tax thereon.

Names of officers	:	A. Bhaskar Reddy, CIT-V, Hyderabad
	:	G.T. Venketeshwar Rao, Addl. CIT, Range-
	:	11, Hyderabad
	:	R. Devendranath Reddy, ITOWard, Hyderabad

DUPLICATE SET OF BOOKS OF ACCOUNT FOUND IN JEWELLERY BUSINESS

Prominent jewellers of Jaipur - business outside regular books - survey conducted- duplicate sets of books of account found - amounts written in code language - code deciphered-original balance sheet found in survey - difference admitted as income

Bansidhar Agarwal, Prop.M/s Agarwal & Company, Jaipur carries on the manufacture and trading of gold and diamond jewellery. The assessee's return for the AssessmentYear 2008-09 filed on 21/08/2008 showed net profit of Rs.9.67 lakhs on sales of Rs.5.64 crore. The closing stock was shown at Rs.2.24 crore and the capital shown was just Rs.41.40 lakhs. Discrete inquiries revealed that the assessee commanded a very good reputation in the market and his turnover should have been much more. It was also seen that the assessee was constructing a house in a very posh colony and this would not be possible with the small capital shown in the books. Thus, it was evident that the statement of affairs reflected in the return was not commensurate with the actual state of affairs.

A survey was conducted on 12/09/2008. The survey team found that the assessee maintained duplicate set of books for his unaccounted business. These books recorded actual transactions of the business whereas in the regular books only a part of these transactions found place. The unaccounted profits earned had been invested in unaccounted stock of jewellery, construction of house, investment in plots of land and cash loan (on Hundi), etc. In the duplicate set of books, the assessee accounted for the transactions in coded figures. He recorded figures at 1/100th of the actual value. For example, Rs.5,00,000 was recorded as 5000)00. The assessee summarized the statement of affairs in the form of a balance sheet at the end of the year i.e. 31.3.2008 on the basis of the transactions recorded in the duplicate set of books. This balance sheet was different from the balance sheet which the assessee prepared on the basis of regular books of account maintained for the purpose of income tax.

On being confronted with the transactions recorded in the duplicate set of books, the assessee admitted certain discrepancies in the investment in

purchase of plot, construction of the house, unaccounted cash loans and unaccounted stock aggregating to a sum of Rs. 2.94 crore.

It was noticed that page 1 of annexure A-24 of the impounded document was the balance sheet of the assessee as on 31.03.2008. The total of assets/ liability of this balance sheet was Rs.12,58,33,456/- whereas the total of assets/ liability of the balance sheet as per the regular books of account amounted to Rs.3,09,73,279/-. The assessee admitted that the difference of Rs.9,48,60,186/- represented his unaccounted income and filed a revised return for the AssessmentYear 2008-09 disclosing the difference as additional income and paid tax of Rs.3.54 crore.

Further, in the duplicate set of books, the actual sales of the assessee for the accounting year 2008-09 up to the date of survey were about Rs.21 crore whereas in the regular books of account, the assessee has shown sales of Rs.1.84 crore only.

The assessee agreed to account for the profits earned on these unaccounted sales and paid advance tax of Rs.42 lakhs.

The efforts made during post survey proceedings yielded undisclosed income of Rs.9.38 crore as against Rs.75.22 lakh offered during the survey.

The survey in the case led to detection of undisclosed income aggregating to Rs.12.88 crore for two years.

Names of officers	:	Rajesh Gupta, ITO,Ward-1(1), Jaipur
	:	Sardar Singh Meena,Addl. CIT, Range 1, Jaipur
	:	Ram Krishna Gupta, CIT-1, Jaipur

DUPLICATE SET OF BOOKS OF ACCOUNT FOUND IN RETAIL JEWELLERY BUSINESS

Leading jewellers of Jaipur - business outside regular books - survey conducted duplicate sets of books of account - amounts written in code language and dated 20 years back deciphered - unaccounted income admitted

M/s Garg Jewellers and M/s Royal Jewellers, Jaipur, both related concerns are in the business of retail sale of gold and silver jewellery. Market enquiries showed that a major part of the actual transactions / sales of these concerns were not routed through the regular books of account and that the profit so earned outside the books was invested in unaccounted stock of jewellery, real estate, land and property.

In the course of survey conducted on 21-1-2008, it was found that the assessee maintained duplicate set of books of account in coded figures, i.e. recording the transactions at 1/100th of the actual amount. The assessee also followed a unique modus operandi to conceal these transactions by dating them 20 years back i.e. the transactions which were made during the financial year 2006-07 are written as those of the year 1986-87. This unique modus operandi of the assessee was exposed during the survey as the assessee also wrote bank transactions by back dating them in these duplicate set of accounts.

The duplicate set of books of account contained unaccounted business transactions of the assessee group relating to its jewellery business, investment in land and money lending business. The stock of about Rs. 3.94 crore in M/s Royal Jewellers and Rs. 4.01 crore in M/s Garg Jewellers, besides cash found during survey were also not verifiable as the assessees had not maintained the regular books for the current accounting year. In the statement, he admitted maintenance of duplicate set of books of account and admitted that the transactions recorded therein were unaccounted.

In post survey proceedings, the books and documents impounded were verified thoroughly. The assessee was called and made to understand that the transactions recorded in the duplicate set of books were unaccounted and that the stock and cash found during the survey were also not verifiable and thus they represented his unaccounted income. Thereafter, the assessee admitted

and offered undisclosed income of Rs.12.07 crore.

The returns for the Assessment Year 2008-09 have been filed by M/s Royal Jewellers and M/s Garg Jewellers declaring income of Rs.5.01 crore and Rs.3.25 crore and taxes of Rs.1.77 crore and Rs. 1.12 crore respectively have been paid. On the basis of the unaccounted transactions relating to the earlier years found recorded in the duplicate set of books, the AO has reopened the assessments for earlier years i.e. A.Y.s 2004-05, 2005-06, 2006-07 and 2007-08.

Names of officers	:	Sunil Verma, CIT-1, Jaipur
	:	Sardar Singh Meena, Addl. CIT Range 1, Jaipur
	:	P.C. Sharma, Dy. CIT, Circle-1, Jaipur

SUPPRESSION OF PRODUCTION AND UNACCOUNTED SALE OF SUGAR & BY-PRODUCTS

Sugar manufacturer - pre-survey enquiries revealed suppression of production of sugar and by-products - survey conducted - suppression admitted - returns filed and tax paid

M/s Kareli Sugar Mills Pvt. Ltd., Kareli, Narshingpur (M.P.) is engaged in the business of manufacture of sugar from sugarcane. In the returns filed, it accounted for sale of sugar and molasses.

During the crushing season 2006-07, there was a bumper harvest of sugarcane in Narsinghpur District, and there were long queues of tractor-trollies, bullock-carts and trucks loaded with raw sugarcane outside the gate of M/s Kareli Sugar Mills Pvt. Ltd. Informal enquiries with the farmers and transporters outside the factory gates indicated that the company was making heavy unaccounted sales of sugar. The assessee was manufacturing sugar and molasses as well as by-products such as bagassee and press mud. The assessee converted bagassee into compressed blocks which were sold. It converted press mud into organic manure and sold the same under brand name 'Krishna' organic manure.

Perusal of the IT records showed sale of sugar and molasses but not of bagassee and organic manure.

The Addl.CIT entered the factory *incognito* and gathered first hand information about the assessee's unaccounted production, stock and sales.

Survey was conducted on 28-2-2007 in the factory and office premises of the assessee. Meticulous stock taking was done. Physical stock of sugar found was 19,971 quintals as against stock shown at only 11,112 quintals in the books. There also was excess stock of baggasse. Several incriminating documents showing unaccounted production and sale of sugar, sales of organic manure and scrap were found and impounded.

When the director of the company was confronted with the aforesaid documents and evidences, the company disclosed an aggregate amount of Rs.3.1 crore towards suppression of sale of sugar, baggasse, press mud, organic manure and unaccounted stock. Thereafter, the assessee filed the return of

income for the Assessment Year 2007-08 disclosing income of Rs.4.09 crore including the surrendered income of Rs.3.10 crore and paid tax thereon.

Names of officers	:	Shashi Saklani, ACIT, Circle - 1(1), Jabalpur Jayant Misra, Addl.CIT, Range-1, Jabalpur S.K. Chattopadhyay, CIT-1, Jabalpur

SURVEY AND POST SURVEY ENQUIRY REVEALS STARTLING MALPRACTICES CARRIED ON BY MNEs FOR TAX AVOIDANCE

International Tax survey unearths 'Permanent Establishment' camouflaged as 'Liasion Office' - existence of dependant agent brought to light - profits attributed to PE & dependant agent services brought into tax net

The Taxpayer M/s GE Nuovo Pignone SPA is a GE Group Company and is a tax resident of Italy. It is engaged in the business of Oil & Gas. In the return of income, the assessee had shown an income of Rs. 8.79 crore as fee for technical services from Arvind Mills Ltd. (AML) and HPL Cogeneration Ltd. (HPLCL). No income was shown from sale of equipments and parts. The assessee had claimed benefit under the Double Taxation Avoidance Convention between India and Italy on account of reimbursement of expenses received by AML and HPLCL.

A survey u/s 133A of the I.T. Act, 1961 was carried out at the office premises of General Electric International Operation Inc., India Liaison Office(GEIOC), at New Delhi on 02.03.2007. The GE Group was making equipment supplies to the customers in India. Such supplies relate to oil & gas business, energy business, transportation business and aviation business. Various companies of the Group incorporated in United Kingdom, Japan, USA, Germany, Canada, Italy, Malaysia, Singapore etc. have made the supplies of equipments/ spare parts to customers in India. On the basis of information, so gathered, detailed reasons to believe that income has escaped assessment in various years in the cases of various GE Group Entities were recorded and cases of these entities for all six years were reopened u/s 147 of the I.T. Act, 1961. The case of the GE Nuovo Pignone SPA for AY 2001-02 was one of the above cases.

After the analysis of documents gathered during the survey action and as a result of post survey enquiry, it was confirmed that the expatriates were working as heads of various GE businesses in India through liaison office of the group company. Similarly, Indian company, which was providing marketing and support services, had far exceeded the scope of services provided in the agreement, for which it was being remunerated. The existence of fixed place

permanent establishment and of agent, other than agent of independent status could only be found out due to physical verification due to survey action.

In the assessment order, it was held that the assessee had business connection as well as permanent establishment in India and profit attributable to it were taxed accordingly. It was also held that the assessee was rendering services to the Indian customers and the same was to be taxed as Fee for Technical Serivces under Section-115A of the Act. Amount received as re-imbursement of expenses was also taxed as fee for technical services.

A demand of Rs. 17.58- crore was raised for all six years, of which 50% i.e. Rs. 12.29 crore has been deposited. On the basis of survey documents, cases of various GE Group Entities for all six years depending upon the facts of the case were re-opened and assessed. A total demand of Rs. 102.18 crore including demand in the case of M/s GE Nuovo Pignone SPA was raised and the taxpayer has deposited Rs. 53.90 crore up to date.

Names of officers	:	S.K. Mishra, DIT(Intl.Taxation)- I, New Delhi
	:	Sanjeev Sharma Addl. DIT, Range-1 (Intl. Taxation), New Delhi
	:	Smt. Nishta Tiwari, ADIT Circle 1(2), New Delhi

INVESTIGATIONS INTO FROZEN DEMAT ACCOUNTS AND OFF MARKET TRANSACTIONS

In June 2007, SEBI had made quoting of PAN mandatory for trading in the stock market through DEMAT accounts. The National Securities Depository Limited and Central Depository Services (India) Limited, India's two top depositories for securities, had frozen more than 27.5 lakh DEMAT accounts by June 2007 due to non-submission of PAN.

A Special Cell created under DGIT (Inv), Delhi undertook a project relating to mining of Databases of frozen DEMAT accounts. The DEMAT investigations were extended to:

- Identification of possible benami accounts and unexplained investments made therein
- Detection of cases of possible evasion of Capital Gains tax by way of off market transactions as these transactions were liable to Capital Gain tax in the absence of payment of security transaction tax

Considering the volume of the Data, only those accounts having balances of share value worth more than Rs. 10 lakh or off market transactions in excess of Rs. 1 crore were taken up. Through a process of detailed data mining, it was determined that the total balance in these accounts was around Rs. 6,709 crore (in 6385 accounts as on Dec 2008).

Preliminary investigations have revealed the following:

- 71 parties whose accounts with NSDL stand frozen had transferred shares worth approximately Rs.736.18 crore through off market transactions during the last six months preceding the freezing of the accounts
- Large scale unauthorized investments in these accounts belonging to Non-residents individuals/ companies/Institutions, which were not registered either as FII or sub accounts with SEBI. (Sandvik Finance B.V. having shares worth Rs. 75 crore is one such entity)
- A large number of Overseas Corporate Bodies (OCBs) comprise the list of frozen Demat accounts. (Indus Capital Group (Rs. 19.53 crore) and Pythian Investments (Rs. 11.13 crore)

- Shares in these frozen had been pledged for the benefit of Indian residents / entities. It is suspected that either consideration had changed hands overseas or these overseas entities were used to round trip unaccounted funds
- A large number of entities belonging to scam cases such as DSQ group, Green Field Investments, also formed part of these Non-Resident Entities.
- Shares in frozen demat accounts had been pledged to Indian Banks in favour of third parties both by Residents and by non Resident entities
- Instances of genuine account holders who possess PAN but did not claim these Demat accounts as having been opened / operated by them.
- Instances of accounts in the names of non-existent parties.

The details of the Demat accounts have been sorted out CCIT region wise and been sent to the respective CCsIT. Detailed reports on the results of investigations awaited.

Names of officers : Milap Jain, DGIT (Inv), New Delhi
Ashish Abrol, JDIT (Inv) Special Cell

MISCELLANEOUS ORDERS

MISCELLANEOUS ORDERS

REJECTION OF APPLICATION FOR CONTINUANCE OF APPROVAL U/S. 80G

Trust applied for renewal of approval u/s 80G - CIT examined the request - accounts not audited - false audit reports - request for approval refused - High Court dismissed assessee's writ petition

Bangalore Educational Trust was registered u/s. 12AA and was approved u/s. 80-G. It applied for continuance of approval u/s. 80-G. It runs an engineering college and other educational institutions.

During the course of hearing, the CIT noticed that an amount of Rs.2 lakhs was shown as due from another trust of the same group. Verification of the other trust's records available in the office revealed that the other trust was showing the assessee as a debtor. Thus, there was a mismatch between the accounts of the two trusts. The books of account were summoned and examined. It prima facie appeared that the books were not maintained in the regular course. It also appeared that they were not audited as no marks of audit were found. The C.A. who gave the certificate of audit was summoned and his statement was recorded. After initial denial, the C.A. confessed that he did not conduct any audit of the books of account of trust and that on the request of one of his colleagues who was associated with the trust, he had issued certificates of audit in respect of the accounts of the assessee trust.

Based on the inconsistency between the trust's books of account and the fact that the books of account were in fact not audited and false certificates of audit were produced and on noticing that substantial advances were made to various persons whose details the trust could not produce at all, the CIT held that the funds of the trust were being diverted for other purposes, that the activities of the trust could not be said to be charitable and that its accounts were not reliable. The CIT, therefore, rejected the assessee's application for continuance of approval under sec. 80G. The professional misconduct of the C.A. was reported to the ICAI for appropriate disciplinary action.

On a writ petition filed by the trust against the decision of the CIT, the Karnataka High Court upheld the order of the DIT (Exemption) and dismissed the assessee's writ petition. The High court directed that a copy of the order of

DIT(Exemption) along with a copy of the order of the High court be sent to the ICAI for its information and necessary action. The case is reported in 267 ITR 549 (Kar).

Name of the CIT : K.V.Chowdary, DIT (Exemption), Bangalore.

DETECTION OF NON-GENUINE ACTIVITIES OF EDUCATIONAL SOCIETY LEADING TO DENIAL OF EXEMPTION AND CANCELLATION OF REGISTRATION

M/s All India J.D. Educational Society filed an application in Form No. 56D seeking notification u/s 10 (23C)(vi). On the basis of detailed examination of the books of accounts, DGIT (E), Delhi concluded that the books of accounts of the assessee were heavily doctored to siphon off the money of the society. Accordingly, he concluded that the income of the applicant society was not applied wholly and exclusively to the objects for which it was set up and refused to grant notification u/s 10 (23C) for the assessment year 2007-08 vide his order dated 28.11.2008.

The case of the assessee for the assessment year 2006-07 was under scrutiny. During the investigations, the AO found that corpus donation to the extent of Rs. 75,05,000/- was in fact unaccounted income brought into the books in the garb of corpus donation. Two major accounts relating to construction and hostel expense involving a sum of Rs. 85,25,300/- was totally unverifiable in the absence of bills or vouchers or any detail about the recipients of theses payments. The AO accordingly concluded that these two payments were not application of income to the charitable purpose but in fact manipulated accounts meant for inflating expenses for siphoning of funds. An assessment was made at a total income of Rs. Rs. 1.38 crore after refusing to allow exemption of income u/s 11 of the Act vide order dated 31.12.2008. The status of the assessee was changed to AOP. A proposal for cancellation of registration u/s 12A was also sent to the CIT by the AO.

Based on the order of the DGIT (E) and the proposal of the AO seeking cancellation of registration u/s 12A, the DIT (E), Delhi issued notice u/s 12AA (3) requiring the assessee to explain why the registration granted u/s 12A should not be cancelled. The assessee could not produce any additional evidence to rebut the findings recorded in the order of DGIT (E) or in the assessment order of AY 2006-07 passed by the AO. DIT(E) recorded a finding that the funds of the assessee society were being siphoned off and not being applied to the objects for which the society was established. It was held that the activities of the assessee were not genuine and were not being carried on in accordance with the objects. Registration granted was therefore cancelled w.e.f. AY 2004-05 onwards u/s 12AA (3).

TRANSFER OF PROFITS TO NON-EXISTING NEW UNITS - DEDUCTION U/S 80-IB WITHDRAWN

Transfer of profits from taxable entity to non existing new units - claim of deduction u/s 80-IB in respect of two units - units closed in quick succession - notice u/s 263 - CIT held deduction u/s 80-IB not allowable

M/s Green World Corporation, a firm of husband and wife, had an old trading business at Delhi with substantial turnover but declaring net profit thereon only at the rate of about 1%. Lured by the deductions available u/s 80-IB for industries set up in the State of Himachal Pradesh, the assessee opened a small unit with plant & machinery of less than Rs.3,00,000 in value. The assessee declared huge profits year after year in the new unit and claimed the profit as eligible for deduction u/s 80-IB. Whenever the department began an inquiry into the genuineness of the unit or the income derived therefrom, the assessee would promptly declare the unit as closed to avoid any further inquisition into its affairs. It was also noticed that the expenses on account of electricity, salary & wages etc. which are absolutely essential for a manufacturing unit were extremely minimal. These expenses were insufficient even to account for the consumption of electricity of ordinary non-manufacturing functions, such as lights, fans, computers, etc. The assessee would not allow any unit to last for more than 5 years as in that case it would have to pay tax on 75% of the net profit.

The assessee firm had claimed 100% deduction u/s 80-IB for two industrial units. Unit 1 was claimed as producing fax paper rolls and exercise books. The A.Y. 2000-01, which was under consideration, was the 5th and last year for 100% deduction u/s 80-IB. The assessee had shown heavy profit of Rs.56,60,307 on declared sales of Rs.88,55,592 from this unit during the first five months of the accounting period, i.e. from 1.4.1999 to 31.8.1999, and the assessee claimed to have suddenly closed this unit in September, 1999. In this unit, against the declared sales of Rs.88,55,592, the cost of raw material consumed was Rs.21,29,372 only which worked out to about 25% of the sales and the total manufacturing expenses were at Rs.1,52,424. Net profit was Rs.56,60,307, which worked out to as much as 65% of the sales.

In respect of unit 2 also, the situation was similar. It was claimed that paper-pads were made in that unit from already manufactured paper sheets/ rolls purchased from the market. On sales of Rs.63,13,923 of this unit, the assessee admitted net profit of Rs.18,09,007, which worked out to a profit rate of 29%. Electricity expenses were a meagre Rs.12,906 and salary and wages were Rs. 2,77,346 only. This unit which had started its production in March, 1998 was also closed during the period relevant to the A.Y. 2000-01. When both the units were doing well, the assessee abruptly closed down just so that no one would even consider inquiring into the state of affairs of the units.

The CIT issued notice u/s 263. In the course of inquiry u/s 263, the CIT noticed that the profits declared by the assessee firm were much higher than the normal profits and the AO had failed to invoke the provisions of sub-sections (8) and (10) of section 80-IA r.w.s.80-IB(13). Further, the AO allowed heavy deductions u/s 80-IB even when the assessee did not fulfill many of the conditions such as -

i) Non-employment of 10/20 persons in the manufacturing process.

ii) Manufacturing process being carried without the aid of power.

iii) Non-fulfillment of condition regarding new Plant & Machinery.

The CIT, therefore, held that the huge amount of otherwise taxable income had been wrongly allowed as deduction u/s 80-IB without proper verification, resulting in a substantial loss of revenue. In the order u/s 263, the CIT withdrew deduction u/s 80-IB.

Eventually, the action of the CIT u/s 263 was upheld by the High Court (285 ITR 118)

The AO has since withdrawn similar deduction allowed in the assessments of the preceding years.

Name of the CIT : A.K.Manchanda, CIT, Shimla

NO NEW UNIT IN BACKWARD DISTRICT - CLAIM OF DEDUCTION U/S 80-IB(4) PROVED BOGUS

Assessee claimed to have established a new unit in a backward district - claimed huge profits as exempt - notice u/s 263 - survey and enquiries showed no new unit in backward district - assessee withdrew the claim of deduction - CIT set aside the assessment

The assessee, M/s Plasti Surge Industries Pvt.Ltd., Amravati, is involved in manufacture of surgical instruments such as hand gloves, head cap, chappals, masks etc., which form part of surgical kit. It claimed benefit u/s 80-IB for the 9th year on its Amravati unit. It claimed to have statrted a new unit at Thapoda, a backward district, and claimed deduction u/s 80-IB on the profits of the unit.

Receipt Audit pointed out that deduction u/s 80-IB was allowed on production of a single Form No.10CCB instead of obtaining two separate Forms for two eligible units, i.e., Thapoda and Amravati units. Proceedings u/s 263 were initiated to deal with the revenue audit objection.

For the A.Y. 2005-06, the assessee claimed deduction u/s 80-IB to the extent of Rs. 1.46 crore on both units. The assessee claimed that Thapoda unit was set up prior to 31.03.2004 relevant to the A.Y.2004-05 and hence it was eligible for this incentive. The incentive of 100% deduction is admissible u/s 80-IB(4) in respect of units set up in a backward district on or before 31-03-2004. The assessee intelligently disclosed loss of Rs. 1.74 lakhs on Thapoda unit in the earlier year, on a meagre sale of Rs.8,000. During the course of the proceedings u/s 263 for the A.Y.2005-06, thorough investigations including surveys were conducted which brought to light the modus operandi of the assessee in evading tax. By disclosing meagre sales and resultant loss for the year ending on 31-03-2004, the assessee avoided investigation into the issue of setting up of the new unit. Consolidated Form No.10CCB was filed disclosing profit. Once the claim of setting up of new unit was accepted for the earlier year, it sought to claim huge tax benefit for the subsequent years in respect of the new unit.

The investigations and survey conducted established that no machinery

was transported to the so-called new unit prior to 31.3.2004. Even the raw material was not transported to the new factory. The diesel bill was proved to be non-genuine. There was no employment of labour for production. It was detected that there was no claim of depreciation on the usage of new machinery in the earlier year. During the entire financial year, the consumption of raw material and diesel was so low in the new unit that it could never have resulted in such a huge production that the assessee claimed. When confronted with all these evidences, the assessee surrendered and withdrew its claim of deduction u/s 80-IB(4) to the extent of Rs.1.36 crore for the A.Y. 2005-06. In other words, the assessee admitted that the new unit in Thapoda did not come into being on or before 1-4-2004. This disentitled the assessee to the incentive u/s 80-IB(4) not only for the A.Y.2005-06 but also for the succeeding 8 years during which the assessee would have claimed the deduction otherwise.

The revisionary proceedings u/s 263 led to unearthing of several other incomes that had escaped assessment. The assessee had availed the incentive under the sales tax department scheme of the State Government. The assessee did not admit sales tax collected as receipt. Instead, it credited sales tax to a separate account known as sales tax account. Nevertheless, provisions of sec.43B were not invoked since the assessee entered into an agreement with the State Government for sales tax deferral. The assessee, however, prepaid the sales tax liability at net present value (NPV) and this resulted in a gain of Rs. 26.33 Lakhs to the assessee. The assessee did not admit this gain as income u/s 41(1). In response to the query as to why the gain of Rs.26.33 lakhs should not be reckoned as cessation of liability u/s 41(1), the assessee contended that under the Sales Tax Act, deferred sales tax was converted into a loan and that the State Government allowed payment of the said loan on NPV basis and, thus, the gain related to the loan rather than remission of sales tax liability. The CIT held that the entries in the books of the assessee or the provisions under the Sales Tax Act did not alter the nature of the gain under the IT Act. The assessee had been allowed deferment of sales tax and when such deferred liability is prepaid at a lesser amount, the gain is on account of cessation of sales tax liability. The CIT, therefore, held that the gain was taxable u/s 41(1) of the IT Act.

The CIT noticed that the assessee failed to add back interest paid on income tax as inadmissible. It also wrongly disclosed capital gains on account of

share trading as long term capital gains and paid tax at a lesser rate. Moreover, inspection of the factory premises at Amravati led to detection of certain items which were just bought and sold (and not manufactured) such as knife, bed sheet, soap, scissors and forceps on which deduction u/s 80-IB was not admissible. These issues also were dealt with in the order u/s 263.

During the course of the proceedings u/s 263 itself, the assessee company withdrew the claim of deduction u/s 80-IB(4) on Thapoda unit to the extent of Rs. 1.36 crore. The benefit was withdrawn even for the later two years to the extent of about Rs. one crore per year. For the A.Y.s 2004-05 and 2005-06, additional income of Rs. 2.03 crore has been brought to tax on account of action u/s 263.

Name of the CIT : T. Jayashankar, CIT-III, Nagpur

TAXABILITY OF PAYMENTS RECORDED IN DOCUMENTS SEIZED FROM THIRD PARTY

Search & seizure - documents of significance not recovered from assessee's premises - recovery of documents from third party's premises showing assessee's involvement - effect to be given in assessee's case

The assessee, M/s Radico Khaitan Ltd., is in the business of manufacture of IMFL and country liquor. On 14.02.2006, various premises of the group, including the residential premises of its director and that of the key employees were subjected to search. The search at these premises, however, did not lead to recovery of any incriminating books of account or documents.

Simultaneous search action had also been mounted at the residential premises of one Shri R K Miglani, General Secretary of U.P. Distillery Association (UPDA), of which the assessee was a member. The search at this premises yielded highly incriminating documents. These showed that UPDA had collected huge amounts from its member constituents and had utilized the same for paying bribes to various authorities to further the business prospects of its members. In his statement, recorded at the time of search, Shri Miglani admitted to the purported collection and disbursement of money.

Pursuant to the search, the assessee company filed the return for the A.Y.2006-07 disclosing additional income of Rs.4.5 crore. However, soon afterwards, the assessee approached the Income Tax Settlement Commission (ITSC) with a disclosure of further additional income of Rs. 23 crore.

In the proceedings u/s 245D(4) before the ITSC, the assessee raised various contentions. It stressed that incriminating documents, if any, had been recovered not from the assessee but from UPDA, an altogether separate and independent entity. On this ground, it argued that the said incriminating documents, being third party documents, were not admissible and solely on the basis of entries contained in such documents no liability could be fastened on to the assessee. In this context, the assessee placed reliance on several decisions, including that of CBI v. V.C.Shukla & Others (1998) 3 Supreme Court Cases 410. The assessee also challenged the evidentiary value of the statement of Shri Miglani by arguing that the principles of natural justice had not been complied

with and no cross-examination had been allowed.

On behalf of the department, the DR argued that the documents recovered from Shri R.K.Miglani could not be ignored merely on technical grounds. He went into the details of the working of UPDA and highlighted the crucial role played by Shri R K Miglani in managing the affairs of UPDA. The entries in the seized documents had some vital links missing. The CIT(DR) analyzed the entries in the seized documents to put forth a composite picture of the involvement of the assessee in the transactions. Jottings made on various sheets recovered from the residential premises of the key employees of the assessee were linked with the documents of UPDA and the statement of Shri Miglani to establish the flow of money from the assessee to UPDA. It was argued that since these payments were bribes to certain persons, effect of these should be given in the hands of the assessee rather than UPDA, which was only a conduit for transfer of money.

Taking a comprehensive view of the matter and in the facts and the circumstances of the case, the ITSC determined the income of the assessee at Rs.30 crore thereby enhancing the income by Rs.2.5 crore.

Names of officers : Nitin Gupta, CIT(DR), Delhi
Ashok Mittal, Addl.CIT, Central Range 6, Delhi

RECOVERY BY AUCTION - TENANCY PROVED BOGUS

Assessee defaulter of taxes - TRO auctioned its preview theatre - tenant of the premises filed writ claiming tenancy rights - writ dismissed - assessee and tenant are spit images - no tenancy - auction held valid

The assessee, M/s Sujatha Films Ltd., owed arrears of Rs. 11.04 crore and interest thereon. The assessee owned a preview theatre in Chennai. The TRO auctioned this theatre. Smt Priya Darshan and Shri Priya Darshan were the successful bidders of the theatre for Rs.2.05 crore. They were declared as auction purchasers.

M/s G.V. Films Ltd. was in occupation of the theatre at the time of auction. This entity did not avail of the procedure laid down under ITCP Rules. Instead, it filed a writ before the Madras High Court claiming itself to be a legal tenant of the premises on the strength of three lease agreements it had with the assessee.

After obtaining legal opinion from the Standing Counsel of the department, M/s. G.V. Films was evicted from the premises in accordance with the provisions of Rule 39 of the ITCP Rules. The Madras High Court directed the TRO to pass an order with respect to the applicability of Rule 39 in the case.

The TRO passed an order holding that M/s. G.V. Films was not a legal tenant for the following reasons:

1. The lease agreements were not registered and hence not reliable.
2. The lease agreements were signed by husband and wife in their capacity as directors in both companies, without any witnesses.
3. The lease arrangements were dated after the issuance of notice under Rule 2 and hence were hit by Rule 16 of the Second Schedule.
4. M/s. G.V. Films was in possession of the property as an entity representing the defaulter, as M/s.Sujatha Films and G.V. Films have common directors and function at the same premises.
5. M/s. G.V. Films had no tenancy rights as it was not the tenant of the property.

The TRO examined the relevant books of account and other materials and established that the payment of rent by M/s.G.V. Films was suspect. He

analysed the annual reports and other materials and lifted the corporate veil to prove that both M/s.Sujatha Films Ltd. and M/s.G.V. Films Ltd. were reflections of one another.

The TRO proved that the lease arrangement was only a facade to avoid tax liability as the both the companies had common directors.

Since notice under Rule 2 was issued to M/s. Sujatha Films Ltd. on 27.2.1987 for the A.Y.1984-85 and the dues remained unpaid till 21.3.1990, the alleged lease agreement dt.28.1.1989 was hit by Rule 16 of the Second Schedule. Hence, the lease arrangements were void and not maintainable.

The Madras High Court (decision reported in 287 ITR 561) upheld the order of the TRO while disposing the writ petition filed by G.V.Films Ltd. In their decision, the High Court commented as below:

1. '... the TRO has rightly lifted the corporate veil and found that GV Films and Sujatha films are reflections of one another.'
2. '... the TRO has rightly held that GV Films has no tenancy rights over the property and they are not the tenants of Sujatha films'.
3. '... the writ power cannot be used to correct a finding which is based on the materials. In proper appreciation of the evidence and materials placed, the TRO has rightly passed the order that only rule 39 of ITCP Rules would apply and that G.V.Films is not a tenant. The order of the TRO is neither perverse nor unreasonable nor suffers from any irregularity or illegality of procedure warranting interference.'

M/s.G.V.Films Ltd. filed appeal against the decision and the Full Bench of Madras High Court dismissed the appeal.

Names of officers : S. Krishnamurthy, TRO, Media Ward, Chennai
K.R.Vasudevan, Addl. CIT, Media Range, Chennai
T. Jayashankar, CIT - IV, Chennai

PRIVATE SALE ALLOWED - SUCCESSFUL RECOVERY OF ARREARS

Wealth tax arrears outstanding for 20 years - TRO attached properties - auctions ran into dispute - private sale allowed in consultation with Member (R) - sale fructified - arrears collected

Wealth tax arrear demand of Rs.20.63 crore in the case of late Sri S.N. Wodeyar, the former Maharaja of Mysore, remained uncollected for more than two decades. In the absence of liquid assets, the TRO had attached many valuable properties of the assesse. These properties, however, could not be auctioned. Attempts of the TRO to auction the properties met with no success over the past 15 years because of legal hurdles. The Government of Karnataka or Bangalore Development Authority or other Government Agencies obtained stay of auction of several properties.

The assesse's LR sought the department's permission in December, 2005 for private sale of Surabhi dairy farm land. The CCIT approved the proposal subject to fulfillment of certain conditions which the assesse's LR agreed to comply with. But the sale did not materialise since a new person appeared claiming right of ownership of the land. The assesse took time to sort out the matter.

Finally, the assesse's LR identified another party of Mumbai who showed interest in purchase of the property. The assesse's LR once more requested the department for private sale of the property. After consultation with and approval of Member (South Zone), the CCIT by his letter dated 24.01.2008 conveyed approval for private sale subject to deposit of advance of Rs. 5 crore which would not be refunded even if the sale did not fructify and deposit of the entire sale consideration with the TRO by 25.03.2009.

The TRO and the CIT kept a close watch on the payments by the assessee's LR. The last installment of Rs.7.1 crore was made on 31.03.2009. Finally, after a period of 20 years, the arrears were collected successfully.

Names of officers : Venkatesh Murthy S.T., TRO Range - 1, Mysore
P. Chandrashekar, Addl. CIT Range - 1, Mysore
R.L. Rinawma, CIT, Mysore
Durgesh Shankar, CCIT-III, Bangalore

ENQUIRIES LEAD TO ADMISSION OF INCOME BEFORE THE SETTLEMENT COMMISSION

Assessee a share sub - broker - enquiries revealed that sundry creditors for Rs. 28,41,636 not genuine - assessee surrendered this amount for addition u/s 68 - earlier A.Y.s 2000-01 to 2002-03 re-opened u/s 147 - enquiries carried out in respect of sundry creditors, sources of investment in shares and valuation of shares held as investments - assessee filed application before Settlement Commission- disclosed additional income of Rs. 18.42 crore and paid taxes thereon

The assessee, Shri Jaideep N Sampat, is a share sub-broker of Anagram Securities Ltd., Mumbai. For the A.Y. 2003-04, the assessee had shown sundry creditors amounting to Rs. 46,72,780. During the course of the assessment proceedings, enquiries were carried out in respect of these trade creditors. Enquiries showed that most of the creditors were non-existent and bogus. An opportunity was given to the assessee to produce all the 23 trade creditors. Subsequently, the statement of the assessee was recorded on oath in which the assessee expressed his inability to produce these creditors. Out of 23 creditors, 12 creditors were new for the previous year relevant to the A.Y. 2003-04 wherein the total amount involved was Rs. 28,41,636 and the balance 11 credits pertained to the earlier assessment years starting from the A.Y. 2000-01. In his deposition, the assessee surrendered Rs. 28,41,636. Accordingly, an addition of Rs. 28,41,636 was made u/s. 68 of the I.T. Act, 1961.

The assessments for the A.Yrs. 2000-01 to 2002-03 were reopened u/s. 147. During the reassessment proceedings, the assessee was asked to produce all the trade sundry creditors for cross verification. Further, the assessee was required to furnish the sources of investments made towards purchase of shares which were shown as investment by the assessee in his balance sheet along with the details of bank accounts through which the payments were made by the assessee for purchase of these shares. Pursuant to this line of enquiry, the assessee filed an application before Settlement Commission, Mumbai and disclosed additional income on account of undervaluation of shares and accepted that he had actually carried out share trading activity in benami and that the entire money belonged to the assessee

himself.Year-wise additional incomes disclosed by the assessee are as under:-

A.Y.	Additional income
2000-01	Rs. 12,45,78,596
2001-02	Rs. 1,87,94,715
2004-05	Rs. 1,99,70,824
2006-07	Rs. 2,09,01,254
TOTAL	Rs. 18,42,45,389

The assessee paid tax of Rs.11.57 crore on the above additional incomes declared. The assessee had claimed losses before the Settlement Commission of Rs. 1,79,26,659, Rs. 91,81,688 and Rs. 1,25,11,206 for the A.Ys. 2002-03, 2003-04 & 2005-06 respectively.The Settlement Commission rejected the claim of losses in the reopened assessment proceedings u/s 147, following the decision of the Apex Court in the case of Sun Engineering Works.

Names of officers : A.P. Jakhanwal, ITO, Ward 4(2), Thane
Jayanthi Krishnan, Addl. CIT, Range 4, Thane
K.K. Sharma, CIT-III, Thane

REPRESENTATION BEFORE ITAT

REPRESENTATION BEFORE ITAT

ISSUE OF NOTICE U/S 148 SECOND TIME PERMISSIBLE IN CERTAIN CIRCUMSTANCES

Bar of limitation not applicable to re-assessment proceedings based on the finding or direction contained in order passed in land acquisition proceedings - notice u/s 148 can be issued in respect of same income for a second time if the return filed in response to earlier notice u/s 148 is non est

During the period relevant to the A.Y. 1999-2000, Ajmer Singh (HUF) & Others, Chandigarh received interest on enhanced compensation for the period 8-6-1987 to 29-4-1998. The AO passed order u/s 143(3) read with section 148 taxing the interest income in the respective years, i.e. A.Y.s 1988-89 to 1998-99. The assessee challenged these assessments before the CIT(A) who dismissed the appeals. The assessee preferred appeals to the ITAT. The ITAT cancelled the assessments for all the years on the ground that notices u/s 148 were issued to the persons in their status as individuals whereas the assessments were framed in the status of HUF. The AO again issued notices u/s 148 on 12-1-2007 for taxing the same income and completed the assessments. The assessments were again challenged before the CIT (A) who upheld the assessments and the assessee filed appeals before the ITAT.

The second round of litigation gave rise to the following three main issues before the ITAT:

i) Notice issued u/s 148 of the IT Act is without jurisdiction being barred by limitation within the meaning of section 149 of Act and, therefore, the assessment framed deserved to be annulled. The assessee contended that the CIT(A) erred in resorting to the provisions of section 150(1) of the Act to justify the jurisdiction.

ii) The AO was not justified in issuing notices u/s 148 dt 12-1-2007 again because the department itself was pleading before the High Court that the earlier notices were valid.

iii) Originally notice u/s 148 the Act was issued on 6-2-2003 in response to which the assessee had filed the return of income. According to the assessee, though the said notice u/s 148 was found invalid by the Tribunal, yet the return filed in pursuance thereof remained and,

therefore, in the face of it, the impugned notice u/s 148 could not be issued again.

The aforesaid legal issues were argued at length by the CIT (DR). He also filed written submission along with paper book containing the relevant case laws. He relied upon the following case laws in support of his argument that the notice issued under sec. 148 was valid -

K.M. Sharma v. CIT 254 ITR 772 (SC); R. Kakkar Glass & Crockery House v. CIT 254 ITR 273 (P&H), ACIT v. Rajinder Kumar 181 ITR 400 (SC); ITA No.1396/DEL/2004 dt. March 2008 ITAT Delhi 'B' Bench; 275 ITR 146 (Ker.); 287 ITR 50 (Mad.); Sriniwas Computers Ltd. v. ACIT. ITAT (Chennai 303 ITR (AT) 205); 276 ITR 98 (Allahabad).

The ITAT, Chandigarh in ITA No. 852 to 862/ Chandi/2008 decided all the issues in favour of the Revenue as detailed below:

1. Bar of limitation is not applicable to re-assessment proceedings which were based on the finding or direction contained in order passed in land acquisition proceedings.
2. On facts, notice u/s 148 can be issued in respect of same income `for a second time.
3. There is no bar for issue of notice u/s 148, even if there is a return filed by the assessee in response to earlier notice u/s 148 which has been held to be non est.

Name of the DR : Sunita Puri, CIT (DR), ITAT, Chandigarh

ROLE OF CIT IN REGISTRATION OF TRUSTS

Whether with insertion of section 12AA the CIT is specifically empowered to satisfy himself about genuineness of activities of trust /institution before grant of registration us 12A – held, yes

Aman Shiv Mandir Trust, Chandigarh, a trust created for the purpose of construction and management of temples, shrines, places of worship and for arranging spiritual discourses applied for registration u/s 12AA. As on the date of application in Form No. 10A seeking registration, the trust had already been in existence for five years. The applicant requested for condonation of delay in filing the application for registration. The CIT refused to condone the delay and passed an order rejecting the application for registration u/s 12AA and approval u/s 80G on the ground that the trust had not been genuinely created for the purposes listed in the trust deed.

The applicant preferred an appeal to the ITAT against the decision of the CIT. The DR relied up on the material available on the record to contend that -

- with effect from 1-4-1997, section 12AA has been amended so as to empower the CIT to make inquiries as may be deemed necessary in order to verify the genuineness of the activities of the trust or the institution. Therefore, the decisions that no inquiry is required to be made for the purposes of grant of registration under section 12AA are no longer applicable with effect from 1-4-1997.
- Huge deposits in the bank account had been found in the name of the family members of Shri J.S. Tanwar, the settlor.
- The assessee had applied for registration of the trust only after investigation and detection of FDRs by the Income-tax Department.
- The assessee had not carried on any activity in furtherance of the objects of the trust and had also not established the source of the receipts/donations claimed to have been received for the corpus of the trust.

The ITAT in order in ITA No. 746(CHD.) of 2000 appreciated the arguments of the DR and held that the CIT is empowered to make inquiries to satisfy himself about the genuineness of the trust as well as the activities carried on for furtherance of objects of the trust. Therefore, the objection on behalf of the assessee that such inquiries were not called for is not well-founded. The ITAT further held that the fact that the trust with an accumulation of nearly Rs. one crore had not spent a rupee during a long period of its existence amply demonstrated that the trust was not a genuine trust. Considering the totality of the circumstances of the case, the delay in filing of application for registration u/s 12AA also was relevant for considering the genuineness of claim of the assessee. Altogether, the ITAT upheld the order of the CIT.

Name of the DR : R K Goyal, CIT (DR), ITAT, Chandigarh

EXISTENCE OF PE - INTERPRETATION OF DTAA

Assessee a non-resident company incorporated in Netherlands - mobilized its own rig and vessel from Singapore – carried out soil investigations at various drilling locations in India for short periods aggregating to less than 183 days, appearing in paragraph 2 of Article 5 of the DTAA - held the said paragraph did not apply as there was no installation or structure used for exploration of natural resources - the company did constitute a PE within the meaning of paragraph 1 of Article 5 of DTAA

Fugro Engineers BV, is a non-resident company incorporated in Netherlands. It carried out soil investigation for exploration of drilling locations, mobilizing its own rig and vessel from Singapore. It carried out the activities for less than 183 days. Fugro Engineers BV claimed that it did not constitute a PE in India because of paragraph 2(i) of the DTAA under which PE includes an installation or structure used for exploration of natural resources provided that the activities continued for more than 183 days.

The AO, however, concluded that there was a PE and held that its income was liable to tax as per section 44BB of the Act in respect of the sums paid or payable to the assessee, including mobilization and demobilization advances. The CIT (A) confirmed the finding of the AO that there was a PE while accepting the assessee's plea that mobilization and demobilization advances would not be included in the gross revenue for computing presumptive income u/s 44BB.

The department as also the assessee preferred appeals before the ITAT. The DR placed emphasis on paragraph 1 of Article 5 of the DTAA, which defines the term PE to mean a fixed place of business through which the business of the enterprise is wholly or partly carried on. It was pointed out that the requirement of this paragraph is only the fixed place of business through which the business is wholly or party carried on. There is no other requirement for constituting the PE. Thereafter, he referred to paragraph 2, which is worded in an inclusive manner and which provides that the PE includes (a) a place of management (b) a branch (c) an office (d) a factory (e) a workshop (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources (g) a warehouse in relation to a person providing storage facilities for others (h) a

premises used as sales outlet and (i) an installation or structure used for the exploration of natural resources provided that the activities continue for more than 183 days.

The DR pointed out that clauses (a) to (h) contain the requirement of a place, but clause (i) does not contain such requirement as it speaks about an installation or structure used for exploration of natural resources. The DR explained that since clause (i) dispenses with the requirement of the place, it stands on a different footing from other clauses and that is why continuous activity of more than 183 days is required under this clause for constituting a PE. The DR demonstrated that in the present case, there was a fixed place of business where the soil was obtained and was tested and analyzed. He thus argued that since there was a fixed place of business there was no requirement of the presence of the assessee in India for any particular length of time. The DR stressed that the length of time has to be seen in the context of the nature of work, which in this case had been completed in just a few weeks from a fixed place. The DR also claimed that since it was neither an installation nor a structure, there was no requirement of the work to continue for more than 183 days for constituting the PE.

On the issue of mobilization and demobilization of advances, the DR pointed to the Tribunal that the assessment of a non-resident company is made in accordance with the provisions of sec. 5 and sec. 9 of the Income-tax Act and that the profit has to be taxed at the rate of 10% of the amount specified in sub-section (2) of section 44BB which is a special provision relating to a non-resident. The attention of the Tribunal was also drawn to the decisions in Sedco Forex International Inc. v. CIT (2008) 299 ITR 238 and CIT v. Halliburton Offshore Services Inc. 300 ITR 265.

The Tribunal in ITA No. 1754(Del)/2007 agreed with the view of the department that the time limit prescribed in paragraph 2 of Article 5 cannot be read into paragraph 1. In arriving at this conclusion, the Tribunal agreed with the commentary on OECD model tax convention. The Tribunal further observed that on consideration of various case laws and the above commentary, it is clear that no length of time is prescribed in respect of paragraph 1. In such a situation, if the place of business is available to the assessee for the period in which its independent work can be completed, it shall constitute a PE. The

Tribunal held accordingly. In respect of mobilization and demobilization of advances, the Tribunal held that the issue was covered in favour of the department by the decision of the High Court in which it was mentioned that all amounts either paid or payable received or deemed to be received are mutually inclusive and includible in the receipts for the purpose of sub-section (2) of section 44BB.

In the result, the appeal of the assessee was dismissed and that of the department was allowed.

Name of the DR : Devendra Shankar, CIT (DR), ITAT, Delhi

CAPITAL EXPENDITURE V. CURRENT REPAIRS

Huge expenditure claimed as current repairs—AO held the expenditure as capital in nature—CIT(A) held the expenditure to be in the nature of current repairs allowable as deduction—ITAT held expenditure not incurred for the preservation of an existing asset but to bring forth a new asset - expenditure not current repairs eligible for deduction u/s 30(a)(ii)

In the return for the Assessment Year 2001-02, M/s Hero Cycles Ltd., Chandigarh claimed deduction of expenditure of Rs.4,24,36,378 (Rs.3,15,69,606 on building repair and Rs.1,08,66,772 on sundry repairs) under the head "Building Repairs". The assessee claimed that the expenditure was incurred largely on repair and maintenance necessitated due to wear and tear of the buildings, especially of the Rim Plant. The AO inquired into the nature of the expenditure and noticed that the old roof and electrical fittings had been replaced; the plant building had been renovated extensively and the height of the building had been raised. For these reasons, the AO held that the expenditure was capital in nature and disallowed it in the assessment.

The assessee took the matter in appeal before the CIT(A). The CIT(A) was of the view that the quantum of expenditure was not relevant. The assessee had carried out mere renovation to the existing structure and, therefore, the expenditure incurred in this regard was in the nature of current repairs. Accordingly, he directed the AO to allow the expenditure.

The department preferred appeal to the ITAT against the decision of the CIT(A). The DR placed reliance on the order of the AO. He painstakingly took the ITAT through the details of expenses to show that apart from carrying out extensive repair work of the building, the electrical fittings had been changed completely; the floor had been replaced; walls had been extended in height and a new roof with steel structure supported on entirely new pillars had been raised. The DR pointed out that the scope of work undertaken by M/s Larsen & Turbo Ltd. for the assessee involved incurrence of capital expenditure inasmuch as it comprised earth work, plain and reinforced concrete and allied works, structural steel work, roofing, etc. According to the DR, the aforesaid works resulted in creation of an altogether new asset and, therefore, the

expenditure in question was liable to be treated as capital expenditure. The DR demonstrated that the impugned expenditure did not fall in the category of current repairs allowable as deduction under sec. 30.

The ITAT in their order in ITA NO. 781/CHANDI/05 & 493/CHANDI/06 appreciated the arguments of the DR. The ITAT noted that the assessee could not take the shelter of the residuary provisions of section 37(1) and that, to be considered for allowance u/s 30(a)(ii), the expenditure had to be in the nature of 'current repairs'. The ITAT took special notice of the fact that the existing roof had altogether been dismantled and a new roof had been laid. As such, the ITAT took the view that it was a case where the object of the expenditure was not to preserve and maintain the already existing roof and for this reason the expenditure could not be categorized as 'current repairs'. The ITAT also noted that the expenditure was not of recurring nature and could not be classified as arising from routine repair and maintenance. The ITAT placed reliance upon the decision of Bombay High Court in the case of New Shorrock Spinning and Manufacturing Company 30 ITR 338 (Bom). The ITAT held that the expenditure was not eligible for deduction as current repairs under sec. 30(a)(ii) and set aside the order of the CIT(A) and restored the order of the AO.

Name of the DR : Jitender Kumar, Addl CIT (DR), ITAT, Chandigarh

DEDUCTION U/S 80 P(2)(a)(i) NOT ALLOWABLE TO MILK SOCIETY

Deduction u/s 80P(2)(a)(i) - assessee engaged in procurement, processing and marketing of milk and milk products – credit facilities extended by the assessee to its member societies not covered for deduction - interest received from member co-operative societies does not fall u/s 80P(2)(a)(i)

Punjab State Co-operative Milk Producer Federation Ltd., Chandigarh (known as Milkfed) is a co-operative society which is primarily engaged in procurement, processing and marketing of milk and milk products. The main issue in this case is regarding the claim of the assessee for deduction u/s 80P(2)(a)(i) of the I.T. Act in relation to the interest income from the member co-operative societies. The AO did not allow deduction u/s 80P(2)(a)(i) of the IT Act on account of interest income from the members of the co-operative society. The CIT (A) upheld the order of the AO. The matter came up in appeal before the ITAT.

During the course of hearing of the appeal in the Tribunal, the DR made detailed submissions citing various case laws and the ratio thereof in support of the department's stand. He argued before the ITAT that the provisions of section 80P(2)(a)(i) of the Act are not applicable to the assessee as the assessee is engaged procurement, processing and marketing of milk and milk products. He pointed out that the said section is applicable only in case of co-operative societies engaged in the business of banking or providing credit facilities to its member societies. The DR contended that the decisions of the Allahabad High Court in the case of U.P. Co-operative Cane Union (114 ITR 70) and Kerala High Court (170 ITR 455) holding that the income by way of interest earned by the assessee does not qualify for exemption u/s 80P(2)(a)(i) of the Act are squarely applicable to the facts of the assessee's case. Attention of the Bench was drawn to the judgment of Madras High Court in the case of Rodier Mill Employees' Co-operative Stores Ltd. v. CIT 135 ITR 355 for the purpose of understanding the meaning of the expression "providing credit facilities" as appearing in section 80P(2)(a)(i). Further, the DR placed reliance on the cases mentioned overleaf :

170 ITR 455 (Kerala), 156 ITR 655 (MP), 204 ITR 713 (Raj.) 220 ITR 352 (Raj.) 234 ITR 301 (Ker), 106 ITR 868 (Mad), 134 ITR 505 (MP), 234 ITR 301 (Ker), 249 ITR 330 (SC).

The ITAT in their order in ITA NO. 1068/CHANDI/2005 decided the issue in favour of the Revenue. It held that the activity of permitting member milk unions and extending credit facility to pay the outstanding dues by itself would not make the assessee fall within the expression "carrying on the business of the banking or providing credit facilities to its members". The ITAT noted that extension of credit facility is subservient to its main object of procuring, processing and marketing of milk and milk products of the member societies and hence the assessee could not be said to be engaged in any of the activities falling under section 80P(2)(a)(i) so as to enable it to claim deduction in respect of the interest income in question. The ITAT held that the credit facility extended by the assessee to its member societies was only to effectuate the primary object of the assessee. Therefore, the ITAT rejected the claim of the assessee for deduction u/s 80P(2)(a)(i) on interest income.

Name of the DR : Sunita Puri, CIT (DR), ITAT, Chandigarh

OBJECTS OF PUDA NOT CHARITABLE – REGISTRATION NOT ALLOWABLE

Section 2(15) read with section 12AA – charitable purpose - activities of PUDA commercial in nature – CIT refused registration u/s 12AA – ITAT held refusal rightly done

The assessee, Punjab Urban Planning & Development Authority, (PUDA), constituted under the Punjab Regional and Town Planning and Development Act, 1995 to regulate well planned development within the State, applied for registration under section 12AA. The CIT rejected the application for registration on the ground that the objects of the assessee were commercial and not charitable in nature.

PUDA filed appeal to the ITAT against the order of the CIT. The assessee contended that it had been established to satisfy the need for housing accommodation of various sections of the people of Punjab and specially for planning and development in the cities, towns and villages. It claimed that it had no profit motive and that its gains were utilized for creating other amenities of public good. The assessee stated that its objects, therefore, were charitable in nature. It was claimed that on similar facts, the local authority in Patiala had been granted registration u/s 12AA.

The DR defended the order of the CIT refusing registration to the assessee by contending that the assessee was no different from private colonizers and was making huge profits by giving compensation which was less than the market value to the actual land owners. The DR pleaded that to become eligible for registration under section 12AA, the purpose and activity should be wholly charitable, which was not the case with the assessee. As far as the claim of providing public amenities was concerned, the DR explained that other big private colonizers too provided similar facilities. He demonstrated that the activities of the assessee were no different. The DR also argued that the assessee could not draw sustenance from grant of registration u/s 12AA to a similar authority at Patiala because the principle of *res judicata* did not apply to income-tax proceedings.

The ITAT, Chandigarh Bench 'B' in ITA No. 764/CHD/2003

[reported as Punjab Urban Planning & Development Authority v. Commissioner of Income-tax-1, Chandigarh [2006] 156 taxman 37 (Chd.) (Mag.)] held as under:

- The accounts of the assessee revealed that the assessee had turned into a huge profit making agency for which it was taking money from the general public.
- It was clear that the assessee did not engage itself in any charity and if the assessee developed any institutions of public importance such as schools, community centres, the assessee recouped their cost from the public at large.
- The objects/activities of the assessee were commercial in nature and they did not involve any charity.
- Providing various facilities was a means of attracting people so that maximum people might apply for its schemes. The hidden cost was already added, so no charity was involved.
- A new trend had also emerged in that the PUDA, i.e., the assessee, had started auctioning the plots at the market rate and charged interest on belated payments. This did not involve charity. Rather, the assessee had converted itself into a big business entity.
- Similar development/infrastructure/facilities are provided by private developers these days.
- Further, almost in every activity of assessee, there was a scent of commercialization/profit motive.

The ITAT in ITA NO. 764/CHD/2003 held that the CIT rightly refused registration under sec. 12AA to PUDA.

Name of the DR : R K Goyal, CIT (DR), ITAT, Chandigarh

BRANCH OFFICE IN INDIA HELD AS PE

Assessee a non-resident company incorporated in UK - used its subsidiary in India for its sales activities to various government agencies – survey showed operations of the subsidiary managed and controlled by the non-resident company - subsidiary held to be a permanent establishment of the non-resident company and its income from Indian operations brought to tax

M/s Rolls Royce Plc, a UK company, is engaged in the activity of sales of equipment to various government agencies. Its marketing activities are carried out by another UK based entity, the Rolls Royce International. The sales activities in India were carried out by a branch office of another UK based entity, namely, Rolls Royce India Limited (RRIL), a subsidiary of Rolls Royce International. The assessee contended that its branch office does not conclude any contracts in India and that the activities carried out in India are only preparatory and auxiliary. Thus, it claimed that it did not have a permanent establishment in India and, therefore, its income was not liable to tax in India.

The AO conducted survey at the office of RRIL and on the basis of information collected, the AO inferred that the appellant had a PE in India within the meaning of article 5(1), 5(2)(c), 5(2)(f) and 5(4) of the DTAA between India and UK. Following this, the AO issued notices u/s 148 for the Assessment Years 1997-98 to 2000-01. The AO made the assessments in which he computed income in terms of article 7 of the DTAA. The AO resorted to rule 10 of the IT Rules by which he applied the assessee's rate of global profit to the Indian turnover of the assessee. The AO attributed 100% of the income so determined as arising from sale of goods to the Indian customers for the Assessment Years 1997-98 to 2000-01 and 75% of the profits in the assessments made for the Assessment Years 2002-03 and 2003-04.

The CIT(A) partially allowed the appeals for the Assessment Years 1997-98 to 2000-01 and dismissed the appeals for the Assessment Year 2003-04. The CIT(A) upheld the issue of notices u/s 148 for framing the assessments u/s 147 and also agreed with the AO that the assessee had a PE in India. The CIT(A) upheld attribution of profits at the rate of 75% for all the years. The assessee took the matter to the Tribunal.

Before the ITAT, the DR relied heavily on the factual information gathered by the AO in the course of survey, especially the statement of the Managing Director of Rolls Royce India Ltd. recorded under section 131. The DR furnished evidence to show that on a continuous basis personnel from the assessee company had frequently been coming to India; that the ultimate employer of the Managing Director of the Rolls Royce India Ltd. was the assessee himself; that the employees in India were functionally accountable to the assessee and that Rolls Royce International worked as a personnel department of the assessee company. On these facts, the DR contended that the assessee had a PE in India and accordingly the income had rightly been determined as attributable to the PE.

The DR also argued that the activities with regard to sales being carried out in India could not be categorized as preparatory or auxiliary. With respect of attribution of profit, he referred to paragraphs 1, 2 & 3 of article7 of Indo-UK DTAA to argue that the income considered to be directly and indirectly attributable had to be included in the income of the assessee. Further, the DR argued that in terms of paragraph 4 of article 7 India was not precluded from determining the profit by apportionment as may be necessary. He also stressed that since the assessee did not maintain accounts for India operations, the AO was justified in resorting to Rule 10 of the IT Rules.

The Tribunal in ITA NOS. 1496 To 1501/DEL OF 2007 agreed with the contentions of the DR. Taking into account the material available on record, the ITAT concluded that:

- RRIL's presence in India constituted existence of PE of the assessee in India. It is a fixed place of business at the disposal of the Rolls Royce Plc and its group companies in India through which their businesses are carried on.
- The activity of the fixed place is not preparatory or auxiliary, but is a core activity of marketing, negotiating and selling of the product. RRIL is an extension of the assessee and it has the responsibility to sell the products belonging to the group.
- RRIL acts almost like a sales office of RR plc and its group companies,

- RRIL and its employees work wholly and exclusively for the RR Plc and the group.
- RRIL and its employees are soliciting and receiving orders wholly and exclusively on behalf of the Rolls Royce group.
- Employees of Rolls Royce group are also present in various locations in India and they report to the Director of RRIL in India.
- The personnel functioning from the premises of RRIL are in fact employees of Rolls Royce Plc.

Thus, the assessee was held to have a PE in India within the meaning of Article 5(1), 5(2) and 5(4) of the Indo-UK DTAA. Since it was also held that the assessee has a business connection in India as well as PE in India, the income arising from its operations in India was held to be chargeable to tax in India. The Tribunal also held that in terms of para 4 of Article 7, the income attributable to PE shall be computed in accordance with the law of the State in which the PE is situated and accordingly application of rule 10 of the IT Rules was also upheld. The Tribunal, however, held that 50% of the profits towards manufacturing activity cannot be taxed in India as no such manufacturing activity was carried out in India. In respect of other activities, apart from marketing of goods, the assessee carried out research and development on ongoing basis for which 15% profits were allocated. The Tribunal held that the balance profit, i.e. 35% of the profit (as against 75% determined by CIT(A)) was attributable to the PE in India.

Name of the DR : Devendra Shankar, CIT (DR), ITAT, New Delhi

RENT INCLUDES INCOME FROM INTEREST - FREE SECURITY DEPOSIT

Income received from interest - free refundable security deposit received against let out property - can be considered for determining ALV of the property

M/s. Tivoli Investment and Trading Company, Mumbai owned premises at Sakhar Bhawan, Nariman Point, Mumbai. Through an agreement, the assessee allowed Citi Bank to use the premises on leave and license basis for 10 years on payment of monthly license fee of Rs. 9,825, which amounted to prevailing taxes and outgoings. Simultaneously, the two parties executed an agreement for payment of interest free security deposit of Rs.1.54 crore. The AO taxed notional interest on interest free security deposit received of Rs.1.54 crore as part of rent received for the property following the decision in the case of MV Sonawala v. CIT (1989) 177 ITR 246 (Bom).

The issue of taxability of notional interest on interest - free refundable security deposit in case of let out property had been decided against the department by the jurisdictional High Court in the case of CIT v. J K Investors (2001) 248 ITR 723 (Bom) and by the Calcutta High Court in the case of Satya and Co. Ltd. (1194) 175 Taxman 193(Cal) and later by the Delhi high Court in the case of CIT v. Asian Hotels Ltd. (2008) 215 CTR (Del) 84.

In the appeal of the department before the ITAT, the DR placed the following facts of the case before the Bench:

- In this case, no rent was being paid in as much as payment of Rs.9825 per month represented only payment of taxes by the licensee.
- Rateable value shown by the assessee was ridiculously low.
- The Assistant Vice President and Head of Services Administration, in the statement recorded u/s 131, stated that interest - free deposit of Rs1.54 crore represented compensation for occupation of the premises.

The DR placed reliance on the following two important decisions:

- Bhagwan Dass Jain v. UOI (1981) 128 ITR 315 (SC) wherein the Supreme Court has laid down that 'income' in ordinary economic

sense includes not merely what is received but also includes what one saves by using the property oneself.

- Saipansaheb WD Dawoodsaheb v. Laxman Venkatesh Naik LVII BLR 413 (Bom) wherein the High Court has held that for fixing 'standard rent', correct approach should be to adopt reasonable net return on investment.

The DR distinguished the decisions against the department on facts by arguing that in this case rent was not at all paid.

The ITAT in ITA NO. 3269/MUM/1993 and 3009/MUM/1994 accepted the arguments put forward by the DR. Observing that in the present case, deposit had been accepted in lieu of rent, the ITAT held that the revenue authorities were correct in treating the usufructs of said deposit as rent.

Name of the DR : Ajit Korde, Addl CIT (DR), ITAT, Mumbai

TAXABILITY OF ARBITRATION AWARD WHEN NO PE IN INDIA IN THE YEAR OF RECEIPT

Assessee had PE in AY 1995-96 and 1996-97 – later PE discontinued - assessee received award in arbitration in AY 2001-02 - claim of receipt exempt since no PE in year of receipt – held taxable in year of receipt

The assessee company, Van Oord Dredging and Marine Contractors BV, had a Permanent Establishment (PE) in India during the previous years relevant to the Assessment Years 1995-96 and 1996-97 while executing some project in India. The PE got discontinued later.

In the previous year relevant to the Assessment Year 2001-02, the assessee received award of Rs. 30.78 crore in arbitration. The assessee claimed the said receipt to be exempt as no PE was in existence in relation to the project in that year. The AO, however, made an addition of Rs. 30.78 crore. The CIT (A) confirmed the addition.

The assessee filed appeal before the Tribunal. The assessee reiterated the fact that at the time of receiving the award, it did not have a PE in India. It also claimed that the receipt could not be traced to any order of the court. The DR, on the contrary, submitted that there was no discontinuance of business in the case of the assessee. He invited the attention of the Tribunal to various articles of DTAA between India and Netherlands and pointed out that for a receipt to be taxed in India only two conditions were required to be satisfied. Firstly, there should be a PE of the assessee in India. Secondly, the income sought to be taxed should be attributable to the PE. The DR submitted that the DTAA with Netherlands did not stipulate the condition that the income, if any, must relate to a PE that must be existing in India in the year of receipt. The DR submitted that the PE of the assessee company was in existence during the Assessment Years 1995-96 and 1996-97 in India and the income of Rs. 30.78 crore, which was received by way of arbitration award in September 2000, related only to that PE. Thus, the DR argued that the receipt had rightly been brought to tax in the hands of the assessee.

The Tribunal in their decision in Van Oord Dredging and Marine Contractors BV in ITA No. 679/M/05 - 105 ITD 97 (Mumbai) dt. 29.3.2006

held that the income of Rs. 30.78 crore was attributable to the PE of the assessee and had rightly been brought to tax as the income of the assessee. The Tribunal also held that the issue of applicability of section 176(3A) of the Act to the facts of the case is not relevant. Accordingly, the Tribunal dismissed the assessee's appeal.

Name of the DR : K. L. Maheshwari, CIT (DR), ITAT III, Mumbai

PREMIUM RECEIVED FOR TRANSFER OF FLAT BY CO-OPERATIVE HOUSING SOCIETY IS INCOME

Premium charged by a co-operative housing society from an incoming member for transfer of occupancy rights of a flat held by an outgoing member - claimed as exempt from tax on the principle of mutuality—held not exempt

For the Assessment Year 1997-98, Walkeshwar Triveni Co-operative Housing Society Limited, Mumbai collected premium on transfer of occupancy as described in clause 7(h) of the bye laws of the co-operative society. The AO taxed the entire amount, including the portion received from the transferor, as income in the hands of the society. In appeal, the CIT (A) upheld the order of assessment on the ground that the amount was "transfer fee" and it was taxable as the income of the society.

The matter eventually came up for consideration before the Special Bench of the ITAT. The society placed reliance on various case laws to contend that its transactions were covered by the principle of mutuality. Further, it was stressed that the society was a voluntary organization having no profit motive and the amounts collected were to be applied for the common good of the members of the society.

The DR took the ITAT through the following decisions highlighting the applicability of the principles of mutuality to co-operative housing societies:

- CIT v. West Godavari District Rice Millers Association (1984) 150 ITR 394 (AP)
- ITO v. Sea Face Park Co-operative Housing Society (unreported) ITA.- 5314-16 (Bom) of 1984
- Oval Shiv-Shanti Bhuvan Co-operative Housing Society Ltd. (2001) 78 ITD 403 (Mum)
- Regent Chambers Premises Co-operative Society Ltd. v. ITO (2002) 82 ITD 13 (Mum)
- Hatkesh Co-operative Housing Society Ltd. v. ITO (1997) 60 ITD 662 (Mum)
- CIT v. Madras Race Club (1976) 105 ITR 433 (Mad)

- Jai Hind Co-operative Housing Society Ltd. v. Sixth ITO (1983) 3 ITD 625 (Bom)
- Kumbakonam Mutual Benefit Fund Ltd. (1964) 53 ITR 241 (SC)
- CIT v. Darjeeling Club Ltd. (1985) 153 ITR 676 (SC)
- Baburao Shntaram More v. Bombay Housing Board AIR 1954 SC 153
- S M Mahendru & Co v. State of Tamil Nadu AIR 1985 SC 270
- HMT House Building Co-operative Society v. M Venkateshwarappa AIR 1995 SC 2253

The DR also distinguished the following judgments, which were in favour of the assessee:

- CIT v. Apsara Co-operative Housing Society Ltd. (1995) 204 ITR 662 (Guj)
- CIT v. Adarsh Co-operative Housing Society Ltd. (1995) 213 ITR 677 (Guj)

Stressing the fundamental principle of mutuality that no one can make profit out of oneself, the DR argued that the identity and capacity of the participants and contributors had to be the same, which was not in the case in the transaction under consideration. He pointed out that the receipt had its origins in the motive to have income and it should be brought to tax. He also contended that the payments were not voluntary or ex gratia payments and that the assessee could legally enforce its right to receive premium. The DR, therefore, argued that the amount was taxable in the hands of the society. Further, he pointed that, in any case, when the transferee paid premium to the co-operative housing society, he was not its member and hence the amount received from the non-member would not be exempt from tax even on the principle of mutuality.

The ITAT in their decision in Walkeshwar Triveni Co-operative Housing Society Limited v. ITO (2004) 88 ITD 159 (Mumbai) (SB) recognized that at the time of effecting the transfer, the transferee was not a member of the society. Hence, it took the view that the portion of premium received from the transferee did not meet the test of mutuality and would be taxed in the hands of

the society. Insofar as the premium receipt attributable to the transferor was concerned, the ITAT held that this amount received was not exigible to tax as the transferor was a member of the co-operative society when he made the payment.

Name of the DR	:	Ajit Korde, Addl. CIT (DR), ITAT, Mumbai Girish Dave, CIT (DR), ITAT, Mumbai

HEAD OFFICE EXPENSES REQUIRE APPORTIONMENT IN COMPUTING PROFIT ELIGIBLE FOR DEDUCTION U/S 80-IA

Assessee calculated share of corporate expenses allocable to its Silvassa unit but did not debit the same to the P&L a/c of the unit - AO deducted the expenses - reduced assessee's profits eligible for deduction u/s 80-IA - CIT(A) invoked provisions of section 44C to put a ceiling on HO expenses - ITAT upheld action of AO - also held sec.44C meant for non-residents and not applicable to the assessee's case

The assessee, M/s. Tide Water Oil Company (India) Limited claimed deduction u/s 80-IA in respect of profits from its Silvassa unit. The statutory auditors had furnished the details of income/expenditure of Silvassa unit following the principles laid down in section 80-IA. It, however, was noticed that the corporate expenses were not debited to the P&L a/c of the unit and had been shown separately. The assessee claimed that these corporate expenses did not have any 'direct' nexus with the manufacturing or selling operations at Silvassa unit.

The AO did not accept the above claim on the ground that the products of the Silvassa unit were sold throughout India through zonal offices of the assessee company, and, therefore, corporate expenses incurred at the head office were relatable to supervision of production and sale. Consequently, the AO reduced expenditure of Rs.1,75,73,406/- from the deduction of Rs.9,02,62,048/- allowed u/s 80-IA. In first appeal, the CIT(A) placed reliance on provisions of section 44C and directed the AO to restrict the said reduction to Rs.40,34,620/-.

In the appeal before the Tribunal, the DR urged the ITAT to consider the following points:

1. Silvassa unit of the assessee was the only unit eligible for deduction u/s 80-IA.
2. Head Office expenses were for the composite business as the Head Office at Kolkata, which looked after marketing, administration, policies, statutory work, banking and overall supervision and control of the operations of the entire business.
3. The accounts of Silvassa unit were maintained separately. But proportionate expenditure of the corporate office had not been

deducted from the profit of the Silvassa unit.

4. Profit of Silvassa unit was 78% of the composite profit of the assessee company. This clearly showed that the profit of Silvassa unit, which was eligible for deduction u/s 80-IA, had been overstated.

5. Even the CIT (A) accepted that corporate office expenditure, as relatable to Silvassa Unit, had to be deducted while working out the profits eligible for deduction u/s 80-IA. However, he had brushed aside the findings of fact given by the AO without proper justification. Also, it was not correct for the CIT (A) to have invoked the provisions of section 44C to restrict the deductible expenditure, as the said provisions were applicable only to non-residents.

6. The assessee had submitted before the CIT (A) fresh material to contend that majority of the expenses, considered by the AO, was 'not so essential expenses'. The CIT (A) admitted the said material as evidence without giving the AO proper opportunity of being heard and, thus, the CIT(A) violated rule 46A of the IT Rules.

The ITAT in ITA No. 1791, 1792, 1793/ Kol/2007 agreed with the DR that the provisions of section 44C were not applicable to the present case. The ITAT observed that in terms of provisions of section 80-IA(5), the profit of the Silvassa unit had to be computed as if it were the only source of income of the assessee during the relevant previous year and as such the expenditure incurred by the Head Office to the extent it related to the business of Silvassa unit was liable to be deducted while determining the profit of the unit eligible for deduction u/s 80-IA.

The ITAT noted that Silvassa unit had accounted for more than 75% of the total profit of the entire business operations of the assessee and such a unit could not have run without a corporate office. The expenditure relating to the unit, as per the allocation made by the assessee itself, had to be considered by the AO.

The ITAT also held that additional evidence admitted by the CIT (A) without giving an opportunity to the AO as required under rule 46A of the IT Rules was not to be relied upon.

The ITAT set aside the order of the CIT (A) and upheld the order of the AO.

Name of the DR : P K Ray, CIT (DR) ITAT, Kolkata

TAXATION OF A PERMANENT ESTABLISHMENT IN ACCORDANCE WITH DOMESTIC LAW DOES NOT AMOUNT TO DISCRIMINATION

Interpretation of Article 7of DTAA- Application of sec 44D in computation of income of a PE - limitations of domestic law when applied-Specific language in a DTAA would decide discrimination

The assessee Pipeline Engineering GmbH, was a branch of a German Company (Permanent Establishment) based in India, providing technical services. The fees received for such services amounted to fees for technical service falling within the scope of Article 12 of the relevant DTAA. The assessee had claimed that income should be computed after allowing all the expenses incurred by the PE and rate of tax should be applied @ 10% as per Article 12(2) of the DTAA. However, the A.O applied sec.44D and taxed the Technical fees on gross basis at the rate of 20% as per sec115A.

The assessee's argument was based on the provision of Article 7(3) of the DTAA, which provided for computation of profits of a PE after deductions of all expenses incurred for the purpose of business of PE including the executive and general administration expenses. It was argued that the provisions of sec 44D should be read down so as to make the provisions of Article 7(3) workable as application of the provisions of section 44D would render the provisions of Article 7(3) redundant.

The assessee's arguments were countered by the DR who explained that there was no conflict between section 44D and article 7 of the DTAA. Though article 7 provided for determination of the income of the PE after deduction of all expenses including administrative and general expenses incurred by the PE, the same article simultaneously had provided for determination of income by applying the limitations of the domestic law. Referring to the provisions of domestic law, attention was drawn to the fact that section 44D being non-obsante provisions, would overwrite the provisions of section 28 to section 44C. The present case being covered by sub-section (2) of section 44D, no deduction would be allowable in respect of Royalty or fees for technical services. Attention of the bench was also drawn to sub-section (3) of section 115A to contend that no deduction in respect of expenditure or

allowance was to be allowed to the assessee u/s. 28 to 44C and section 57 in computing the income referred to in sub-section (1) of section 115A.

It was further contended by the assessee that the provisions of Article 24(2) of the DTAA with Germany would apply in this case arguing that application of the provisions of section 44D would amount to discrimination between the assessee and a resident assessee in India. Reliance was placed on two recent decisions of the Tribunal in the case of Metchem Canada Inc. and Herbalife International India (P) Ltd. These arguments were repelled by the DR by referring to the language of Article 24 of the DTAA with Germany. Referring to the provisions of section 24(2), it was explained that the said article itself protected the provisions contained in Article 7(3) and therefore discrimination clause would not apply to a case where income itself was to be computed under Article 7(3). The DR distinguished the two case laws cited by the assessee by showing that provisions of DTAA between India and Germany were not similarly worded as in the Indo-US and Indo-Canadian treaties, on which the two cited cases were based. Having regard to the substantial difference in the language of the DTAAs, those decisions would not be applicable.

All the contentions of the department were accepted by the ITAT (2009-TIOL-45-ITAT-MUM). The Tribunal held that where fee for technical services was linked to a PE, taxation of the same would be governed by article 7(3) and not article 12 that provided for favorable tax rate. It was further held that as article 7(3) required taxation of PE in accordance with domestic law and hence sec.44D had to be mandatorily applied. Regarding the discrimination provision contained in Article 24, the Tribunal referred to the language of article 24 in the Indo-German DTAA and found that the said article specifically protected application of article 7(3). Hence the rulings referred by the assessee were distinguishable.

Name of DR : Malathi Sridharan, Addl. CIT (DR), ITAT, Mumbai

EXEMPTION OF INCOME FROM SHIPPING OPERATIONS IS NOT AUTOMATIC

Transportation of cargo by feeder vessel ancillary activity only if linked with main voyage by mother ship - Burden of proof on assessee - benefit of Article 8 not automatic

The following issues arose out of cases relating to a number of Shipping Companies claiming relief under Article 8 of various DTAAs:

a. When can a broader interpretation of the term 'operation of ships in international traffic' be made to include incidental activities

b. Whether the transportation of goods in feeder vessels is eligible for relief under article 8 of the relevant DTAA independently or only as an incidental activity.

c. Whether linkage of goods transported in feeder vessel with the mother vessel is necessary to establish that it is an incidental activity

d. Whether relief is to be given on the basis of evidences produced on a case to case basis or on the basis of sample documentation.

The assessees 'ANL Container Line Pty Ltd.', 'Cia De Avegacao Norsul' Brazil and 'Delmas Shipping' France are non-resident shipping companies transporting goods from India to various parts of the world. The main or the large vessels traveling long distances that were operated by these assessees, usually called at major hubs in the region (Dubai and Singapore in South East Asia). The assessees used feeder vessels belonging to other shipping companies to transport goods from an Indian port to an Intermediary port, and the goods were then reloaded to the mother vessels owned, chartered or leased by these companies for shipping to the final destination. However, none of the ships owned, leased or chartered by these assessees called on any Indian Port during the relevant period. Freight for the entire journey was booked from India and the same was claimed to be exempt under article 8 of various DTAAs, claiming that the freight income was profit from operating ships in International traffic and hence not taxable in India.

The Assessing Officers denied relief under Article 8 of DTAA whereas the CIT(A) allowed relief holding that that once an assessee carried on shipping

activity anywhere in the world, it was not required to show that it operated any ships from India to claim benefit of article 8. Further, the CIT(A) also held that benefit of article 8 would be available without any linkage of cargo from feeder vessels to the mother vessel. The department's ground of appeal in all these cases was that transportation by feeder vessels not owned, chartered or leased by the shipping companies did not amount to operation of ships.

Before the ITAT, the DR had taken the following set of arguments to substantiate denial of exemption:

- Blanket relief cannot be given for the entire freight booked from India on the premise that a ship is operated anywhere in the world
- Applicability of the Article 8 was required to be examined with respect to each consignment to check whether it complied with the conditions of the article.
- Language of the DTAAs entered into by India with different countries not being the same, each case had to be evaluated with reference to the particular words used in the relevant Treaty.
- When goods are transported through feeder vessels, the activity does not independently amount to transportation of goods in international traffic
- When the relevant DTAAs define 'operation of ship' in clear terms as transportation of goods in vessels owned, leased or chartered by the enterprise, transportation through feeder vessels can never be eligible for relief under article 8
- Only when the DTAA does not define 'operation of ships', a reference can be made to commentary of OECD and only in that eventuality, transportation through feeder vessels as an incidental activity could be considered as eligible for relief.
- Production of evidence of operation of ship in respect of every consignment for transportation from the hub to destination required to claim relief with reference to the second leg of the transportation.
- Linking of the consignment from feeder vessel to the mother vessel was required to claim benefit of article 8, as transportation through feeder

vessels cannot be treated as an incidental activity unless such linkages are made.

The above arguments were accepted in full by the Tribunal. In the case of 'Delmas Shipping France', the assessee had in fact argued that on similar facts the same bench had granted relief in a group case without requiring the assessee to link consignment from feeder vessel to mother vessel. However, the Tribunal rejected the same stating that in that case no arguments were advanced on the question of linkages as was being done in the present case. Hence, the earlier decision could not be taken as an authority on the issue. Further, the Tribunal held that no relief could be given on the basis of sample documents and the onus lay with the assessee to provide full linkages.

Citations:

Cia de Navegacao Norsul Brazil reported in (2009) 27 SOT316 (Mum).
Delmas Shipping France reported in 2008-TIOL-646-ITAT-MUM.
ANL Container Line is reported in 2008-TIOL-625-ITAT-MUM.

Names of DR : Malathi Sridharan, Addl. CIT (DR), ITAT, Mumbai
RajivVijay Nabar, CIT (DR), ITAT, Mumbai

PROFITS DERIVED FROM OPERATION OF AIRCRAFT IN INTERNATIONAL TRAFFIC

Scope of Profits derived from operation of Aircraft in international traffic - Activity relatable to transportation of passengers by other airlines, charter handling and maintenance not exempt under Article 8 of Indo-US DTAA

'Delta Airlines' is a foreign airline company engaged in the business of transportation of passengers in international traffic and also engaged in providing services of baggage screening and equipment support to other airline companies operating from India. It received fees for such services and had claimed the same as exempt under Article 8 of Indo- US DTAA. The AO negated the assessee's claim for the reason that these activities did not constitute operation of aircrafts. The CIT(A) allowed relief by taking recourse to the OECD commentary and the technical explanations issued by the US treasury department in connection with US Model Convention.

Similar issues also arose in the case of Federal Express. Federal Express is engaged in transportation of goods around the world. It has its own fleet of aircrafts and provides door to door delivery of goods. Though it operated some flights from India during the period, it could not operate fully for want of various clearances from Government. Hence it availed the services of other airlines to transport its goods from India. It argued that the income earned on transportation of goods through other carriers was also eligible for relief under article 8 of Indo- US DTAA. The AO negated the assessee's claim for the reason that when goods were transported through other carriers, the profits arising from the same was not derived from 'operation of aircrafts'. The CIT(A) accepted the assessee's contention and held that the assessee was eligible for benefit of Article 8 of the Indo -US treaty.

The questions raised by the department before the ITAT in these cases were:

a. Whether provision of baggage screening and equipment support services constitutes operation of aircraft and hence eligible for benefit of Article 8 of the Indo -US treaty.

b. Whether transportation of goods in carriers belonging to others eligible for benefit of Article 8 of the Indo -US treaty.

The CIT DR put forward the following set of arguments:

- There is no basis to give a broader interpretation to the term "operation of aircraft" as contained in the OECD commentary in the given instance.
- The term "operation of aircrafts" has been defined in the Treaty as "transportation through aircrafts owned, leased or chartered by the assessee". When the term used in a treaty is defined in the treaty itself, its scope cannot be extended beyond the same.
- Reference to the OECD commentary and the Technical explanations issued by the US treasury department in connection with US Model Convention can be made only when the relevant DTAA is based either on the OECD model or the US model.
- Para (2)(b) of article 8 which extended the scope of the said Article to 'incidental activity' was restrictive and such other activity should be directly connected to transportation of goods or passengers in aircrafts owned, leased or chartered by the assessee in order to qualify for relief.
- Services of baggage screening and equipment support are provided to passengers who are transported by other airlines and not by aircrafts owned, leased or chartered by the assessee. Hence, the fees received for the same was not eligible for relief under para (2)(b) of article 8.
- On recourse to the commentary of OECD, the revenue reiterated its previous arguments that where a term has been defined in the treaty itself in a precise and unambiguous manner, the term has to be interpreted within the parameters of the said definition.

The CIT DR brought to the notice of the Tribunal that in the case of Federal Express, subsequent to the filing of appeal before the CIT(A) the assessee had gone into Mutual Agreement procedure (MAP) under article 27 of the Indo US DTAA and all the above issues were decided in the MAP against the asseessee. No reference to MAP was there either in the assessment order or in the appellate order (As it was a subsequent event). This came to light when case records were called for by the DR. The MAP order was produced before the ITAT. The bench expressed displeasure that the assessee had not disclosed this fact. Though the courts are not bound by MAP resolutions and the assessee had

not accepted the same, still the conclusions in MAP have persuasive effect.

All the above arguments were accepted by the ITAT and the cases were decided in revenue's favour. These rulings have significant importance as they lay down important guidelines for making reference to OECD Commentary while interpreting a treaty.

Citations:
Delta Airlines is reported in (2008) 26 SOT 514(Mum).
Fedral Express reported in 2008-TIOL-179-ITAT-MUM.

Names of DR : Malathi Sridharan, Addl. CIT (DR), ITAT, Mumbai
Rajiv Vijay Nabar, CIT (DR), ITAT, Mumbai

THE ROAD AHEAD

The global business environment, in which the Income Tax Department operates, is undergoing constant change. On top of it, the intense judicial scrutiny of the Income Tax Act by a set of judicial authorities across the country even makes the Act a very dynamic one. Under these circumstances, a body of knowledge unless regularly updated, would turn stale in no time. Managing knowledge for such a department is a tall order, which would require constant monitoring of the institutional mechanism itself, to be grounded on reality.

After completing the tasks of compiling the first two volumes of "Let us Share", CBDT has carried out a critical review of the mechanism. In the future, the institutional mechanism for collection and compilation of the best orders and practices in the department would be as under:

- From now on, "Let us Share"- A compilation of Best Orders and Practices, will be an annual feature, to be released every year during the All India CCIT / DGIT Conference starting 2010
- Standing Regional Evaluation Committees (RECs) will function under the respective CCIT (CCA) as its ex-officio convener with CIT- I, DIT (Inv), CIT (DR) as its ex-officio member. The convener may co-opt other members to give full representation to various functional areas of the department. The Additional CIT (HQ) (Technical) is to be made the member-secretary of the REC for coordinating with DIT (O&MS), the nodal agency for the compilation
- All Officers in the department will send their best orders / practices for inclusion in the book under seven different sections in the book: Best Practices, Assessment Orders including search & seizure assessments, CIT(A)'s orders, TDS Orders & Surveys, Searches & Surveys, Miscellaneous Orders and Representation before Tribunals and Courts, to the jurisdictional Regional Evaluation Committees, through their respective CCsIT. The last date for sending entries is 20th January 2010.
- DGIT(International Tax) will have a similar set up and work as the convener of the Regional Evaluation Committees in respect of Transfer Pricing and International Tax cases. Officers in the Directorates of

Transfer Pricing and International Tax will send their orders for evaluation to the office of DGIT through their respective Directors by 20th January 2010

- DGIT, NADT will act as the Regional Evaluation Committee for selecting best practices at NADT and RTI and the officers of NADT and RTIs will send their best practices to DGIT, NADT by 20th January 2010.
- The orders are to be evaluated by the RECs as per the guidelines issued by the Board. The selected orders are to be sent to DIT(O&MS), Nodal agency for compilation of Best Orders, by 12th of February 2010 for placing before the National Evaluation Committees for different sections
- The Member-Secretary of the RECs would ensure that all the selected orders are forwarded with self-contained synopses of not more than 1000 words, along with the soft copies of all the relevant orders. In the absence of the soft copies of all the relevant documents, the write-ups would not be considered by the National Evaluation Committees.
- Best Practices implemented at regional level are to be sent to the respective RECs for evaluation by 20th January 2010. The Best Practices selected by the RECs, best practices in the form of National Initiatives taken by all the Directorates would be sent to DIT(PR, PP & OL), by 12th February 2010, for putting up before the National Evaluation Committee.
- An institutional mechanism has already been put in place to make selection of Best Practices for the PM's award of Excellence. There will be a two-day national workshop at NADT every year for making selection of Best Practices for nominations. DIT(O&MS) is the Nodal Agency for coordinating with NADT and DIT(PR, PP & OL) for organizing the workshop. The next workshop will be held on 29th and 30th of June 2009
- A standing Steering Committee has been set up with DGIT (Admn) as its ex-officio Convener and DIT (HRD), DIT (O&MS), DIT (PR, PP & OL) and DIT(TDS) as ex-officio members for spearheading the Knowledge Management initiative in the department
- The Convener of the Steering Committee in consultation with the CBDT would constitute the National Evaluation Committees in the

month of January 2010 for evaluating different categories of Orders as per the guidelines to be issued by the Board. The national committees would start the evaluation process on 25th of February 2010 and complete the process by 10th of March 2010.

- The Convener of the Steering Committee in consultation with the CBDT would constitute the Editorial Board in the month of January 2010 for putting the selected orders/practices together, out of the orders selected by the National Evaluation Committees. Separate guidelines would be issued by the Board for the Editorial Committee
- The Editorial Board will commence its work on the 15th of March 2010 and complete its work of compiling the book by 25th of March 2010 and hand over the edited book to the Steering Committee on the 25th of March 2010
- DIT(O&MS) will put up through the Convener of the Steering Committee, the guidelines for evaluation of the best orders / practices by the Regional and National Evaluation Committees, the Editorial Board for approval of the Board. While fixing the criteria of tax effect in respect of orders pertaining to various classes of cities, difference in tax implications across cities is to be kept in mind, for ensuring adequate representation from officers across all classes of cities.
- DIT (PR, PP & OL) in consultation with the Steering Committee would maintain the website incometaxindiapr.gov.in. The Steering Committee will come up with a proposal for maintenance and updating of the site including enhancement of the server capacity to be able to support the department's initiative on Knowledge Management
- DGIT, NADT would act as the nodal agency for collection of good presentations made at the NADT and the RTIs and would forward the same on a quarterly basis to DIT(PR, PP & OL) for uploading the same to the knowledge portal of the department.
- The Officers of the department can send Articles written by them to DIT(O & MS) for hosting on the departmental website through the respective Regional Committees. After getting it evaluated by a Screening Committee to be formed in consultation with Steering Committee, the selected articles will be uploaded on the website.

ACKNOWLEDGEMENTS

National Evaluation Committees

GroupI: InternationalTaxation

Member	Designation
Girish Dave	CCIT-IX, Mumbai
Sanjay Mishra	DIT(Intl. Taxn), Delhi

GroupII:Transfer Pricing

Member	Designation
V.K. Mangotra	DIT(TP)-I, Mumbai
Tejinder Singh	DIT(TP), Pune
Ms. Alpana Saksena	DIT(TP)-II, Mumbai

GroupIII: InvestigationWing & Central Charges

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B. N. Dutta	DIT(Inv.), Ahmedabad
SunilVerma	DIT(Inv.), Jaipur
D. S. Chopra	CIT-II, Jaipur
Ronmoy Das	DIT (Inv.). Kolkatta
Vinodananda Jha	DIT (Inv.), Bhopal
V.K. Pandey	DIT (Inv.), Chennai

GroupIV:TDS Orders and Surveys

Member	Designation
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Arti Handa	CIT(TDS), Delhi
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GroupV: Assessment Orders and Survey operations conducted by the Assessment wings

Member	Designation
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K. Chandrahas	CCIT-V, Chennai
K.V. Chowdary	DIT(Inv.), Nagpur
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Group VI: Assessment Orders and Survey operations conducted by the Assessment wings

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N.P. Sinha	CIT (C)-II, Kolkata
Shishir Sinha	CIT (A), Durgapur
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Group VII: Appellate Orders

Member	Designation
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Sudha Sharma	CCIT, Kanpur
H. P. Kain	CIT-X, Delhi

Group VIII: Representation before Tribunals

Member	Designation
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Mukesh Kumar	CIT-XI, Mumbai
Rajendra CIT(DR)(ITAT), Mumbai	
Ruby Srivastava	DIT, (Settlement Commission), Mumbai
S.U. Dhaykumaran	CIT(DR), ITAT-VIII, Mumbai

Group IX: Miscellaneous Orders

Member	Designation
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Gautam Kar	CIT-II, Bangalore
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Group X: Best Practices

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