"The wealth of learning
cannot be stolen by thieves"

-Kautilya

For Departmental Use Only

LET US SHARE

A Compilation of Best Practices & Orders
of Income Tax Department

Vol. V 2012

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

प्रणव मुखर्जी
Pranab Mukherjee

वित्त मंत्री, भारत
FINANCE MINISTER
INDIA

29th May, 2012

MESSAGE

India today is among the front runners in economic growth, and is acknowledged the world over as an emerging economic power. This is attributable as much to the focused policies of the government, as it is to their implementation at the ground level. While we bravely face the challenges arising from global business practices, the task at home is also stupendous, that of ensuring equity and efficiency, through continuous improvement of our policies, practices and procedures. In all these areas, the role of the Income Tax Department assumes great significance. The Department has emerged as the major revenue earner for the government and I am happy to see continuous rise in share of direct taxes over the years.

In today's complex global economic scenario, we need a more efficient, technology and knowledge driven tax administration. I notice that in the past few years the Department has taken steps for enriching its manpower by improving its training infrastructure, introducing mid-career training programmes, and also by providing a platform for learning from each other.

I am glad that the Department's initiative of sharing the good work done by the officers and staff, amongst themselves as also with the public is continuing, and the fifth volume of "Let Us Share" is being released. I am confident that this will further enhance the sense of pride amongst the officers and staff, help them to sharpen their skills, bring transparency and lead to standardization of practices in the Department.

(Pranab Mukherjee)

S. S. Palanimanickam

वित्त राज्य मंत्री
भारत सरकार
नॉर्थ ब्लाक, नई दिल्ली–११०००१
Minister of State for Finance
Government of India
North Block, New Delhi - 110001

4th June, 2012

MESSAGE

I am pleased to know that the Income Tax Department is bringing out its fifth edition of "Let Us Share - A compilation of Best Order and Practices". This effort is extremely praiseworthy as experience sharing and documentation are essential to create institutional memory. This can be fruitfully utilized for many years to come.

I have seen the Income Tax Department initiating many innovative schemes for the benefit of the tax-paying public. There is greater transparency, increased use of technology and simplification of procedures. This has helped in widening the tax base and growth in revenue collections. While the efforts put in by the officers and staff of the Department have been commendable, a well-informed work force can take these efforts forward. I compliment the officers and staff who have shared their knowledge, efforts and experience in this volume, and which can be shared by their colleagues and also the public. This will lead to increased awareness about the Department's working and enhanced compliance.

I have no doubt that with such knowledge sharing initiatives, the Department will emerge as an even more efficient organization, vigorously carrying out its assigned task and at the same time presenting itself as a tax-payer friendly Department. I wish the publication all success.

(S. S. PALANIMANICKAM)

वित्त सचिव
FINANCE SECRETARY

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

28th May, 2012

MESSAGE

It is heartening to note that the process of learning through experience sharing is continuing in the Income Tax Department, with the publication of the fifth volume of "Let Us Share". I am sure that, as in the past, this compendium of best orders and practices will help the officers and staff in updating their knowledge and honing their skills. It must be appreciated that the Department is conscious of this need and recognizes that expertise in individual hands must be used for the benefit of all stakeholders.

The economic scenario is undergoing rapid changes, both inside the country and outside. The Income Tax Department has taken several initiatives to keep abreast of such changes, not only by affecting suitable changes to the legal framework, but also by delivering better services to the tax payers. It has finely balanced its obligations as a tax collector as well as a service provider, which is the need of the day.

I hope that the culture of sharing best practices will continue so that more and more officers and staff are able to benefit and acquire the skills required of taxmen in a modern and growing economy.

(R. S. Gujaral)

Laxman Das, IRS
Chairman, CBDT

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

30th May, 2012

MESSAGE

I am pleased to know that the initiative for sharing of experiences and knowledge has continued with the anticipated vigour and zeal, and we are now publishing the fifth volume of "Let Us Share". This has and will surely continue to build a larger reservoir of collective wisdom available amongst us, from which each one, including the public, can benefit.

The Department today is the largest contributor to Central Revenues, which is the result of combined effort of all the officers and staff. Many innovative steps have also been taken to achieve excellence in public service delivery. We are seen today as a technology driven Department with greater efficiency, decreased response time and fewer grievances. The CPC, which has a nationwide coverage, has reduced the average processing time for Returns of Income from 205 days in 2009-10 to only 41 days in 2011-12, which is less than the period specified in the Citizen's Charter. Call Centres have been set up at many stations to directly answer the queries of tax payers. As many as 65 Aayakar Seva Kendras are already working and 50 more will be set up in the present Financial Year 2012-13. These have had a positive impact on tax payers and project the Department well.

"Let Us Share" succinctly brings out our efforts in sharpening our professional skills and moving to a more transparent regime. I do hope that this initiative will gather momentum and take the shape of a compendium which will be useful to all, within and outside the Department. I congratulate those who have shared their experience in this volume, and also those who have contributed towards the publication of "Let Us Share Volume V".

30/5/2012

(Laxman Das)

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एस. सी. जैनी, आई आर एस
S.C. JAINI, IRS
सदस्य, के. प्र. क. बो.
Member, CBDT &
विशेष सचिव, भारत सरकार
Special Secretary to the Govt. of India

भारत सरकार
GOVERNMENT OF INDIA
(वित मंत्रालय / राजस्व विभाग)
Ministry of Finance/Department of Revenue
केन्द्रीय प्रत्यक्ष कर बोर्ड
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FOREWORD

The next volume of 'Let Us Share' is before all of you. It is an idea which has taken strong roots and in these 5 years has established its niche value. It is different from other publications in as much as it contains original work done by the officers of the IT Department. Access to this body of work, I hope, will positively impact the thought and performances of our officers and raise the bar as far as goals and achievements are concerned.

2. It is no secret that amidst fast paced changes occurring around us, the IT Department has also grown and so have the skills and practices. The results are there for all to see. Today the Direct tax to GDP ratio is around 6%. Many innovative changes have been introduced to improve organizational working, yet we have miles to go.

3. New areas of taxation are emerging, business models are changing, mergers and acquisitions are common place. All of them are throwing up challenges which require lateral thinking as well as investigation of widespread linkages. In such a scenario, which requires inculcation of both soft and hard-nosed investigative skills, a compendium such as 'Let Us Share' gives the officers an insight into challenges and helps in delineating the technicalities of law and procedure involved. In my view, the more we share, the more we allow our receptivity to grow which helps us to imbibe best practices, to innovate and think creatively. So I am sure this volume, like earlier ones, would be of tremendous help to all.

4. While we have received and included high quality orders, I am sure the body of work not included is equally rich qualitatively. I, therefore, exhort the officers to send their orders without hesitation so that the best across the regions is showcased and there is truly an exchange of best practices and dissemination of information across the Department. Further, acknowledgment of good work done through this volume is aimed at raising the bench mark and encouraging professionalism.

5. I congratulate all the officers, who have undertaken the responsibilities at different stages of this compilation, and who have successfully contributed some of the best our Department has to offer. Henry Ford said, 'Coming together is a beginning, Staying together is progress, Working together is success'. This is, in my view, a fine example of participative management.

6. I have, thus, great pleasure in putting "Let Us Share Volume V" in your hands and I hope it will provide relevant and useful guiding light to all across the country in times of need.

S. C. Jaini
Member (R), CBDT

अनीता कपूर
Anita Kapur

आयकर महानिदेशक (प्रशासन)
Director General of Income Tax (Administration)

ACKNOWLEDGEMENTS

The fifth volume of the publication "Let us Share" is in your hands. At the outset, I convey my appreciation to the contributors, whose commitment, hard work and excellence in performance are manifest in this edition.

2. I express my sincere gratitude to the members of the Regional Evaluation Committees (REC) for their objective assessment of the entries. I am also extremely thankful to the members of the National Evaluation Committees (NEC) for their thorough evaluation process.

3. The Editorial Board headed by Shri A. K. Jain, DGIT (Investigation), Ahmedabad has done an excellent job of editing and compiling the entire volume, working against a tight schedule, without compromising on the quality of the publication. Meticulous attention was paid to the cover design, layout, presentation and selection of the entries. My sincere thanks to the Editorial Board for an assignment professionally executed.

4. Shri Amitabh Kumar, DIT (PR, PP & OL) and his team deserve credit for piloting and bringing out this volume well in time.

5. I would like to place on record a special note of gratitude to Shri Laxman Das, Chairman, CBDT who was a constant source of inspiration for the entire team.

New Delhi
Date: 4th June, 2012

Anita Kapur
Director General of Income-Tax(Admn.),
New Delhi

अरूण कुमार जैन
Arun Kumar Jain

आयकर महानिदेशक (अनुवेषण) अहमदाबाद
Director General of Income Tax (Investigation)
Ahmedabad

From The Editorial Board

Innovations in business structures and processes, tremendous growth of transnational trade and commerce, introduction of complex financial products, the urge for equitable and inclusive development of each strata of society through incentives and benefits, and many other factors have contributed to the increasing complexity of tax laws. Not only are the provisions required to be amended frequently, but a surfeit of judgments by various appellate authorities from the Commissioner of Income Tax (Appeals) to the Supreme Court, are being added to this repository each passing day. So much material is being accumulated so rapidly that it is well-nigh impossible for an individual tax administrator to comprehensively study, understand and assimilate all of it. There is insufficient time to make independent studies on the complex issues confronting him, both administrative and technical.

2. Officers across the country have been devising different innovative approaches and investigative techniques to find solutions to diverse problems and issues faced in tax administration. 'Let Us Share' is an effective tool to crystallize such knowledge, insights, investigative techniques, innovative and best practices, and to constantly update our human resources. Knowledge workers of any organization possess a wealth of insights which can effectively be utilized to address the difficult issues faced by the organization. Already four volumes old, 'Let Us Share' is by now a brand in its own right, apart from being a handy reference guide for officers and staff of the Department who are constantly striving to do more, to do better, and to enhance results.

3. The Editorial Board is proud to present Volume-V of 'Let us Share'. It is said, “If it isn't broken, don't fix it”. Inspired by this sentiment, the Editorial Board has consciously refrained from unnecessary tinkering with the format of the publication which its readers have by now got used to. The cover design of the volume, however, attempts to make a refreshing departure from the earlier volumes.

4. On behalf of the Editorial Board, I would like to thank Mrs. Anita Kapur, DGIT, Shri Amitabh Kumar, DIT, and their team from Directorate of Income Tax (Public Relations, Printing & Publications and Official Language). The editorial team would also like to place on record its grateful thanks to CBDT for giving them the opportunity to bring out this volume of its prestigious publication, 'Let Us Share'. Thanks are also due to the publishers for delivering a quality product within the short deadline given to them. Most of all, however, our thanks are due to all the officers and staff of the Department who have contributed entries to this volume and to the Regional and National Evaluation Committees for the time and effort put in by them in short-listing and evaluating the entries and preparing synopses.

5. The Editorial Board is aware that many initiatives were actually taken by officers other than those who presided over the end-result, but their contributions are not acknowledged. We would like to congratulate all such innovators whose ideas have borne fruit. The editorial team is also conscious that the entries included in the volume are not fully representative of all the good and meritorious work done in the Department. It is confident that the elaborate process of selection and review of entries which is already in place, will be further streamlined to enable more and more best practices, initiatives and orders to be included in future volumes of 'Let Us Share', thereby enhancing its usefulness.

Arun K. Jain

Dated: 24.05.12

Chairman, Editorial Board

CITIZEN'S CHARTER

" Rights that do not flow from duty well performed are not worth having "

- Mahatma Gandhi

VISION, MISSION & VALUES

Our Vision

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

Our Mission

The following Mission statement outlines the roadmap for the ITD to realise its vision:

- To formulate progressive tax policies
- To make compliance easy
- To enforce tax laws with fairness
- To deliver quality services
- To continuously upgrade skills and build a professional and motivated workforce

Our Values

Our Values will steer us through the journey towards realising our Vision and will be reflected in all our decision making processes.

Integrity	We discharge our duties truthfully, honestly and transparently
Accountability	We are responsible for our actions and outcomes
Responsiveness	We are sensitive, prompt, fair and objective in our dealings with our stakeholders, fostering mutual trust
Professionalism	We strive for improving performance and competence with a focus on achieving excellence
Innovation	We encourage new ideas, methods, processes and practices
Collaboration	We work together with our stakeholders and partners to achieve common goals

CITIZEN'S CHARTER
A DECLARATION OF OUR COMMITMENT TO THE TAXPAYERS

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

We Believe in

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

This charter was issued on 24th of July 2010, revisiting the earlier charter issued in July 2007. In the preparation of this charter, consultations have been held with all stakeholders. This charter reflects the best endeavor of the Department. The Department intends to review the charter after three years.

Service Delivery Standards

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

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

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

The above timelines will apply to cases where returns/applications are complete in all respects.

Expectations from Taxpayers

We expect our taxpayers:

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

We Endeavour

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

Grievance Redressal

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

BEST PRACTICES/INITIATIVES

" The difference between what we do and what we are capable of doing would suffice to solve most of the world's problems "

- Mahatma Gandhi

IMPLEMENTATION OF AAYAKAR SEVA KENDRA IN THE INCOME TAX DEPARTMENT

Aayakar Seva Kendra aims at 'Excellence in Service Delivery' to the tax payers. It represents a Single Window System for computerized registration of all communications from taxpayers, including paper returns. The system generated unique acknowledgement number ensures compliance within the deadlines specified in the Citizen's Charter. Tax payers can also monitor the

status of their applications and returns. As on date, 65 ASKs have been set-up in the Income-tax Department. In the current Financial Year 2012-13, the Department will be setting up 50 more ASKs across the country. Officers and staff of the Department are becoming more sensitive to the philosophy of excellence. With the Bureau of Indian Standards as the knowledge partner, training programs were organized at seven Direct Taxes Regional Training Institutes simultaneously, in co-ordination with NADT.


PRATYAKSH KAR BHAWAN

BEST PRACTICES / INITIATIVES

E-APPEAL

Comprehensive end-to-end technological solution for automation of all the procedures and processes in the office of the CIT (Appeals) – transformation into a paperless office – commendable initiative of CIT(A), Hyderabad

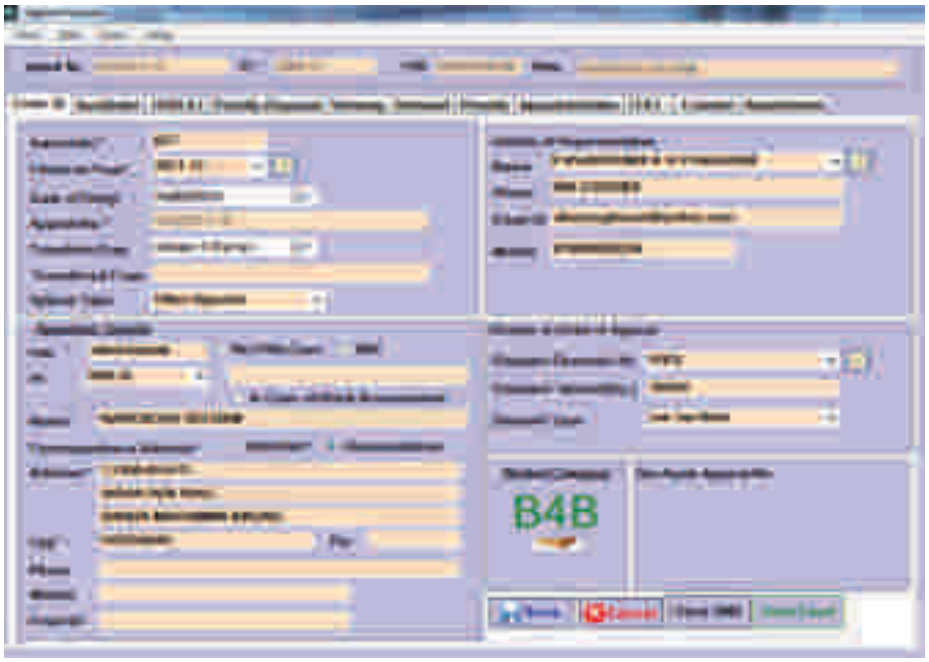
While the Income Tax Department (ITD) has slowly metamorphosed into a technology-enabled organisation of global competitiveness, the office of the CIT (A) has somehow remained at the fringes of this revolution. The systems in use in Appeals offices, whether the process of receipt and acknowledgment of appeals, maintenance of records, passing of appellate orders, or generation of reports, are wholly manual, inefficient and unreliable. Non-availability of archival records, inability to link original and set-aside appeals, inability to identify cases involving similar issues, lack of any system to monitor and implement the directions of higher courts, unreliability of reports and data sent to the higher authorities, and low quality of taxpayer service, are endemic to the current mode of functioning of Appeals offices. Added to this is the problem of complete lack of readiness to integrate with new initiatives like ASK.

2. 'E-Appeal' is an initiative developed by the office of the CIT (A)-V, Hyderabad, as an end-to-end technological solution to the problems plaguing the Appeals offices. It involves the use of latest IT hardware, development of specialised software, and proactive involvement of both departmental and outside stakeholders, including staff, taxpayers and tax professionals.

3. 'E-Appeal' envisages an internal wireless LAN within the office of the CIT (A)[1]. The software package of E-Appeal is installed in the server and each system. The process begins with scanning of every incoming paper in the office of the CIT (A), whether an appeal (Form No.35), a letter, or any other document. A very user friendly interface ensures that no special expertise is required in this process. The scanned document is automatically routed to the relevant appeal folder or office file in the system. If it is a new appeal, the system will generate an appeal number and place it in the relevant basket. A brief

[1] A wired LAN can also be used where the staff of CIT (A) sits at a distance.

confirmatory SMS and email will be sent to the appellant and/or to the authorised representative (AR). A database of appeals, ARs, officers, wards etc. is maintained along with their mobile numbers and email IDs. The following is a screenshot of the user interface of the system:



The data in the above screen reveals that a new appeal has been filed. An appeal number has been generated. The buttons at the bottom show that a confirmatory email has been sent but SMS is yet to be sent. Basket has been allocated automatically. The tabs located near the top of the screen relate to the different functions performed in Appeals offices and indicate that each one of those functions has now been automated. Upon entering details of the Assessment Order (including the grounds and issues), the system prompts for generation of ITNS-51, Appeal Memo, and even the labels on the files. The system automatically takes data from the database, obviating the need for manual input.[2] The Priority Disposal screen captures information about appeals to be disposed of on priority on account of court orders, administrative directions, or for any other reasons. The due dates are captured and reminders can also be set. The Hearing tab is a sophisticated appeal management and scheduling system. It

[2] In the E-Appeal (Ver-2) which is presently under development, the system will also have the facility to generate ITNS etc. in bulk.

generates hearing notices, SMS and email alerts for new hearings, and even a response warning in case the proposed time and date clash with another engagement or the day happens to be a closed holiday. Hearings register is also automatically generated.

4. Remand is another significant aspect of the appeals process. The system generates remand/comment letters and provides MIS on all aspects of the reports. SMS and E-mail alerts can also be sent to the AO, the Range Head, and the CIT.

5. Issues, sections and the decisions involved in an order can be entered in the system, so that issue-wise and section-wise information can be generated at a future time.

6. The ITAT tab captures information on set aside orders from any higher authority or court. In case of a set aside order, the system instantly generates a new appeal number while attaching the old appeal file to the new one. Thus a very important problem of locating old set aside files is solved. The Transfer tab facilitates transfer in and out of files. An email containing the entire file folder is sent and the recipient can download it into the system at his/her end. The databases at both the ends are updated automatically. The last tab Attachments enables viewing, transferring and emailing the entire file or portions of it. Through this tab a file or portions of it can also be converted into PDF or into formats compatible with iPad, Android Tab, mobile phone etc.

7. MIS is the most important component of 'E-Appeal' which makes it a true companion for a CIT (A). The system has an inbuilt self-generating Appeal Control Register which provides information on baskets, pendency, particular appeals, remand reports, comments, disposals, penalties and many other aspects. In addition, the system also generates prescribed monthly reports, registers and many other reports.

8. 'E-Appeal' has multiple levels of security. Firstly, access to the system is password-protected. Secondly, only CIT (A) has certain privileges of file editing and changing. He can lock certain appeals and also change the basket. System image is taken every day at 4 PM and data backups at 5 PM.

9. The hardware requirements for 'E-Appeal' include a high-speed scanner with automatic document feeder, PCs (already present

in all offices), internal networking, and external hard drives, SD cards or pen drives for backup.

10. 'E-Appeal' makes both administrative and legal functions the office of the CIT (A) completely paperless. The software is highly upgradable. The system is flexible enough to incorporate future administrative and procedural requirements. It can function both in standalone and integrated, networked and web-based environment. With 'E-Appeal', the CIT (A) has a transparent office with reliable information available real time, thus bringing excellence in the internal and external management of the office of CIT (A) and enabling it to render better client service. He can carry his entire office on his tablet, Android device, iPad or a pen-drive, and work in a virtual office environment even when physically away from office.

11. The project has been extremely successful at Hyderabad. Appellants, professionals and officers alike have been enthused by its user-friendliness. 'E-Appeal' incorporates many firsts vis-a-vis taxpayers, including SMS and email alerts on various milestones in the appeals process, and seamless delivery of e-orders. Complete transparency in working is the hallmark of the system.

Name of the Officer : Parneet Singh Sachdev,
CIT(A)-V, Hyderabad.

MANAGEMENT OF INFRASTRUCTURE PROJECTS AT NADT

Modernization of ageing infrastructure at NADT – transformation into a state-of-the-art training facility of international standards - creation of other facilities - no time or cost overruns - result of excellent teamwork and participation.

The infrastructure facilities at NADT were set up in early 1980s and were designed to cater to the requirements of that time. Since then, there had been a tremendous change in the training methodology, a substantial increase in training duration, a significant rise in the number and the content of the courses (including courses for the international participants) and unprecedented jump in the magnitude of the training population. With the growth of the Academy into an institution of international repute, the inadequacy of the available infrastructural facilities, including classrooms, faculty rooms, storage space, library, auditorium, senior officers' accommodation, mess, etc., posed a severe constraint, and there was an imperative need to augment them.

2. Through persistent efforts, the Academy was able to obtain sanctions for a new Officer Trainees' Hostel, an Advanced Training Centre, a Senior Officers Hostel & an Officers' Mess. The National Buildings Construction Corporation Limited (NBCC) was chosen as the executing agency. However, implementation of the projects posed significant challenges including the need for constant liaison with NBCC as well as with Directorate of Infrastructure, ensuring timely release of funds, regular monitoring of quality and progress in completion of work, and avoiding cost and time overruns.

3. To successfully meet these challenges, a Projects Review Committee consisting of both officers of NADT and the officer trainees was constituted. The Committee held monthly review meetings with the execution team of NBCC. These review meetings served as an effective forum for tracking and reporting of progress of the project, problem-solving, risk management, and as a regular interface for communication. The actual progress of the project was regularly

monitored against planned progress on basis of PERT charts, etc. the problems faced by NBCC were discussed and reviewed with a view to finding solutions so as to ensure uninterrupted flow of work.

4. M/s NBCC was also requested to make ready a mock-up (model) room in the first project, i.e., New Officer Trainees' Hostel. The same was prepared and inspected by the Committee Members. This mock-up room gave the exact idea about the dimensions and layout of the Officer Trainees' Hostel rooms. This room was also shown to the senior officers and the suggestions received were carefully considered. Apart from the above, the officers and trainers visiting NADT were requested to visit the site and give their valuable feedback and suggestions for the consideration of the Committee.

5. The most innovative part was the inclusion of the officer trainees undergoing induction training in the Projects Review Committee. Their active participation with the aid of information technology and innovative design ideas proved very useful in finalizing designs (including that of furniture) for optimum utilization of space. It also gave them hands-on experience of project management which will doubtlessly be helpful to them in their careers.

6. Close monitoring, constant supervision and regular site visits resulted in completion of the first project, i.e., construction of new Hostel for the Officer Trainees, within the stipulated time avoiding cost and time overruns. This prestigious state-of-art building comprising 156 rooms, which has been named "Vikramshila", was inaugurated by the Chairman, CBDT, in January, 2012. The building is compliant with 3-star GRIHA (Green Rating for Integrated Habitat Assessment) norms developed by the Tata Energy Research Institute (TERI) jointly with the Ministry of New and Renewable Energy.

7. Successful completion of the Officer Trainees' hostel and other infrastructure projects which are still in the pipeline, comprising state-of-the-art buildings and modern audio visual teaching and training aids, will go very far in bolstering NADT's reputation as an emerging centre of excellence in the field of training.

Names of the Officers : G.G. Shukla, DG (Trg), NADT.
N. Sankaran, ADG-I, NADT.
R. Ravichandran, ADG-II, NADT.
Shekhar L. Gajbhiye, Joint Director (Admn) & Nodal Officer.
N. Jayasankar ,Additional Director (Faculty).
Dr Rajeev Ranade, Additional Director (Faculty).
Dr V K Singh, Additional Director (P&R).
J. A Kadaloor, Assistant Director (Faculty).
Sanjay Joseph, Deputy Director (Admn-II & Projects).
Ashim Kumar Chakraborty, Assistant Director (Admn. & Estate).
Rahul P.R., Officer Trainee-64th Batch of IRS.
Nidhi Mittal, Officer Trainee-64th Batch of IRS.
Seema Dhankar, Officer Trainee-64th Batch of IRS.
Pravin D. Salunkhe, Officer Trainee-64th Batch of IRS.
Abhay Chorghade, Administrative Officer, NADT.
Milind Pande, ITI(Projects & Budget), NADT.

UPGRADATION OF NADT LIBRARY

Significant efforts by NADT to augment its library resources - particularly digital resources and infrastructure - proposal to enhance status of its Library under the Government of India norms.

As a training institution of excellence, NADT must remain equipped with top-class library services capable of providing the latest resources to trainees and faculty. Yet the library suffered from a series of inadequacies including limited access to digital resources, outdated hardware, as well as infrastructural and manpower constraints.

2. With a view to improving the overall capacity of the Library and enable it to become an important resource not only for the NADT but for the Department as a whole, a series of initiatives were taken as part of a comprehensive project for the up-gradation of the Library.

3. The Digital Library hardware was expanded and access to digital services was extended beyond NADT. The Digital Library operates on Libsys software, incorporating a fast search engine and indexing facility, whereby, books, presentations and other documents and multimedia can be preserved and shared. All authorised users can access it over the internet with a user ID and password. This facility was made fully functional with installation of upgraded servers which enabled extension of access to DTRTIs as well as to other in-service trainees visiting the Department. Over 3000 documents, comprising study material, monographs and research papers prepared by trainees and faculty at NADT, manuals, and other documents prepared by the Department, were uploaded for access by users.

4. To enable the trainees and the faculty to regularly update their knowledge and to assist them in undertaking research projects which are a part of the various training programs conducted by the Academy, access was made available to tax-related databases and also to Lexis Nexis. It was also decided to join government promoted consortia to access more databases at an economic price.

5. A workshop was held on Library Day[3] for local Government Libraries in Nagpur, which provided a valuable opportunity for the

[3] The 12th of August, being the birthday of Prof. S. R. Ranganathan, the father of modern Library Science, is celebrated in India as "Library Day".

staff of NADT Library to interact with other Librarians. It was also decided in the workshop that all Government Libraries will work together to increase sharing of resources and best practices among one-another. A Library Bulletin was published and released on the day, which highlighted the initiatives undertaken by NADT Library and the issues and challenges ahead. It also documented the progress made, and is expected to serve as a reservoir of institutional memory. It was circulated primarily in digital format (as a pdf file) to minimize the costs and reduce environmental footprint.

6. Government of India rules provide for categorisation of government libraries into six categories from Category I (smallest) to Category VI (largest). Grant of posts of Librarian and other staff in Government Libraries is dependent upon such categorization. The NADT Library is currently in Category II. An initiative was undertaken to get the library re-categorised. An objective evaluation of the necessary parameters based on which the library will qualify for re-categorization was carried out. The exercise revealed that the NADT Library would qualify as a Category IV Library. Accordingly, a detailed proposal for re-categorisation of NADT Library as Category IV Library (which is the highest category status for any government training institution's library in India so far) has been prepared and sent to the Ministry for its approval.

7. As a result of the purposeful steps taken to upgrade the library, NADT is today much better equipped to cater to the needs of trainees, trainers, researchers and other users of its services. Cooperation with other government libraries has improved. Since the library has fulfilled all the requirements to be graded as Category- IV as per the prescribed criteria, the CBDT has agreed to the proposal and a formal communication in this regard is being awaited.

Names of the Officers : N. Sankaran, ADG-I, NADT
R Ravichandran, ADG-II, NADT
Dr Vinay Kumar Singh, Addl. Director (Fac & Lib.), NADT
C Tripura Sundari, Additional Director (Fac)
Shekhar Gajbhiye Joint Director (Admin)
S Swaminathan, Joint Director (Fac)

ZERO WASTE CAMPUS

DTRTI, Bangalore adopts environmentally sustainable solid waste management practices and converts its new campus into a 'zero waste campus' – another feather in its cap.

It is well known that garbage dumps are sources of poisonous gases and leachates which pollute the atmosphere and ground water for miles around, and cause land degradation. The DTRTIs, being full-time training establishments, are frequented by trainers, trainees and a large number of other visitors. Inevitably, an appreciable amount of waste material is generated in the campus. It was imperative to find environmentally sustainable solutions which will keep the DTRTI, Bangalore's prestigious new campus free of toxic and environment-unfriendly waste.

2. The DTRTI's approach to solid waste management is based on two fundamental assumptions: first, in nature there is no concept of "waste" as such, since one man's waste is another man's value; second, as earth citizens, each one of us has to take full responsibility for our actions from the point of consumption to the point of final disposal of the 'waste' generated in the process of consumption.

3. The main highlights of the solid waste management strategy adopted by the DTRTI are as follows:

- All waste is strictly segregated at source into organic (food related) and inorganic (paper, plastic, electronic). For this purpose, a system of dual dustbins has been introduced. Every room in the campus, including hostel and officers' rooms, has two dustbins, one of bamboo for inorganic waste, and the other made of steel (with a removable plastic bucket inside) for organic waste. Several large waste bins made of steel have been placed strategically across the campus to ensure a litter-free atmosphere.
- Detailed instructions are repeatedly communicated to the trainees for proper segregation of waste. Non-adherence to the disposal norms is visited with prompt action,

including monetary penalties, issue of memos, and informing the respective cadre controlling authority.

- The facility management contract awarded by the DTRTI incentivizes timely discovery by the house-keeping staff of defaults as they occur, thereby keeping the pressure on the trainees for appropriate behavioral modification.
- Plastic, paper and e-waste are stored in marked bins for monthly collection for recycling. The plastic is given to contractors with the Bangalore municipality for mixing with the tar in road projects in the city. Awareness is generated that even the tiniest piece of plastic, including chocolate wrappers, twine etc is recyclable and that there can be "wealth out of waste" (WOW). E-waste, which is much smaller in quantity, is also recycled.
- A mechanical organic waste converter has been set up in the campus to handle kitchen, dining and garden waste, which is composted using an aerobic process. The operation of the unit has been integrated with the facility management contract.
- Sanitation residues are managed through a sewage treatment plant. Treated water is used for horticulture and toilet flushing purposes. Special equipment for decomposing sanitary towels has also been experimented with successfully. In fact, the campus is not even connected to the municipal sewage lines.
- Sessions on waste management, using films and interactive learning techniques, have been included as part of life skill training for DTRTI and MSTU trainees in all long- duration courses. Exacting discipline is expected from trainees with regard to non-littering, segregation of waste at source, and hygiene maintenance.

  Close partnership with the Solid Waste Management Round Table, a city based net-work, ensures technical and training support to the DTRTI's endeavours.

4. Having by now stabilized these practices at its campus, the

DTRTI has launched an 'outreach' exercise to include the 200 departmental quarters located in its close vicinity. Accordingly, it has started contact and training programs for the officials and their family members, especially the lady members, on the criticality of segregation of dry and wet and organic and inorganic waste for effective waste management. The infrastructure and tie-ups available with the DTRTI have been placed at their disposal in order to optimize the benefits from the resources and efforts already invested by the DTRTI.

5. As a result of the initiative, the new high technology enabled campus of the Institute at Jalahalli, Bangalore, has been made a 'zero waste campus' with end to end management of all solid waste generated there. The DTRTI does not contribute the least bit to the 3600 tons of daily un-segregated waste which is collected and sent by the municipal authorities to the landfills. During the six month period starting from August 2011 when the collaborative arrangement has been in place, the campus has generated 866 kg of solid waste for recycling, including 702 kg of paper, and 164 kg of plastic. Waste paper recycling has saved resources equivalent to 15 trees, 28,000 liters of water and 700 units of electricity. More than 5250 kg of organic waste has been handled. The resultant high quality compost is primarily used for the campus garden with scope for future revenue generation for the government.

6. The campus now enjoys officially certified three star-rated green status. Its efforts have been recognized for presentation as a best practice in the public sector before the Lok Adalat in Bangalore which is hearing a slew of petitions against the local government on the inadequacy of its waste management system.

7. Visitors to the DTRTI receive a smart cloth pouch in which a handful of compost generated in the campus is gifted along with the following lines:

"What you hold in your hand is nature's living clue
It went out as waste and returned as value
Ally of nature, mark its humble origin
Giving life to earth with its power within
From dust thou art born to dust shall return
With this token from our campus this lesson we learn".

Names of the Officers : Jahanzeb Akhtar (CIT)
I. Satish Kumar (JDIT)
P. Sajit Kumar (ITO)
Anayappa (OS)

SPECIALIZED WORKSHOP FOR ASSESSING OFFICERS

DTRTI, Chennai organises workshops focussed at claims of deduction by banks under Section 36(1)(viia) - leads to substantial disallowances in many cases throughout the region and appreciable revenue gain.

Section 36 (1) (viia) of the Income-tax Act is a special provision which is applicable to scheduled and non-scheduled banks, including co-operative banks. This provision allows twin deductions under the same section, namely, a deduction of 7.5% of the total income (computed before making any deduction under chapter VIA), and an amount not exceeding 10% of the aggregate average advances made by the rural branches of such bank.

2. The Addl. CIT, Range-I , Salem, while assessing Salem District Central Co-operative Bank Ltd. (AY 2007-08), came to the conclusion that certain branches of the bank did not qualify as rural branches for the purposes of the said provision. Consequently the benefit of deduction u/s 36(1)(viia) was denied to those branches by him. The investigation had resulted in an addition of ₹ 8.33 crore leading to a demand of ₹ 1.74 crore for AY 2007-08.[4] Interestingly, the said assessee went on to become the highest non-corporate tax-payer of Tamilnadu, and he was felicitated during the 150th year of Income Tax Celebrations held at Chennai on 24.7.2011.

3. The DTRTI, Chennai, as part of its knowledge-sharing initiative, invited the Addl. CIT to conduct workshops which would enable AOs to investigate the claims of deduction made by banks under section 36(1)(viia). 32 AOs participated in the workshop held at Chennai and 16 AOs at Coimbatore. Efforts were made to nominate in particular those officers who were assessing cases where claim of deduction under the said legal provision had been made. They were requested to bring the assessment records, laptops and 3G data cards.

4. During the training sessions conducted by DTRTI, Chennai, the AOs were taught to examine the claims under section 36(1)(viia) vis-a vis the statistical details compiled by Census of India. According to the Explanation below section 36(1)(viia), "rural branch"

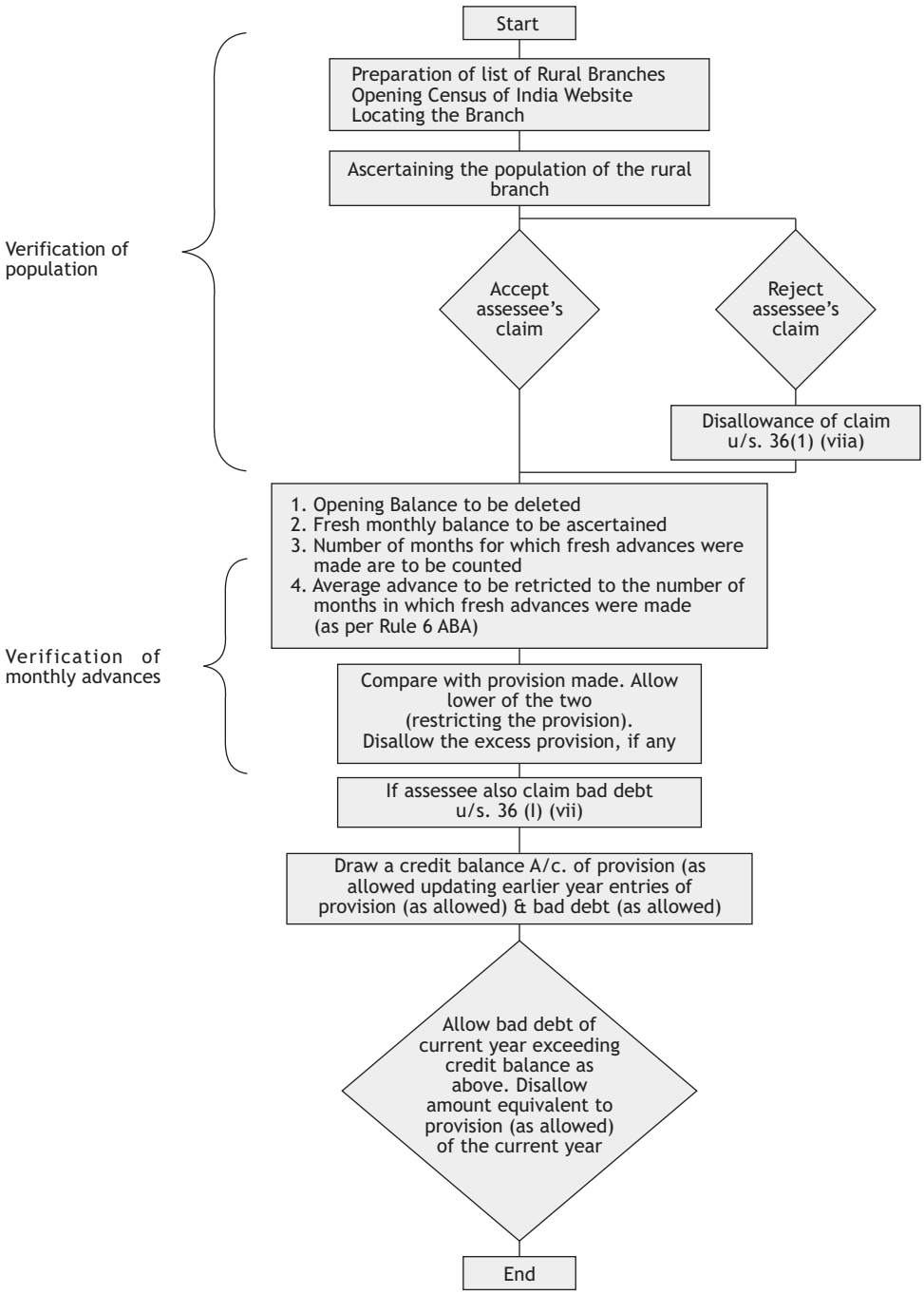
[4] The case was reported in 'Let Us Share', Vol-3 (p.99).

means a branch of a scheduled bank or a non-scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year. By accessing the 'Census of India' website the participants could verify the population of the specific areas where the so-called "rural branches" were located, and ascertain the population of those areas. The workshops thus provided them theoretical, factual and practical inputs on verification of claim under section 36(1) (viia). The important aspects to be looked into were explained in detail. The workshops were greatly appreciated by the participants.

5. The assessments completed by the AOs who had attended the workshops resulted in substantial disallowances of the claims u/s 36 (1) (viia). To cite one instance, the disallowance made by DCIT, LTU, Chennai in his order dated 30.12.2011 in the case of Indian Overseas Bank, Chennai amounted to ₹ 386 crore. Some of the other cases where significant amounts of disallowance were made included the Laksmi Vilas Bank, Trichy (₹ 5.62 crore), the Karur Vysya Bank, Trichy (₹ 3.93 crore), City Union Bank, Kumbakonam (₹ 3.75 crore) etc.

6. The workshops further highlighted the fact that even information available from open sources (the 'Census of India' website in this case) accessed with the help of existing facilities provided by the Department such as the laptops and 3G Data Cards, could be effectively utilized to enhance the quality of assessments, leading to substantial revenue gain. The verification could be made sitting in the office itself and there was no need for any site inspection or lengthy postal correspondence with the relevant authorities. The attached diagram outlines the key points of the training strategy adopted by DTRTI, Chennai.

Verification of claims for deduction under section 36(1)(viia)



SOME CASES WHERE SIGNIFICANT DISALLOWANCES OF CLAIM UNDER SECTION 36(1)(viia) WERE MADE

S.No.	Bank & Branch	AY	Amount Disallowed (₹)	AO	JCIT/Addl. CIT	CIT
1	Indian Overseas Bank, Chennai	2009-10	386,22,20,454/-	S. Nambirajan, DCIT, LTU, Chennai	K.P. Gopakumar, JCIT, LTU, Chennai	P.R. Ravi Kumar, CIT, LTU, Chennai.
2	Lakshmi Vilas Bank Ltd., Trichy	2009-10	5,61,89,000/-	R.S. Naik, JCIT, Kumbakonam	R.S. Naik, JCIT, Kumbakonam	M. Ravindra Sai, CIT, Trichy
3	Karur Vysya Bank Ltd., Trichy	2009-10	3,92,90,000/-	R.S. Naik, JCIT, Kumbakonam	R.S. Naik, JCIT, Kumbakonam	M. Ravindra Sai, CIT, Trichy
4	City Union Bank, Kumbakonam	2009-10	3,75,08,489/-	R.S. Naik, JCIT, Kumbakonam	R.S. Naik, JCIT, Kumbakonam	M. Ravindra Sai, CIT, Trichy
5	The Coonoor Co-operative Urban Bank Ltd., Coonoor	2009-10	17,61,313/-	A.S.Dineshkumar, ACIT, Circle I(1), Ooty	K. Rajagopal, JCIT, Range-I, Ooty	A. Vasantha Kumar, CIT -II, Coimbatore
6	The Udhagamandalam Co-operative Urban Bank Ltd., Ooty	2009-10	8,82,767/-	A.S.Dineshkumar, ACIT, Circle I(1), Ooty	K. Rajagopal, JCIT, Range-I, Ooty	A. Vasantha Kumar, CIT -II, Coimbatore
7	M/s TamilNadu Industrial Co - op Bank Ltd., Chennai	2009-10	8,24,531/-	P. Madhanasekaran, Addl.CIT, Business Range VII(i/c), Chennai	P. Madhanasekaran, Addl.CIT, Business Range VII(i/c), Chennai	Avinash K Sahai, CIT-VII, Chennai
	TOTAL DISALLOWANCE		**399,86,76,554/-**			

Names of the Officers : Jayanthi Krishnan, Director, DTRTI, Chennai
Dr. P.K.Srihari, Addl. CIT , Range –I, Salem
Ruby George, Addl. Director, DTRTI, Chennai
Howard Devisser, Asst. Director, DTRTI, Chennai
E. Elango, AAD, DTRTI, Chennai
Dharani K.,AAD, DTRTI, Chennai
S. Parvathy, AAD, DTRTI, Chennai
V. Veeraragahavan, AAD, DTRTI, Chennai

'FIELD TRAINING' INITIATIVE BY MSTU, PUNE

MSTU, Pune has started a new initiative in the form of 'Field Training'. Under this initiative, training, instead of being conducted at the MSTU, is conducted by the faculty of MSTU in the respective assessment Ranges by troubleshooting the actual day to day problems relating to ITD application being faced by the assessing officers of the Range. The availability of live cases greatly enhances the effectiveness of training.

As a result of the initiative, there was a reduction of infructuous demand to the tune of ₹ 150 crore during the FY 2010-11. The impact of the initiative was evident from the fact that in the next year, the field staff could manage troubleshooting on their own, leaving only critical cases amounting to about ₹ 15 crore for the trainers to handle.

Saving of government resources by way of TA/DA of the participants was another significant outcome of the 'Field Training' initiative of MSTU, Pune.

SOCIETY OF CIVIL SERVANTS OF PUNE

Idea to establish a common forum for Civil Servants at Pune – The "Society of Civil Servants of Pune" established as a common forum for members of various Civil Services - exemplary initiative and perseverance of senior officers bears fruit.

Like most other stations in the country, Pune too did not, till recently, have a common forum for members of various civil services (both All India and Central Services) stationed in the City. In the year 2009, some officers, led by the then Chief Commissioner of Income-tax, Pune, strongly felt the need for a forum which would help the Civil Servants of Pune belonging to different Services shed their self-imposed isolation and come together within an interactive frame-work. To achieve this objective, it was decided to set up a 'Civil Servants Society'. The then CCIT, Pune convened a meeting of the heads of various departments in Pune wherein this idea received endorsement. A draft Memorandum of Association prepared for this purpose was also approved. However, the resolution adopted in the said meeting was not pursued seriously during the year that followed and the initial euphoria died down soon.

2. A few IRS officers, however, continued to harbor an unrelenting wish that such a Society should be set up. In October, 2010, the then CCIT, Pune, convened a meeting of the heads of the various departments to chalk out a concrete plan of action to take the idea forward. In the said meeting, which was largely attended by representatives from several civil services in Pune, office-bearers of the new Society were also elected. Shri S. K Misra, IRS, was unanimously elected President. The other elected office-bearers included officers of the Indian Administrative Service, Indian Police Service, Indian Customs & Central Excise Service, Indian Defence Accounts Service, Indian Information Service, Indian Postal Service etc.

3. Initially, many Civil Servants were rather sceptical about the very purpose of setting up the society as well as its prospects. But the Society lost no time in swinging into action. Soon, an exhaustive Memorandum of Association setting out the objects of the new society

and its rules and regulations was prepared. The prime object of providing a platform of convergence to members of different civil cervices through socio-cultural activities was perceived vigorously. A cultural evening of Ghazals was followed by a trek to the Sinhagad Fort, visit to the National Film Archives of India at Pune, a shooting event at Balewadi stadium where the members were taught shooting by none other than the national shooting coach Mr. Stanislaw Lapidus and Ace Shooter Shri Gagan Narang, a Vanmohostav event near Mulshi Dam, a guided tour of the Film and Television Institute of India (FTII) followed by screening of films, etc. The tradition of each Service inviting all members of the Society on the occasion of superannuation of the head of each Service was also established. Each successive programme under the Society's aegis attracted larger and larger participation. As of date, membership of the Society, (mostly in the nature of being life-membership) has crossed 80. The bonhomie experienced by the members in every meeting and get-together is to be seen to be believed. The initial skepticism regarding sustainability of the initiative has given way to robust faith. The enthusiasm amongst the Civil Servants to interact with one other has not only become a reality but is soaring by the day.

4. Many other programs are already on the cards. A medical camp is being planned to facilitate general health check-up for the members and their families. The maiden newsletter-cum-literary magazine is under publication. It will showcase the enormous talents that the Civil Servants and the members of their families possess, which would not have found an outlet in the absence of such a forum. Some more cultural events too have been lined up. A stage has now come when the Services have started vying with one another for hosting programmes.

5. Formation of the Society has led to a spurt in interactions amongst the Civil Services even in service-related matters. Exchange of ideas has increased. The Civil Services have started drawing upon the other Services for imparting training in their respective academies. Cross-Service use of talent and inputs has proved to be enriching.

6. The Society has since received registration both under the Bombay Public Trusts Act, 1950, and the Societies Registration

Act, 1860.

7. Thus the Society of Civil Services of Pune has become a living reality. The IRS can justly be proud of the role played by its officers at Pune in establishing the Society of Civil Servants of Pune.

Names of the Officers : M. Narasimhappa, CCIT (Retd.)
Manjari Kacker, Member, CBDT (Retd.)
Sunil Kumar Misra, CIT-II, Pune

ASSESSMENT ORDERS

"You may never know what results come of your action, but if you do nothing there will be no result"

- Mahatma Gandhi

ASSESSMENT ORDERS

PAGE NO.

CORPORATE DEPOSITS TRACED BACK TO UNACCOUNTED CASH

Large sums received from associate companies – apparently genuine. Painstaking investigation on the basis of seized documents revealed complex chain of transactions having ultimate source in unaccounted funds

A search and seizure operation was carried out at the various premises of M/s Today Homes and Infrastructure Pvt Ltd and its group concerns ('Today group') on 26/11/2009. The group was engaged in real estate business and its key persons were Shri Gulshan Gambhir and Shri Rajender Gambhir. The assessee company M/s Jai Mata Realtors Pvt Ltd, was one of the associated companies of the Today group.

2. In assessment proceedings for AY2008-09 in the case of M/s Jai Mata Realtors Pvt Ltd., it was noticed that during the relevant previous year 2007-08, the assessee had received amounts aggregating ₹ 59.23 crore from seven private limited associated companies.

3. On a careful examination of the seized documents, the statements recorded and the records obtained from the Registrar of Companies (ROC), the Assessing Officer was able to identify 46 companies floated by the Gambhirs during the period 2005 to 2007 (including the seven companies mentioned above), through which large sums of money had been routed. These companies had common addresses in Delhi, and most of them had not filed income-tax returns. Many of them did not even maintain books of accounts or other statutory records. From the website of the Ministry of Corporate Affairs it was seen that 39 of the companies had later been struck off from the ROC records for defaults in filing annual returns and other reports. It was thus established that these were all shell companies floated by the Gambhirs, apparently for infusion of their unaccounted money into the flagship companies of Today group.

4. Subsequently, a search was also carried out at the premises of Shri Virendra Jain and Shri Surendra Jain ('Jain Brothers') on 14/09/2010. The documents and books of account found and seized

revealed date-wise details of cash received from different parties through various mediators and similar details of accommodation entries given to different beneficiaries. From a comprehensive study of the details it was found that the Jain Brothers had received cash aggregating about ₹ 396 crore in more than 30 shell companies from a mediator PN Chawla, against which accommodation entries to the tune of about ₹ 404 crore had been given to the shell companies of the Today group.

5. The AO requisitioned the bank statements of all the flagship concerns of Today group, all shell companies of Today group and all shell companies floated by the Jain Brothers, for the period January 2005 to March 2010. A painstaking study of the accounts was carried out to trace the flow of money amongst the various concerns. It was established that cash was received from the Gambhirs through the mediator PN Chawla and was deposited in the accounts of the dummy concerns floated by the Jain Brothers in the guise of cash sales. The money was then transferred to different shell companies also floated by the Jain Brothers, through a complex trail of transactions in 3 to 4 layers, so as to hide the actual sources of funds. Thereafter accommodation entries in the form of share capital, share application money, unsecured loans etc. were provided through RTGS/cheques to the shell companies of the Today group. These amounts were then introduced into the flagship concerns of the Today group.

6. Apart from establishing the modus operandi, the AO was able to specifically trace the source of an amount of ₹ 58.11 crore out of the total sum of ₹ 59.23 crore found credited in the books of the assessee in the names of the seven companies. Documentary evidence was systematically put together showing that these amounts had their ultimate source in cash paid by the Gambhirs to Jain Brothers through the mediator PN Chawla. The assessee was confronted with the entire evidence and asked to show why the amount of ₹ 59.23 crore should not be taxed as income under section 68.

7. The assessee submitted that it had discharged its onus of explaining the immediate source of the money, and further contended that almost the entire amount credited had been refunded to the said concerns during the year itself by cheques and hence no amount remained in the books as on 31.3.2008 which could be brought to tax.

The AO held that once a credit had been shown to be not genuine, the fact of repayment was immaterial for the purposes of section 68. The AO also examined and cited several Supreme Court judgements including the cases of McDowell and Co. Ltd. [154 ITR 148], Meenakshi Mills Ltd. [63 ITR 609] and Sumati Dayal [214 ITR 801], to hold that where a transaction can be shown to be part of a series of transactions and a colourable device designed to evade tax, the Revenue is entitled to give regard to the economic realities behind the legal façade.

8. Finally the AO passed a detailed order bringing out the entire evidence together with the judicial precedents, and brought the amount of ₹ 59.23 crore to tax under section 68 as a non-genuine credit representing the assessee's own money.

Names of the Officers : Dr. Anjula Jain, DCIT, Central Circle-23, Delhi
Jyoti Legha, Addl. CIT, Central Range-VI, Delhi
R M Garg, CIT (Central) -III, New Delhi

SUPPRESSION OF CAPITAL GAINS THROUGH SHAM TRANSACTIONS

Capital gains on sale of land – purchaser found to be mere intermediary - actual sale with third party for much higher consideration. Sham nature of transactions with intermediary revealed on detailed enquiries and interrogation of all concerned persons

M/s KNR Constructions Ltd., Hyderabad is a public listed company, engaged in the business of civil construction. The company declared income of ₹ 20.22 crore for AY 2007-08, which was originally assessed under section 143(3) at ₹ 20.45 crore. After a survey conducted in its case under section 133A, the case was reopened under section 147.

2. The assessee had earned a profit of ₹ 7.25 crore during the year from sale of land in the vicinity of Hyderabad, but had claimed the same as exempt on the ground that the land sold was 'agricultural'. The assessee's claim had been accepted in the original assessment. During the reassessment proceedings, the Assessing Officer (AO) got the distance from the end of municipal limits physically measured from different points with the assistance of the Greater Hyderabad Municipal Corporation, which conclusively proved that the land fell within 8 K.M. of the municipal limits, and was therefore a capital asset within the meaning of section 2(14) of the Act.

3. The assessee had shown to have sold the land to M/s. Irmac Services India Ltd. (IRMAC) for a consideration of ₹ 13.89 crore through an 'Agreement of sale-cum-irrevocable GPA'. The AO found that IRMAC in turn had sold the land on the same day to M/s. PBEL Real Estate India Pvt. Ltd. (PBEL) for ₹ 60.00 crore through a 'Sale Deed'. However, IRMAC had filed a 'NIL' return claiming that most of the sale proceeds were spent towards removal of boulders and encroachments.

4. The AO made extensive enquiries and examined several persons on oath, including the Directors and officials of the assessee company, IRMAC and PBEL, the Sub-Registrars before whom the documents were executed, and the witnesses who had signed the

agreements. From the records available with the Sub-Registrars and the various statements recorded, it was established that both the transactions took place simultaneously in the presence of all three parties. The possession of the land was not given to IRMAC at the time of 'Agreement of Sale–cum-Irrevocable GPA' and only a notional stamp duty of ₹ 50,000/- was paid as against the actual stamp duty payable of ₹ 5.40 crore. The claim of expenditure incurred by IRMAC on removing boulders and evicting encroachers was found to be bogus, as the persons to whom cash payments were shown to have been made for this purpose were found to be non-existent. When confronted, IRMAC admitted in writing that it had got involved only at the behest of the assessee and the actual sale was only between the assessee and PBEL for a consideration of ₹ 60 crore. It was also admitted that the eviction charges and ground leveling charges are mostly not genuine and that part of the amount withdrawn in cash has been handed back to the assessee. Thus the investigations revealed that the agreement with IRMAC was a sham transaction and the actual transaction of sale was between the assessee and PBEL. Short term capital gains of ₹ 54.70 crore were brought to tax in the hands of the assessee.

5. The assessee had also declared agricultural income of ₹ 1.75 lakh. After making detailed enquiries with the help of Gram Panchayat authorities it was established that the land was not used for any agricultural purposes, and that the so called tenant cultivators were fictitious. The amount was added as income under section 68 of the Act. After making certain other additions, total income was finally assessed at ₹ 77.22 crore and demand of ₹ 24.62 crore was raised. The assessment has since been confirmed by the CIT (Appeals).

Names of the Officers : J. Krishna Kishore, Addl. CIT Range 2, Hyderabad
H. Srinivasulu, CIT-2, Hyderabad

CAPITAL GAINS ON CONVERSION OF PROPRIETARY BUSINESS INTO PARTNERSHIP

Assets of proprietary business transferred to firm at book value - trademark value recorded in books of firm – trademark value and difference of market value over cost of transferred stock brought to tax after detailed analysis of facts

The assessee, Prakashchandra S. Soni (HUF) carried on the proprietary business of manufacture and sale of gold ornaments under the name and style 'Suvarnmahal'. During the previous year relevant to AY2008-09, the assessee HUF entered into a partnership with effect from 25/02/2008 with the Karta of the HUF and his two sons, and the new firm thus constituted agreed to carry on the same business of M/s Suvarnmahal. Return of income for AY 2008-09 was filed by the assessee HUF for the period 01/04/2007 to 24/02/2008, declaring income at ₹ 55.38 lakh.

2. In assessment proceedings, the Assessing Officer (AO) noted that all the assets (other than immovable properties) of the proprietary business had been transferred to the newly constituted partnership firm at their book values, including the closing stock of gold that had been valued at cost. The assessee stated that the business had not been discontinued and continued as such in the partnership firm, and there was therefore no justification for revaluing any asset including closing stock. The assessee relied on the judgement of the Supreme Court in Sakthi Trading Co. vs CIT [250 ITR 871].

3. The AO went through the partnership deed and made a careful analysis of the facts of the case. He held that since the ownership had changed, and since only part of the assets had been transferred, there was no continuance of the existing business. The judgement in the case of Sakthi Trading Co. did not apply, as that was a case of a mere change in constitution of the firm and not a transfer from one entity to another. The AO instead referred to the decision of the Supreme Court in A.L.A. Firm vs CIT [189 ITR 255], where a partnership was converted into a proprietary business, and the Court had held that the privilege of valuing the opening and closing stock in a consistent

manner is available only to a continuing business. The AO accordingly held that the closing stock transferred had to be valued at market price, and the difference of ₹ 45,26,544/- in valuation was taxed as capital gains.

4. The AO also found from a perusal of the accounts of the successor firm that the trademark 'Suvarnmahal' had been valued at ₹ 5 crore and brought into the balance sheet at the end of the year, and ₹ 1.25 crore were credited to the accounts of each of the four partners as their share in this value. The assessee contended that this was a mere book entry; there was no transfer of trademark from the proprietary business to the firm and nothing had been paid by the firm to acquire the trademark. However, the AO referred again to the partnership deed and held that all the assets of the HUF except immovable property had been transferred to the partnership firm, and these assets evidently included the trademark. He further held that by crediting the partners' accounts with the share in trademark value, the firm had in effect placed funds at their disposal and had thus paid for the trademark. The amount of ₹ 5 crore was added by the AO to the income of the the assessee HUF under section 28(va) as business income.

5. The CIT(Appeals) fully confirmed the addition on account of valuation of stock. In respect of the trademark value, he held that the asset transferred was actually in the nature of goodwill, and that the income of ₹ 5 crore should be taxed as capital gains under section 45(3) and in accordance with section 55(1)(b)(1). The ITAT has since confirmed the order of the CIT(Appeals) on both issues.

Names of the Officers : C. K. Mishra, Addl.CIT, Range-2, Ahmedabad
Satish Kumar Gupta, CIT(A)-XVI, Ahmedabad
B. N. Panda, CIT-1, Ahmedabad

CAPITATION FEES IN THE GUISE OF DONATIONS

Amounts received from students admitted under management quota – credited to building fund – development fees also charged contrary to Government instructions – amounts held to be capitation fees and brought to tax

M/s Sadvidya Educational Institutions, a reputed society registered under section 12A of the Income-tax Act, runs several educational institutions in Mysore city from nursery to pre-university college level. In a survey conducted under section 133A in its case, several demand drafts were found, ostensibly representing donations from students, which were not entered in the regular books of account maintained. It was stated by the Secretary of the Society that these drafts were taken from students applying for admission under the management quota. Every donation was supported by a receipt containing the details of payment made along with the name of parents. The DDs were kept with the management till the admission process got over. Thereafter, the DDs received from the successful students would be deposited in the bank and entered in the books. The DDs pertaining to unsuccessful candidates would be returned to them.

2. For the relevant AY2006-07, the assessee declared nil income after claiming deduction under section 11. In the assessment proceedings, the AO observed that the donations aggregating to ₹ 50,21,500/- collected from the successful candidates under the management quota during the year, were credited directly to the Balance sheet under the head "Building fund" and were not treated as income. The AO also found that the assessee had collected certain other amounts from students under the head "College Development Fund" and had taken the same directly to the balance sheet as forming part of the corpus fund.

3. The assessee furnished photocopies of certain confirmation letters from 60 donors stating that the donations were voluntary and towards corpus fund. However, even after being given sufficient time, the society could not produce the original letters. Some pre-printed cyclostyled letters were filed, which did not give any details of the

payments. After a careful perusal of impounded documents and books of account, the AO concluded that the donations were not voluntary or corpus donations, but were given in consideration of the admission secured by the successful candidates. Consequently they were not exempt from tax under section 11(1)(d), and were in the nature of capitation fees taxable under the head 'other sources'.

4. With regard to the College Development Fund, the AO examined the relevant instructions issued by the State government and found that the society was authorised to collect such amounts only from the students upto 10th Standard, and not from students of pre-university college. The total amount of ₹ 40,93,600/-, collected as college development fee from pre-university college students, was held to be in violation of Government instructions and was treated as capitation fee and brought to tax.

5. Various decisions were cited by the assessee to contend that as long as the purpose of the society in existence does not involve carrying on of any activity for profit, it is immaterial how the income is earned. These were countered by the decision of the Supreme Court in Islamic Academy of Education vs. State of Karnataka [(2003) 6 SCC 697] wherein it was held that collection of money over and above the fee prescribed by the authorities concerned is unconstitutional and would amount to collection of capitation fee. Accordingly, the entire amount of "building fund" and "college development fund" aggregating to ₹ 91,15,100/- was brought to tax under the head 'other sources'.

6. The assessment for AY 2007-08 was also made on the same basis bringing a sum of ₹ 1,33,26,335/- to tax. Both assessments have been confirmed by the CIT(A).

Names of the Officers : P. Chandra Sekhar, Addl.CIT,
Range-1, Mysore
R. L. Rinawma, CIT, Mysore

ISSUES RELATED TO FOREIGN CURRENCY CONVERTIBLE BONDS

Exchange fluctuation gain on FCCBs and provision for premium payable on redemption adjusted by assessee against cost of assets acquired – exchange fluctuation gain held revenue in nature and taxable – provision for premium held to be contingent liability and not forming actual cost of assets

M/s Simbhaoli Sugar Ltd. was engaged in the business of manufacture of sugar, liquor and organic compounds. In the assessment proceedings for AY2008-09, the Assessing Officer (AO) observed from the audit notes that in March, 2006 the company had issued Zero Coupon Foreign Currency Convertible Bonds (FCCBs) aggregating to US $33 million, which translated into ₹ 146.85 crore at the time of issue, for acquiring assets within India. The Bond holders as well as the company had the option to convert these bonds into shares. Such bonds as were not so converted would fall due for redemption in March, 2011 at a premium of about 37% of the principal amount. It was stated by the Auditors that a provision of ₹ 18.32 crore had been made in the accounts in respect of premium payable on redemption of FCCBs. The AO further noted that the assesee had credited an amount of ₹ 15.76 crore in the P & L A/c on account of foreign exchange fluctuation gains in respect of these bonds. However, in the computation of income filed with the return, the assessee had deducted this amount from the income.

2. The assessee stated that the foreign exchange fluctuation gains had been credited to the P & L A/c. in accordance with accounting standards. However, for income-tax purposes the amount was required to be adjusted against the cost of assets acquired, and hence the amount had been deducted from business income. Regarding the provision of ₹ 18.31 crore, the assessee stated that this provision had been created by debiting pre-operative expenses which were subsequently transferred to capital assets on completion of projects, and had not been claimed as a deduction.

3. The AO analyzed the case law on the issue of foreign exchange fluctuation gains and noted the decision of the Bombay High Court in

CIT vs. V. S. Dempo & Co.(P) Ltd. [206 ITR 291], where it was held that even if the foreign currency had originally been utilized for acquiring fixed assets, if at the time of devaluation it had changed its character and had become circulating capital, the gain or loss would be revenue in nature. The AO examined the facts of the case and found that the entire amount of ₹ 146.85 crore raised from the FCCBs had been utilized prior to the revaluation date i.e. 31.3.2008. Hence, at the time of revaluation the foreign currency had acquired a new character of circulating capital. The AO accordingly held that the gain of ₹ 15.76 was a revenue gain, to be taxed as business income. The AO further held, after analyzing the definition of actual cost in section 43(1) and after referring to the case law on the subject, that even if the gains were said to be on capital account, the actual cost could not be adjusted by the gains which arose after the assets had been acquired and put to use. Hence the amount of ₹ 15.76 crore was held to be taxable as business income.

4. In respect of the provision for premium payable on redemption of FCCBs, the AO noted that in the earlier F.Y.2006-07 the Auditors had clearly stated that the likelihood of redemption could not be ascertained, since the bonds are redeemable only if there is no conversion into shares, and hence the premium payable had been disclosed in F.Y.2006-07 as a contingent liability. The AO also analysed the case law on the issue of contingent liability and held that since no reasonable estimate could be made of the amount payable on redemption, the provision now made was only a contingent liability and hence could not form part of actual cost of the assets. The AO further held that since the provision had been made on 31.3.2008, after all the assets had been acquired and put to use, it could not in any case be added to the cost of assets under section 43(1).

Names of the Officers : Dr. Anjula Jain, DCIT(Hq), Central-III, Delhi
Jyoti Legha, Addl.CIT, Central Range –VI, Delhi
R. M. Garg, CIT (Central) – III, Delhi

SUPPRESSION OF INCOME FROM REAL ESTATE TRANSACTION

Solatium paid to third party claimed as deduction from sale proceeds of land – part of sale proceeds also claimed as diverted by over-riding title - detailed investigation carried out to establish false nature of claims

Shri Jayantilal Tarachand Oswal is a builder and developer of commercial and residential projects at Pune. In the course of assessment proceedings for AY 2007-08, the Assessing Officer (AO) noted that the assessee had sold certain land at Wakad for a total consideration of ₹ 15.51 crore, against which expenditure of ₹ 6.60 crore was claimed, resulting in gross profit of ₹ 8.91 crore. The expenditure claimed included various amounts paid to the land owners, and a sum of ₹ 2.25 crore paid to a concern called M/s Manav Promoters Pvt. Ltd. (Manav). The assessee explained that he had earlier agreed to sell the land to Manav for about ₹ 11 crore, but the agreement had to be cancelled because a better offer was subsequently received from M/s Sayaji Hotels and the assessee sold the land to that party. A solatium of ₹ 2.25 crore was consequently agreed to be paid to Manav.

2. On examining the books of accounts, the AO found that various amounts were paid directly to the respective parties, except for a sum of ₹ 1.05 crore which was shown to be payable to Manav but was actually paid to one Smt. Jayashree Wani of M/s Venkatesh Developers. When asked for details, the assessee furnished a confirmation from Smt. Wani stating that the amount had been received by her and recorded in her books of account.

3. The AO issued summons to Manav asking them to confirm the receipt of ₹ 2.25 crore as solatium from the assessee. It was then stated by Manav that only an amount of ₹ 1.20 crore was receivable by them as solatium, and that the remaining amount of ₹ 1.05 crore was neither receivable nor received by them. In the absence of proper explanation from the assessee, the AO held that even if the payment of ₹ 1.05 crore was in fact made to Smt. Wani, the same did not represent any genuine liability incurred by the assessee in relation to

the sale of the land, and was hence not allowable as deduction.

4. The AO further observed that although the land had been sold to M/s Sayaji Hotels for ₹ 21.88 crore, the assessee had shown sale consideration at only ₹ 15.51 crore in his return. On being questioned, the assessee stated that the balance amount was actually receivable by 4 other co-owners who had rendered services in connection with the sale of the land, including M/s Venkatesh Developers to whom ₹ 5.39 crore was paid. Copies of some unregistered MOUs with these persons were filed in support of the claim. It was contended that these amounts were not the assessee's income as they had been diverted to the 4 other persons by over-riding title.

5. The AO carefully examined the sale deed and found that it specified the amounts payable to the assessee and the other persons, in accordance with their proportionate interest. The share of the assessee himself was specified as ₹ 17.05 crore. The AO also found that M/s Venkatesh Developers had recorded the receipt of the sum of ₹ 5.39 crore, but had declared net income of only about ₹ 40 lakh in their return for the year. There was also no evidence of any specific services having been rendered by these persons, as was stated in the MOUs. The AO concluded that the registered sale deed constituted the primary evidence of the consideration receivable by the assessee, and that the MOUs were mere self-serving documents representing collusive arrangements made between the assessee and the other persons to evade tax. The AO held that the actual sale consideration received by the assessee was ₹ 17.05 crore as against ₹ 15.51 crore declared, and the difference of ₹ 1.53 crore was brought to tax.

Names of the Officers : Dr. L. Ramji Rao, Addl CIT, Range-5, Pune
Prayag Jha, CIT-III, Pune

CAPITAL EXPENDITURE ON REPLACEMENT OF EQUIPMENT

Expenditure on replacement of vital component claimed deductible as repairs – in-depth study of textile manufacturing process carried out – expenditure established to be for acquiring new and advanced machinery and hence capital

M/s Satyanarayana Spinning Mills Ltd. was engaged in the manufacture and sale of cotton and blended yarn. In assessment year 2008-09 the assessee debited an amount of ₹ 4.79 crore towards 'Repairs to Machinery'. In the assessment proceedings, the Assessing Officer examined this claim and noticed from the 'Stores Consumption Register' that the expenditure included ₹ 3.30 crore spent on acquiring seemingly special equipment.

2. The assessee clarified that the equipment purchased was commonly known as 'drafting system'. The old and worn out drafting parts had been replaced with compact drafting parts. The improvisation in technology was stated to be supplemental to the existing process and not amounting to any new and enduring advantage. The assessee contended that since the expenditure was incurred only to preserve and maintain an asset, it should be allowed as 'current repairs'.

3. To correctly appreciate the nature and role of these 'draftings' in the production process, the AO examined in detail the manufacturing process employed in textile mills. He studied the processes involved in various departments, and noticed that each of the different departments added value to the material and constituted an independent process. He noted that the drafting system was part of the crucial ring frame department, where the unspun thread passed downwards from the bobbins to the draughting rollers and was steadied and attenuated so as to force the fibres to mesh together. Of all the stages, the drafting stage had the maximum influence on yarn quality and ring performance.

4. The AO further noted that textile producing enterprises have always given utmost importance to the upkeep and modernization of drafting systems. Compact drafting represents the latest

technological development in drafting systems. The assessee had purchased such drafting systems from a world-wide technological leader amongst suppliers of compact spinning systems. The systems were separate and distinct units that sat on the ring frames and were equipped with EliTwist®Technology, which resulted in increased efficiency of the yarn spun, better market acceptance and reduced rejections, thus marking a competitive advantage and commercial benefit to the spinning mill that was enduring.

5. On the basis of this exhaustive study of the textile industry, the AO was able to establish that the assessee had not merely carried out repairs to an existing asset, but had bought independent and technologically advanced equipments and had replaced the old equipments with them. Relying on the Supreme Court decisions in the cases of CIT Vs. Sarvana Spinning Mills Pvt. Ltd. [293 ITR 201] and Mangayarkarsi Mills Pvt. Ltd. Vs. CIT [315 ITR 114], the Assessing Officer held that the expenditure of ₹ 3.30 crore was capital expenditure, on which depreciation was allowable. The disallowance was confirmed by the CIT(Appeals).

Names of the Officers : G. Mallikarjun, Addl.CIT, Rajahmundry
K. P. C. Rao, CIT, Rajahmundry.

UNACCOUNTED MONEY SHOWN AS ADVANCE AGAINST SALE

Cash advances shown as received under agreements for sale of land – manhunt launched by AO to locate concerned parties – cash credits established to be false

In the case of Shri Brij Kishore Agrawal, a contractor at Nagpur, the Assessing Officer (AO) observed from the accounts for AY 2009-10 that an amount of ₹ 71.50 lakh was payable to eight persons at the end of the previous year. The assessee stated that these were advances received from the purchasers of certain agricultural land being sold by the assessee. Copies of sale agreements were furnished, alongwith details of the alleged purchasers.

2. The AO noted that all amounts were received in cash. Examination of the agreements revealed that the language used was almost the same in all cases. All the agreements were signed by the same two witnesses. The AO decided to further verify the genuineness of the transactions and a survey under section 133A was undertaken. Simultaneously, commissions under section 131(1)(d) were issued to an ITO at Raipur in order to obtain statements of some of the counter parties, who were said to be residents of Raipur. Teams of officials were deputed to physically trace out the alleged purchasers. The assessee was also asked to produce the parties for examination.

3. Despite the efforts made, most of the so-called purchasers could not be traced. One lady Smt. Kanta Chhabariya was found and examined on oath by the AO She stated that she had not filed income tax returns for the last three years. She accepted that she had entered into an agreement for purchase of land from the assessee, but could not prove the source of funds advanced. She had never seen the assessee and did not even know the location of the land. Apart from this lady, the assessee produced two other parties, viz. Shri Ajitesh Gupta and Shri Dilip Kumar Rathod. However, these persons could not give any specific details of the amounts stated to have been paid to the assessee.

4. As a result of the sustained investigation carried out by the AO, the assessee in his statement dated 29.09.2011 admitted that he did

not know the persons from whom he had allegedly received the advances. He also did not know the brokers through whom the deals were allegedly struck. Finally, in a letter dated 4.12.2011 to the AO the assessee admitted to additional income of ₹ 72 lakh for AY 2009-2010, ₹11 lakh for AY2010-2011 and ₹ 67 lakh for AY 2011-2012, and accordingly surrendered a total amount of ₹ 1.50 crore for tax in three years.

Names of the Officers : D. P. Tiwari, JCIT Range-8, Nagpur
Aarti Handa, CIT-IV, Nagpur

CAPITAL GAINS ON DISSOLUTION OF FIRM

Assets and liabilities of partnership firm taken over by one of the partners – assessee contended no distribution of assets and hence no capital gains – held, capital gains chargeable under section 45(4)

M/s Suvardhan, a partnership firm at Bangalore, did not file its return of income for AY 1993-94. A notice under section 142(1) was issued and served, but there was no response, and a survey was conducted under section 133A. It was gathered during the survey that the firm consisting of two partners had been dissolved with effect from 1.4.1992 vide dissolution deed dated 23.3.92.

2. The assessee then filed a return for AY 1993-94 declaring nil income, on the ground that the firm was not in existence after 1.4.1992. In assessment proceedings, the Assessing Officer (AO) noted that the continuing partner, Ms Anuradha Gokarn, had taken over the business and as per the dissolution deed, all assets and liabilities stood transferred to Ms Anuradha at book value. A valuation report as on 10.4.1992 had been found in the survey, which valued the assets and liabilities on the date of dissolution. Ms Anuradha was summoned by the AO and her statement was recorded, where she confirmed these facts. The firm was asked to show why capital gains were not chargeable under section 45(4).

3. The assessee strongly contended that no distribution of assets or liabilities had actually taken place on dissolution. The business had been taken over as a going concern. The retiring partner was a partner only in name and only due to the insistence of the bankers. He had not brought in any capital, hence nothing was paid to him on retirement. All assets remained in the balance sheet even as on 31.3.93, hence there was no transfer and no distribution of assets. Relying on the decision of the ITAT Bangalore Bench in the case of Mangalore Ganesh Beedi, it was thus contended that section 45(4) had no application on the facts of the case.

4. The AO held that it was not necessary that all partners receive equal shares on distribution of assets. On a careful perusal of the dissolution deed and the books of account, the AO found that there

was a credit balance in the account of Shri Chandrasekhar, the retiring partner, on the date of dissolution, which was specified to be payable to him. The amount was kept in the books as loan re-payable to him. Hence it was not correct to say that nothing was paid to the retiring partner. The AO further held that it was not necessary that actual cash payment should be made for section 45(4) to come into play. The present situation where all assets and liabilities were transferred to one continuing partner, was also covered. The ITAT decision was examined and distinguished by bringing out the fact that the dissolution in that case had been kept in abeyance due to certain pending legal proceedings.

5. The assessment was made holding that the dissolved firm was chargeable to capital gains under section 45(4), and after taking into account the market value of plant and machinery, building and miscellaneous items as per the valuation report, such gains were determined at ₹ 17,30,522/-.

6. The assessee challenged the assessment right upto the Supreme Court, contending that no transfer within the meaning of section 2(47) had taken place and hence section 45(4) had no application. The Karnataka High Court held that with the insertion of section 45(4) and deletion of clause (ii) of section 47 with effect from 1.4.1988, such distribution of assets on dissolution amounted to transfer even though it was not specifically covered by section 2(47). The civil appeal filed by the assessee was dismissed by the Hon'ble Supreme Court on 10.12.2010.

Name of the Officer : Radhakrishnan Sreepada, ACIT(Inv), Bengaluru

INCORRECT CLAIM OF EXEMPTION UNDER SECTION 54F

Capital gains shown to have been invested in house purchased from sons of the assessee – property found to actually comprise three independent bungalows –documents held to be self-serving – claim under section 54F disallowed

Shri Bansilal Kanjani declared long term capital gains in AY2008-09 on a plot of land sold for ₹ 3,20,00,000/-. After claiming deductions of ₹ 50,00,000/- under section 54EC and ₹ 1,82,87,774/- under section 54F, the taxable capital gains were declared at ₹ 58,30,103/-.

2. In the assessment proceedings the AO found that in respect of the deduction claimed under section 54F, the assessee had shown to have purchased a new residential house from his sons. However, the said new asset actually comprised of three independent bungalows in a complex known as Balaji Kutir, which had been originally purchased by the assessee's three sons on 28.7.2006. On being questioned, the assessee contended that the three properties were adjoining and interlinked, and had been acquired as one composite residential house where the assessee wished to stay with his family members. Full consideration had been paid and possession taken and all the requirements of section 54F were met. The decision of the Karnataka High Court in CIT vs D. Ananda Basappa [309 ITR 329] was relied upon.

3. The AO examined relevant documents and details of costs incurred in acquiring the property. He also issued summons under section 131 to the builders who had developed and constructed the three houses, and to the three sons of the assessee. He found that the property was not registered in the name of the assessee, and only an agreement to sell was entered into with his sons. The agreement was only notarized on the last day of the financial year, and no stamp duty was paid. The assessee's sons had purchased their respective houses through separate deeds and after obtaining loans separately from M/s Kotak Mahindra Bank by mortgaging the houses to the bank. Even at the time of assessment, the loans were standing in the names of the sons and the mortgages continued in their names. As per the loan

agreements, the sons were not allowed to sell, charge, lease, surrender or otherwise alienate or transfer the properties or create any interest in favour of any person. It was thus evident that the assessee could not have purchased the properties from his sons till the loan agreements were in force. The assessee also could not furnish any evidence to show that the properties in question had been transferred in his name as a member of the co-operative society, or in the records of the Ahmedabad Municipal Corporation or AUDA. Further, the powers of attorney issued by the assessee's sons on 31.3.2008 (after the date of the agreement 19.3.2008) clearly stated that they are the sole and absolute owners of their respective bungalows. It was also established that the assessee's sons and their families continued to stay in these bungalows without any change. One of the sons had filed a revised return declaring short term capital gains, but the same was filed only after summons were issued to him by the AO The other two sons could not furnish any evidence to show that they had declared any capital gains. All these facts clearly proved that the assessee had not purchased any new residential house and had prepared self serving documents just to make a bogus claim of deduction under section 54F. The AO accordingly disallowed the entire deduction claimed at ₹ 1,82,25,346/-.

4. Without prejudice to these findings, the AO also held, on the basis of the statements made by the developer and by the sons of the assessee, that the said three bungalows were three independent, self-contained and distinct residential units with separate entrances. By removing the partition walls and constructing an interlinking bridge, the three independent houses could not become one. Moreover, the expenditure on such alterations was incurred after the end of the relevant previous year and hence at the time of purchase, the houses were not interlinked. The AO disallowed the claim of deduction under section 54F on this account also.

5. The CIT(A) confirmed the disallowance made by the AO on both counts.

Names of the Officers : F. R. Meena, ACIT, Circle 3, Ahmedabad
Rajesh Kumar, JCIT, Range 3, Ahmedabad
B. N. Panda, CIT-1, Ahmedabad

CAPITAL GAINS ON DEPRECIABLE ASSET

Sale of commercial building – no depreciation claimed in last two years – section 50 claimed not applicable as property sold was essentially land – facts gathered on physical inspection established that the property transferred was building with land appurtenant thereto – capital gains assessed as short term under section 50

M/s Marvel Indenting Pvt. Ltd. primarily worked as a commission agent. In its return for AY 2008-09 the company declared long term capital gains of ₹ 57.92 lakh on sale of a building known as "Universal House" together with the furniture installed therein. In the assessment proceedings, the Assessing Officer found that the building admeasuring about 696 sq. mt. had been constructed primarily during the years relevant to AY 2000-01 and 2001-02. The actual cost of the property as shown in the books was about ₹ 67 lakh, and depreciation had been claimed thereon during AYs. 2000-01 to 2005-06. No depreciation had been claimed for AY 2006-07 and 2007-08, and during the year relevant to AY 2008-09 the property was sold for ₹ 1.53 crore.

2. The AO was of the view that the building was a business asset on which depreciation had been allowed, and hence the gains were to be computed as short term capital gains in accordance with section 50. However the assessee strongly argued that section 50 was not applicable. It was stated that from 2006-07, the property had not been required or used for business and hence was let out to an Institute. Accordingly, on the date of sale, the property was not a depreciable asset. It was further contended that the sale was of land as well as building and the major part of the profit was on account of land, which is not a depreciable asset. Separate calculations of profit from land and building were submitted. Various decisions of the ITAT were cited by the assessee in support of its contention that section 50 was not applicable.

3. In order to rebut the primary contention of the assessee that the asset sold was essentially land and not building, the AO physically inspected the premises and also obtained a declaration from the

purchaser of "Universal House". He found the building to be beautifully constructed with all sorts of facilities such as parking, watchman's cabin and spiral staircase, and eminently usable for business purposes. The AO concluded that the property was essentially a building having constructed area of about 7500 sq.ft. and the land was only appurtenant to it. Even though it had not been used for business purposes and no depreciation had been claimed for the last two years, the property remained a business asset on which depreciation had been allowed. Citing the decision of the Kerala High Court in the case of CIT Vs. Sakthi Metal Depot [(2010) 189 Taxman 329 (Ker)], the AO computed short term capital gains of ₹ 1.07 crore in accordance with section 50 and brought the same to tax.

4. The CIT(A)-III, Baroda has confirmed the assessment made. The CIT(A) went further and examined the title documents of the property. He observed that the assessee had not acquired any leasehold rights to the land from the municipal corporation, and hence the claim that the property sold was primarily land, was not correct.

Names of the Officers : Rajeev Chhabra, ITO Ward 4(1), Baroda
Phagu Oram, AddlCIT Range-4, Baroda
R. N. Parbat, CIT(A)-III, Baroda
Krishna Saini, CIT-2, Baroda

COMMISSION PAYMENTS FOUND BOGUS

Claim of deduction under section 80IB found incorrect as basic condition not satisfied – commission payments made after deducting tax at source established to be non-business payments and hence not allowable

M/s Sun Infraa, Hyderabad is a partnership firm engaged in the business of iron ore extraction and processing. Return of income filed for AY 2008-09 declared total income of ₹ 26.05 crore, after claiming deduction of ₹ 7.80 crore under section 80IB. In the assessment proceedings, the Assessing Officer found that the assessee had commenced its operations only in F.Y. 2005-06, which was far beyond the limitation date of 31.3.1995 specified in section 80IB(3). On being confronted with this fact, the assessee withdrew its claim of deduction not only for this assessment year, but also for AYs. 2007-08 and 2009-10, and paid tax and interest amounting to about ₹ 6.16 crore for the three years.

2. The assessee had also claimed to have paid sales commission of ₹ 4.65 crore to various parties. The AO called for full details of services provided by the parties, as also the details of clients arranged and sale orders procured by each of them. Copies of agreements entered into with the parties, correspondence made and details regarding the basis of commission payment were also called for. The assessee did not furnish any such details and only claimed that all the payments were confirmed by the agents.

3. The Assessing Officer interrogated the alleged commission agents on oath. None of the agents was able to provide a definitive list of customers, quantity of sales effected, and working of commission received. The agents did not provide similar services to any other parties except the assessee and two associate firms, in spite of Bellary being a big centre for iron ore trading. There were glaring inconsistencies and even factual errors in their statements.

4. The AO then examined the partner of the assessee firm under section 131 and found that there were no written agreements with the agents nor any correspondence regarding the customers introduced or sales effected by them. There were also certain discrepancies between

the partner's statement and the statements of the commission agents.

5. When confronted, the assessee submitted that according to trade practice in that region, no written agreements were entered into with commission agents, but no sales could be made without paying such commission. It was emphasized that all the payments were made through account payee cheques after deducting TDS and the parties had confirmed receipt of the commission.

6. The AO held that there was no evidence of even any oral understanding or any longstanding relationship between the assessee and the commission agents. Relying on the decision of the Delhi High Court in Schneider Electric India Ltd. vs CIT [304 ITR 360], and the Supreme Court judgement in Lachminarayan Madan Lal vs CIT [86 ITR 439], he held that the mere fact of payment through account payee cheques after deduction of TDS does not absolve the assessee from discharging its burden of proving the business purpose of the payments. The entire claim of ₹ 4.65 crore was disallowed. The assessment made was confirmed by the CIT(A)-IV, Hyderabad.

Names of the Officers : H. Phani Raju, Addl. CIT, Range-6, Hyderabad
A. Bhaskar Reddy, CIT-3, Hyderabad

SUB-CONTRACT PAYMENTS FOUND TO BE FALSE

Cash payments made to sub-contractors after deducting tax – enquiries establish some of the persons non-existent, others never received such payments

Smt. Thangam Shashidhar Kurup carried on a proprietary business of a civil works contractor. In the assessment proceedings for AY 2009-10, the Assessing Officer (AO) observed that the assessee had debited huge expenditure of ₹ 82.31 lakh as sub-contract payments. It was seen from the books of account that the assessee had made these payments in cash to six persons. The assessee stated that she had given small sub-contracts to these persons on labour basis for execution of certain jobs at NTPS Colony, Nashik. Payments were made in cash, but tax had been deducted at source as per provisions of the Act.

2. The AO issued notice under section 142(1) calling for details and obtained complete addresses of these sub-contractors. Enquiry letters under section 133(6) were sent to them seeking confirmation of the amounts stated to have been paid to them. However, there was no response from any of the six persons. The AO then deputed his Inspector to personally visit them at the given addresses.

3. It was reported by the Inspector that three of these persons were not available at the addresses furnished by the assessee. Persons in the neighbourhood had stated that no such persons were residing there. The other three persons were found and questioned by the Inspector. Two of the persons stated that they were employed with the assessee as supervisor and fitter respectively, and apart from small salaries they had not received any payments from the assessee during the relevant year. They had never executed any contract or sub-contract or any work for the assessee. The third person found similarly stated that he had never carried out any contract work for the assessee and had not received any payment from her during the relevant year.

4. When confronted with these facts, the assessee conceded that

she was not in a position to prove that the payments were in fact sub-contract payments, and filed a letter surrendering the total amount of ₹ 82.31 lakh to tax.

Names of the Officers : K. C. Kanojia, DCIT Circle 1, Nashik
Gaurav Batham, JCIT Range-1, Nashik
Ravindra Kumar Jain, CIT-1, Nashik

REMISSION OF LIABILITY NOT SHOWN AS INCOME

State Electricity Board reviewing power tariff and scaling down arrears payable by assessee – amount not reflected as income on the ground that liability was always disputed – held, taxable under section 41(1) because such charges always allowed in past assessments

M/s Mula Pravara Electric Co-operative Society was an AOP engaged in the business of supply of electricity. It purchased electric power from the Maharashtra State Electricity Board (MSEB) and distributed it to consumers in the rural areas of Ahmednagar district. Due to the rural consumer-base, the rate at which the power was supplied to the consumers was much lower than the purchase tariff fixed by the MSEB. Consequently, the assessee incurred huge losses year after year.

2. For the AY 2002-03, the assessee had declared a loss of ₹ 59.61 crore in the return filed on 23.03.2003. Subsequently, the Assessing Officer noticed from the audit report that during the relevant previous year the MSEB had, vide letter dated 13/5/2001, informed the assessee that the tariff for the period April, 1977 to April, 2000 had been reviewed, resulting in substantial reduction of arrears payable by the assessee to MSEB. Arrears of ₹ 695.59 crore as on 31/3/2001 stood reduced to ₹ 153.79 crore as on 31.3.2002, hence the liability towards MSEB had reduced by ₹ 541.80 crore during the year. However, no entry had been made in this regard in the profit & loss account, and the entire amount of waiver i.e. ₹ 541.8 crore had been directly reduced from the figure of accumulated losses in the Balance Sheet. The AO further noticed that the assessee had filed revised returns for AYs. 1995-96 to 2OO1-02 on 27/12/2002, giving effect to the revised tariff in the accounts of those years. On these facts, the AO was of the view that the assessee had got a remission which attracted the provisions of section 41(1) of the Income-tax Act. The case was re-opened under section 147.

3. During the assessment proceedings, the assessee contested the reopening under section 147 on several grounds. It was primarily

argued that all relevant facts had been disclosed in the return and that no assessment could be reopened merely on the basis of a change of opinion. On merits it was contended that the assessee had all along been disputing the purchase tariffs with MSEB and the liability was therefore a disputed and contingent liability. Hence it was not a liability referred to in section 41(1). The assessee also raised various contentions against the quantum saying that the remission pertained to many earlier years and it should be taxed, if at all, in those years and not in AY 2002-2003.

4. The assessee's arguments were discussed in detail and countered by citing relevant judgements like the Supreme Court decision in the case of Rajesh Jhaveri [291 ITR 500] where it was held that if no regular assessment had been completed, there could be no question of change of opinion, and the decision of the Andhra Pradesh High Court in the case of Panyam Cement & Mineral Industries Ltd [117 ITR 770] where it was held that amounts refunded to the assessee in pursuance of a policy of the government to supply electricity at a concessional rate, were taxable under section 41(1). After a detailed discussion, the amount of remission of ₹ 541.8 crore was brought to tax. Total income was assessed at ₹ 260.82 crore after setting off past losses and a demand of ₹ 162.62 crore was raised.

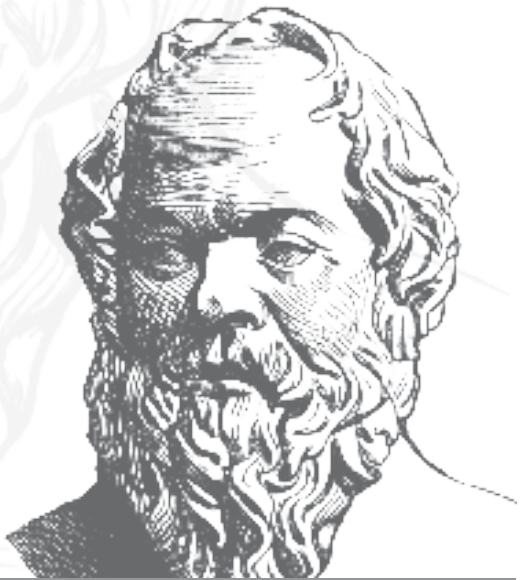
5. The assessment was confirmed by the CIT(A) and also by the ITAT, Pune.

Names of the Officers : Shivraj Deshmukh, DCIT, Ahmednagar
Sunita Billa, AddlCIT, Ahmednagar
S. S. Khan, CIT, Ahmednagar

INTERNATIONAL TAXATION AND TRANSFER PRICING

"I am not an Athenian or a Greek, but a citizen of the world"

- Socrates



INTERNATIONAL TAXATION AND TRANSFER PRICING

PAGE NO.

CAPITAL GAINS ARISING TO NONRESIDENT COMPANIES TAXABLE AT 20%

Capital gains arising to a non-resident from transfer of shares or debentures of an Indian company were chargeable to tax at the rate of 20% and not at the rate of 10%. The applicant has accepted this order and did not file any writ petition before the Hon'ble High Court. The view adopted in the impugned order was upheld by the Hon'ble Authority for Advance Rulings in a later ruling dated 01.08.2011 (AAR No. 950 of 2010) in the case of the applicant itself, albeit in a different deal namely, the Petronas deal.

In the popular Cairn Vedanta deal, Cairn UK Holdings Limited, Scotland vide its application under the provisions of section 197 of the Income Tax Act, 1961 dated 04.10.2010 had requested for authorization for withholding tax at the rate of 4.70% of the total sale consideration received by the Applicant on the sale of 365,028,898 equity shares of Cairn India Limited ("CIL"), an Indian company to THL Aluminium Limited, Mauritius. It also requested that on any further transfer of CIL's equity shares by the applicant to THL beyond 365,028,898 equity shares as mentioned above, tax should be withheld @ 5.52% of the consideration received by the applicant on the sale of each equity share to THL, i.e. 5.52% of ₹ 355 per equity share multiplied by the number of shares transferred over and above 365,028,898 equity shares. The applicant further requested that withholding certificate should be issued for "Nil" rate of withholding of tax on non compete fees to be paid by THL to the applicant.

2. The applicant's claim was that the capital gains arising out of this transaction should be taxed @ 10%, because section 112(1) of the Act gives an option to the assessee towards rate of taxation (i.e. at 10%), if they choose to compute their long-term capital gains without taking the benefit of second proviso to section 48 (i.e. without indexation). Had the assessee chosen to take benefit of indexation, then the rate of 20% would have applied. As such, the applicant claimed that in its case, the capital gains would be taxable at the rate of 10% (plus surcharge and education cess). Reliance was also placed by the applicant on various rulings issued by the Authority for

Advance Rulings in the following cases, wherein the facts involved were identical to those in the applicant's case :-

- McLeod Russel Kolkata Ltd (AAR No. 763 of 2007)
- Burmah Castrol Plc (AAR No.772 of 2008),
- Compagnie Financiere Hamon (AAR No.780 of 2008) and
- Fujitsu Services Ltd (AAR No. 800 of 2009)

3. The case was examined by the Assessing Officer in the light of the provisions of the Act and the Treaty and various details were obtained from the applicant as were also gathered from the newspapers and from the internet. It was observed that the second proviso to section 48, which provided for the benefit of cost inflation indexation of the cost of acquisition, did not apply in the case of capital gains arising to a non-resident from transfer of shares or debentures of an Indian company. Further, it was observed that section 112 was applicable only where the tax payable on the long-term capital gains exceeds 10 per cent of the amount of such capital gains before giving effect to provisions of second proviso to section 48. However, with reference to capital gains arising from transfer of shares or debentures in the case of non-residents, the possibility of 'giving effect' was not there, because the second proviso to section 48 did not apply to such cases at all. It was held that the expression 'before giving effect to the provisions of the second proviso to section 48' presupposes the existence of a situation where the computation of long term capital gain is to be made in accordance with the formula contained in the second proviso to s. 48. Had the legislature intended to cover the cases falling under the first proviso to s. 48, it would not have used the words second proviso to s. 48 in the proviso to s. 112(1). As a result, the applicable rate of tax in the case was held to be 20% (plus surcharge and education cess).

4. Regarding the non-compete fee, it was observed by the Assessing Officer that the applicant was an investment company and as per the non-compete fee agreement, it could participate by holding investment restricted to 5% and by not undertaking management function or any material function. The payment of non compete fee was essentially on account of not allowing affiliates to continue specified business in specified territory, while the applicant (Holding Company) would continue to invest albeit with some restriction. The

characterization of receipts on account of non-compete fee was also deliberated upon and it was observed that right to carry on business was a capital asset (section 55) but temporarily allowing another entity to carry out business without competition for 3 years could not be characterized as capital gains. Similarly, section 28(va) effective from 01.04.2003 characterized non compete fee as business income, but the section required that the sum would be received under an agreement for not carrying out any activity in relation to any business. This provision was therefore applicable when recipient itself did not forgo carrying out any activity in relation to any business. Therefore, the payment was held to be in the nature of 'Income from other sources' and tax was held to be payable at the maximum marginal rate.

The above order resulted in a tax impact of ₹ 2670 crore and the entire tax has since been deposited into government account.

Names of the Officers : Bhupinderjit Kumar,
ADIT (Intl. Tax), Circle-1(1)
Dr. Narender Kumar,
Addl. DIT (Intl. Tax), Range-I
Promila Bhardwaj, DIT (Intl. Tax)-I

PERMANENT ESTABLISHMENT AND ATTRIBUTION OF INCOME

A contract worth $ 1 billion was brought to tax in India which was otherwise claimed to be exempt from Indian taxation. Based on the aforementioned facts, income to the tune of ₹ 111.70 crore was held to be taxable in India during the year under consideration. Since the sale of aircrafts was completed over a period of 4 years, proportionate income shall also be taxed in subsequent three assessment years.

Lockheed Martin Global Inc. (hereafter referred to as the 'assessee' or 'LMGI') is a tax resident of United States of America. Pursuant to approval granted by RBI, it claimed to have set up a liaison office in India. LMGI a wholly owned subsidiary of Lockheed Martin Corporation ('LMC'), USA and submitted that it was engaged in collecting information about possible market opportunities for Lockheed Martin products in India. Return of income was filed for AY 2009-10 declaring Nil income.

2. The assessee had sold six C-130 J aircrafts to India for a sale consideration of over one billion US dollars and had not shown any income as taxable in India. Even the fact that six aircrafts were sold to India was not disclosed let alone offering any income to tax.

3. It was only while exploring on the Web about the activities of the claimed 'liaison office' that the Assessing officer stumbled upon the information of sale of six C -130 J aircrafts to India by the assessee. On confronting the same to the assessee, it was in a complete mode of denial. Thereafter, more research was done regarding the activities undertaken by the assessee and to see whether such activities indeed amounted to only 'liaisoning activities' as claimed or was there something more to it.

4. The primary issue investigated in this case was whether the 'liaison office' of the assessee amounted to a Permanent Establishment ('PE' hereafter) in India within the meaning of Article 5 of India-USA Double Taxation Avoidance Agreement ('DTAA' or 'Treaty' hereafter) and the provisions of the Indian Income Tax Act, 1961. If such PE so existed, the other issue which was to be

investigated was whether any income could have arisen to the assessee which could have been said to be attributable to such PE in India.

5. It was claimed that the office of the assessee in India was merely a 'Liaison Office' and it cannot be held to constitute a PE in India within the meaning of Article 5(1) of the Treaty. It was contended that LMGI was not engaged in any commercial trading, industrial or any other business activity in India and that the role of liaison office ("LO") of LMGI was limited to the following activities:

- Collection of market or business information in India and sending the same to the Head office;
- Providing information about Lockheed Martin products to the prospective Indian customers (essentially Government of India)

It was further contended that it won't constitute a PE as per exemption or exclusion granted under Article 5(3) of the Treaty.

6. On the issue of sale of six aircrafts to India, it was submitted that LMGI is not involved in any manner in sale of C130J aircrafts to the Indian Government. The sale of aircrafts was stated to be executed by Lockheed Martin Corporation a legally distinct and independent corporate entity incorporated under the laws of US. LMGI was stated to have not signed any contract with Indian Government and had not earned any revenues from Indian Government in relation to sale of aircrafts. Further that, LMGI does not constitute Permanent Establishment under the provisions of Indian Income Tax Act and under the provisions of India USA DTAA.

7. After thorough investigation and in-depth analysis, it was established by the Assessing Officer in the given facts of the case that:

A. The Liaison office of the assessee constituted a 'PE'.
B. Sale of six aircrafts was made to India by the assessee.
C. Income had accrued to the assessee from such sale.
D. Income was attributable to the PE in India and hence was taxable in India.

8. On detailed analysis of the facts of the case, it was established

that the PE of the assessee existed in India in more ways than one as follows:

a. A fixed place PE within the meaning of Article 5(1) of the Treaty. It was brought out as to how the assessee had a fixed place of business. The term 'business' was analysed in the given facts of the case and also in light of various judicial pronouncements. It was further held that the assessee was not covered under the exemption clause of Article 5(3) of the Treaty by discussing the facts and the OECD Commentary on the issue.

b. Existence of a PE under Article 5(2)(c)- It was thereafter established as to how the PE also existed within the meaning of Article 5(2)(c) of the Treaty.

c. Existence of a PE under Article 5(2)(l) viz. Service PE- The facts were brought out as to how the employees of the assessee constituted a 'Service PE' within the meaning of Article 5(2)(l) by taking into account the duration of their stay in India.

d. Existence of a Dependent Agent PE under Article 5(4) of the Treaty- On the basis of the facts of the case and relying upon the OECD Commentary, it was held that a Dependent Agent PE also existed. In doing so, reliance was also placed on the enquiries conducted with Ministry of Defence in the instant case. Such enquiries revealed information like the details of the contract, persons who were authorised by the assessee and who negotiated with the Indian government, the quantum of contracts etc.

e. The Indian subsidiary of the assessee viz. Lockheed Martin India Pvt. Ltd. was also held to be a PE of the assessee within the meaning of Article 5(6) of the Treaty after a comprehensive discussion and analysis of the facts of the case. The Indian subsidiary company was also held to be 'dependent agent' PE within the meaning Article 5(2)(l) of the Treaty.

9. After having established that the PE of the assessee existed in more ways than one, it was further established as to how income had accrued to the assessee through such PE in India. Despite denials by

the assessee, it was brought out and established by careful analysis of the facts and in law and the enquiries conducted with the Ministry of Defence that income had accrued to the assessee by sale of aircrafts to India in pursuance of a billion dollar deal between the Indian and the U.S governments.

Names of the Officers : Shashi Saklani, DDIT(IT), Circle 3(1), New Delhi.
Sobhan Kar, Joint DIT(IT), Range 3, New Delhi.
Dinesh Verma, DIT(IT)-I, New Delhi.

TAXATION OF INCOME IN INDIA AVOIDED UNDER THE GARB OF 'RETAINERSHIP FEE' AND 'REIMBURSEMENT OF EXPENSES' WITH REFERENCE TO SINGAPORE DTAA

SIPL was a company incorporated in Singapore and a tax resident of that country and was covered by the provisions of Indo-Singapore DTAA. The income, being not in the nature of business income or royalty or fees for technical services, was thus, covered by the provision of Article 23 of the Indo-Singapore DTAA.
Accordingly, the assesseee was directed to deduct taxes at source on the payments made @ 40% less surcharge on the same.

The assessee Electrosteel Steels Limited remitted sums as per the Consultancy Agreement under the nomenclature of 'retainership fee' and 'reimbursement of actual overseas trip expenses on production of supporting papers'. It was held that such sums were neither in the nature of business income nor royalty nor fees for technical services and were covered by the provisions of Article 23 of the Indo-Singapore DTAA- hence, assessee is liable to deduct tax at source

2. The assessee, Electrosteel Steels Limited [ESL] was setting up an integrated steel plant and ductile iron pipes near Bokaro in Jharkhand and other related plants in India, using the know how and technical details and sourcing of equipments etc from China. In this regard, it had entered into a 'Consultancy Agreement' with M/s Singardo International Pte Ltd [SIPL], a Singapore based Trading Company having good contact of resources in China, which would be helpful in developing the relations with Chinese suppliers and consultants who in turn, would play a significant role in the setting up of new plants. Accordingly, the assessee had requested for remittance of the 'following sums as per the Consultancy Agreement with SIPL [effective from 01.11.2009] without deduction of TDS.

i) A monthly retainership fees of S$8000/-
ii) Reimbursement of actual overseas trip expenses on production of supporting papers.

3. The assessee had submitted that Article 12(3)(a) Indo-Singapore Double Taxation Avoidance Agreement [DTAA], would be

applicable only in cases where payments are received for "the use of, or the right to use" as specified therein. 'If the payments are not for "the use of, or the right to use" then the payment is not in the nature of royalty.' In the instant case, the consideration payable to SIPL is 'not for "for the use of, or the right to use" anything as specified in Article 12(3)(a) of the Indo-Singapore DTAA.' The consideration payable to SIPL were for the services to be rendered by SIPL to the assessee outside India and the same were not in the nature of 'royalty' payment, but in the nature of 'consultancy services'. SIPL was to provide the following services to the assessee:

- SIPL will act as retainer and will help in coordinating the business between ESL and various Chinese manufacturers/suppliers for setting up the steel and DI pipe plants in India.
- Help ESL in getting best prices for machineries and Technical know-how from such Chinese manufacturers.
- Assist ESL to visit, establish, maintain and develop relationship with such Chinese manufactures.
- Provide information to ESL on Chinese market for Ductile Iron Pipes and fittings.
- Assist ESL to procure DI pipes and fittings for its export market.
- Assist ESL by acting as a translator.

However, since no expertise or know-how had been 'made available' to the assessee, the assessee contended that the consideration for 'referral service' does not answer the description of "fees for technical services', as defined in Article 12(4)(b) of the DTAA.

4. From the 'company profile' posted on the website of Singardo International Pte Ltd (SIPL), it was learnt that SIPL was a leading supplier of ductile iron pipes, ductile iron fittings and valves products for all the water and gas infrastructure projects in Singapore, with its market scope covering not only Singapore but also the rest of the neighboring ASEAN countries. Therefore, in the light of the information gathered not only from the website of M/s Singardo International Pte Ltd, Singapore but also as was duly acknowledged by the assessee, SIPL was only a distributor of ductile iron pipes and providing of information or undertaking liaison work for its foreign

clients which was not in any way the business of SIPL.

5. Pursuant to the consultancy agreement with SIPL, it was found that the assessee had also entered into Consultancy Agreement with a Chinese Party, which was effective from 01.01.2010. On examination of the contracts, it was detected that the expertise of the Chinese Party was the same as that of the purported resources of SIPL. Thus, establishing the fact that from 01.01.2010 onwards [effective just after two months of the assessee's Consultancy Agreement with SIPL], the assessee had engaged the Chinese Party for doing the same liaison work which it had earlier entrusted to SIPL, rendering the contract with SIPL redundant, so far as its efficacy and need is concerned.

6. From the form 15 CA filed for remittances made by the assessee to non-residents, it was seen that at least from the period 29.07.2009 onwards [if not earlier], the assessee had been making payments to its Beijing Representative Office, in the nature of "Branch Expenses" and vide Form 15 CA Acknowledgment No.R2009000ZOYG, the applicant had obtained Certificate from Accountant to remit money to "Electrosteel Integrated Limited Beijing Office, B-1709, Tian Yuan Gang Centre, NO C2 Dong San Huan Bei Lu, Chaoyang, Beijing-1000271. Therefore, clearly implying that the assessee already had a presence in China prior to its agreement with SIPL

7. From the Annual Report of the assessee for the F.Y.2010-11, it was evident that M/s Electrosteel Castings Limited [ESL] and SIPL were related parties of the assessee where it was seen that ESL holds 60% stake in SIPL and 700,000,000 shares of ₹ 10/- each of the assessee, thereby, SIPL becoming an Associated Enterprise [AE] of the assessee.

8. Basic details of the Profit & Loss made by SIPL in the period under reference, as available from disclosures made by ESL in its Annual Report for the F.Y.2010-11, mandated under section 212 of the Companies Act, 1956 showed that so far as they concerned the members of ESL, the profits of SIPL amounted to only S$ 40,185 while the assessee had been remunerating annually an amount of S$ 96,000 to SIPL for a service, which on the face of it was not required. Also, the said remuneration was not commensurate with the profit of SIPL from its normal business activity. Thus, it was obvious that the

assessee had provided benefits to its AE ie SIPL, which were in the nature of income.

9. Based on the above facts, it was held that income has accrued or arisen to SIPL in India in the form of benefit arising to it under the nomenclature of 'retainership fee' and 'reimbursement of actual overseas trip expenses on production of supporting papers'. The same was taxable u/s 5(2)(b) read with section 4 of the Income Tax Act, 1961 and was not related to the deeming provisions of section 9 of the Income Tax Act.

Names of the Officers : Rintei Renthlei,
ADIT (International Taxation)-1(1), Kolkata
Shahi Sanjay Kumar,
Addl DIT (International Taxation),
Range-1, Kolkata
Sanjay Kumar,
DIT (International Taxation), Kolkata

MISUSE OF PROVISIONS OF SECTION 195(6) OF THE ACT

Non-resident company was operating its dredger in the Indian territorial waters and hence this constituted PE for the purpose of section 9 of the I T Act. Accordingly, the receipts on account of the operation of the non-resident were taxable in India, being attributable to the PE.

During the course of inspection of forms 15CA/15CB filed with Banks, it was noted that a particular company namely M/s Jaisu Shipping Co Pvt Ltd (Jaisu in short) was remitting funds to one Miller Dredging Co Inc. wherein no TDS was being deducted ostensibly taking benefit of the DTAA between India and UK. Since the amounts involved were quite high, the facts of this case were ascertained and it was noticed that the payments were on account of hiring of dredger which was used within Indian territorial waters and prima facie, the assessee was liable to deduct TDS on remitted amounts.

2. In order to ascertain the facts, survey was conducted in the office premises of M/s Jaisu on 18/1/2011. M/s Jaisu Shipping Co Pvt Ltd had hired two dredgers from a British Virgin Island based company M/s Miller Dredging Co. Inc. for which hire charges were being paid by Jaisu Shipping regularly. During FY 2009-10, such remittances were over ₹ 71 crore. The total remittances over last six years were ₹ 180.68 crore in the case of M/s Jaisu Shipping Co Pvt Ltd and similarly ₹ 47.90 crore was remitted by a sister concern to M/s Clashmore Holdings, BVI in a similar fashion.

3. It was seen that although the overseas entity was registered in British Virgin Island and the remittances were being made to various other countries including Bermuda and New York, the address of the entity was shown in UK and tax was not being deducted taking shelter of Article 7 of DTAA between India and UK. This was a clear misrepresentation of facts as the DTAA between India and UK is not applicable to companies incorporated in British Virgin Islands. The survey led to a clear finding that the assessee was misrepresenting facts to take advantage of India-UK DTAA which was not applicable. Also, the assessee was liable to deduct TDS on the entire amount as

this amount was taxable as business income in the hands of the non-resident as business connection was established and dredgers were being operated within Indian territorial waters since 2002.

4. The survey also established that the non-resident company constituted a PE as it was operating its dredger in Indian territory. The total remittances being to the extent of over ₹ 222 crore, the assessee was liable to be treated as assessee in default in respect of this remittance as well as initiation of suitable penalty proceedings. Subsequently order u/s 201 was passed in the case of M/s Jaisu Shipping raising a total demand of ₹ 239.88 crore on this issue. An alternate issue was that even without business connection, the amount was liable to be taxed as royalty and hence suitable TDS was required to be made on the remittances as per section 195. Further, assessment proceedings have been initiated separately in the case of M/s Miller Dredging Co. Inc. by treating the dredger operations in India as a business activity.

The CIT(A) has confirmed the addition treating the same as royalty income which should have been subjected to TDS on royalty.

Names of the Officers : K.H. Mehta, ITO (Intl. Taxation), Gandhidham
T. A. Khan, ADIT (Intl. Taxation), Gandhidham
Rajneesh Yadav, ADIT (Intl. Taxation), Ahmedabad
V. K. Gupta, DIT(Intl. Taxation), Ahmedabad

ARM'S LENGTH COMPENSATION FOR PROMOTING AND ENHANCING THE BRAND INTANGIBLE

TPO considered the AMP expenses of the current year, the PSM method which underplays the effect of past efforts was not accepted. The TPO considered the amount of ₹ 151 crore as TP adjustment arrived under AMP using bright line method using CUP and TNMM for the FY 2007-08.

The taxpayer was creating a valuable brand intangible by incurring huge expenses on advertisement, marketing and promotion (AMP) on its flagship brand in India. As the taxpayer was not the legal owner of the brand in India, this effectively translated into joint development of brand in which all the entities of the group worldwide, in which the taxpayer was also a part, were contributing in terms of expenses incurred for the development of brand.

2. The taxpayer company incorporated in 1937, has been present in Indian dental and oral care market for the last 70 years. Its oral care brands enjoy strong brand equity in the market. It has multiple manufacturing facilities in India for its various products including toothpaste, toothbrush and toothpowder.

3. The associate enterprise of the taxpayer in the US, is a New York Stock Exchange listed company and sells the well known brands across the globe. The Associated Enterprise (AE) in the US operates in over 200 world markets. Its business segments are focused on four divisions – Oral Care, Personal Care, Home Care and Pet Nutrition. It can be said to be a power brand.

4. Power brands establish a strong pact with consumers, which competitor brands cannot match and are generally supported consistently and powerfully by advertising and promotional initiatives, carried out in a focused way. The essence of any power brand is that it should be present, available, and visible, so that wherever people happen to be, they should be able to buy the product. Customers make purchase decisions based on their perception of value: that is, of quality relative to price. Quality includes all the non-price attributes that count in the purchase decision, both attributes of the product itself and attributes of the associated consumer service.

When organisations provide less perceived value than their competitors, they lose market share. Advertising plays a key driving function in helping companies become perceived quality leaders.

5. The decision-making process for buying a toothpaste is commonly regarded as a low involvement action, i.e. the consumer is not willing to search for alternatives, purchases the easiest way while buying the familiar brand, and seeks not the optimal but only the satisfactory solution etc. Brand plays a major role in the consumer behaviour in low involvement products like dental care

6. The taxpayer applied TNMM and re-sale price method (RPM) to determine the arm's length price of the international transactions in the manufacturing segment and in the distribution segment respectively.

7. The TPO analysed the international transaction in the form of arrangement or understanding in which the taxpayer has been incurring substantial AMP expenses for the improvement of brand value in India, which was owned by its AE in the US for which compensation was required at arm's length. In this regard, the TPO used AMP expenses as a proxy for building the brand in India.

8. When each of the parties involved in controlled transactions makes valuable and unique contributions, TNMM is unlikely to give a reliable result. In the instant case, TNMM could not be applied as the most appropriate method due to non-availability of data on uncontrolled enterprises in which the companies develop the intangibles but are not the owners of the intangibles developed by them in India. The taxpayer along with its AE in US and its group entities all over the world were developing jointly the brand intangible whereas the AE in US was the legal owner of all the brand intangibles that were used and developed by the taxpayer in India. So, when the taxpayer and its AE in US were effectively developing brand intangible jointly, Profit Split Method is the most appropriate method. Thus, in the facts and circumstances of the case, residual Profit Split Method was the most appropriate method to arrive at the arm's length compensation for the development of the brand by the taxpayer and the AEs. Thus the TPO applied residual profit split method (RPSM) as the most appropriate method in the facts and circumstances of the case and considered residual profit attributable

to Advertisement, Marketing and Promotion (AMP) activity of the Group as a whole and attributing the same to India.

9. But in the absence of specific and correct information on the brand value of the taxpayer's brands in India that were being developed by the taxpayer and owned by its AE in US, AMP expenses were considered as a good indicator for contribution towards brand intangible. Thus, the TPO considered AMP expenses as a proxy for contribution analysis for developing brand intangible, as AMP expenses are the main driving force for building a brand like that of the taxpayer as discussed above.

10. The TPO relied on the decision of ITAT, Delhi in the case of Rolls Royce Plc VS. DDIT [TIOL-408-ITAT-DELHI]. In the FMCG industry, marketing efforts, in creating and promoting the brand, drive revenues as well as profits. Further, in the oral health care industry in which the assessee and its Group were operating, the selling price would be in multiples of the cost of manufacturing the product. Further, research and development and innovation also play a significant role in promoting oral care products. It was also noted that Advertisement & Marketing was one of the major factors affecting the level of sales in products like toothpaste. It is an important factor to sustain a particular level of sales and retain market share. AMP expenses are critical for the sale of oral care products like toothpastes. Thus, on a reasonable basis, in oral care industry, the profits of the group at the consolidated level were attributed to the following significant activities.

Manufacturing	-	50%
Research and development	-	15%
Advertisement, marketing and promotion (AMP)	-	35%

Thus, the residual profits of 35% at the consolidated level of the Group allocated to India based on the ratio of AMP expenses incurred in India and globally by the Group. To avoid double counting, 35% of the profits declared by the taxpayer in India were reduced from the above, to arrive at the transfer pricing adjustment.

11. In the instant case, AMP expenses incurred by taxpayer not only benefitted the taxpayer but also the AE in US in terms of increase in the brand value of its brands in India as the AE in US was the legal owner of the brand for the Indian territory. Thus, alternatively, the

TPO examined to see whether the taxpayer was incurring any extraordinary AMP expenses over and above that would have been incurred by independent enterprise for creating routine intangibles (bright line concept). These extraordinary expenses were incurred to create a unique intangible owned by its AE in US.

It was seen that AMP expenditure of the taxpayer accounted for 17.41% of its sales as compared to average AMP expenditure to sales ratio of 8% for the comparables i.e., comparable uncontrolled price. Factually this by itself established that the taxpayer had incurred huge non-routine expenditure to develop marketing or brand intangible for the AE. This comparability analysis also proved that AMP expenditure in the case of the taxpayer was in excess of the bright line test i.e., more than routine marketing expenditure of comparable manufacturer without non-routine intangible. The expenditure, which was beyond the routine marketing expenditure, was for the benefit of the AE. Based on this ratio, the TPO inferred that the taxpayer incurred both routine and non-routine advertisement & marketing expenditure on brand promotion and development of marketing intangible for the AE.

12. It was evident from above that the taxpayer had performed advertisement, marketing and sale promotion activities (marketing or AMP expenditure), which exceeded that performed by comparable independent enterprises. The extent to which the marketing or AMP activities had exceeded as compared to uncontrolled comparable was expected to benefit the owner of trademarks i.e., the AE of the taxpayer and had actually benefited the AE. The taxpayer through its non routine marketing (AMP) activities had not only enhanced the brand value of the AE in India but had also developed marketing intangible for the products of its AE which resulted in enhanced sale and profit to the AEs. Since legal ownership of brand was with the AE, the taxpayer would not be entitled to share in any return attributable to the increase in the value of the brand. This clearly proves that the taxpayer had performed significantly greater functions than the arm's length entities. Accordingly, the taxpayer was entitled for reimbursement of non-routine AMP expenditure with mark-up.

As the taxpayer had also entered into another international transaction i.e. rendering research and development services to its

AE, this transaction was also examined and adjustment was made in this respect also.

Names of the Officers : D. Prabhakar Reddy, TPO-I(4), Mumbai
Anuradha Bhatia, DIT(TP)-I, Mumbai

DETERMINATION OF ARM'S LENGTH PRICE FOR ADVERTISEMENT & MARKET PROMOTION AND INTEREST FREE LOAN

The arrangement by which expenses were incurred by the assessee for promotion of AEs brands was held to constitute international transaction. It was held that the expenses incurred and debited were not wholly and exclusively for the assessee's business as mandated under sec. 37(1) of the I.T. Act but also for the benefit of AE. No compensation was received for the same by assessee. Hence, an adjustment of ₹ 87.65 crore was made towards determination of ALP for promotion of AE's brand in India and incurring large expenditure in connection with the same.

The assessee, Star India Pvt Ltd (SIPL, television channels company) is part of the Star Group (foreign group) whose ultimate parent company is News Corp Group. The assessee's principal activities were provision of agency services in connection with marketing and sale of advertisement air time, distribution of satellite television channels in India and procurement of television content for the various channels of the Star Group. The international transactions with the AEs reported by the assessee were:-

(i) Marketing and collection agency services with respect to advertisement – ₹ 79,07,87,416/-

(ii) Obtaining of distribution rights for television channels- ₹ 1,28,06,30,400/-

(iii) Procurement of content for channels- ₹ 4,85,61,21,796/-

2. As per agreement entered with its AE, Satellite Television Asian Region Limited ('Star Ltd' of Hong Kong), the assessee was the exclusive advertising sales agent for soliciting of advertisements and sponsorship for the channels Star Plus and Star Utsav. Assessee was entitled to remuneration of 10% of the amount actually collected from the advertisers. The reported transfer price of such remuneration was ₹ 79,07,87,416/-. The assessee also entered into a distribution agreement with its AE STAR Ltd for distribution of the channels Star Plus and Star Utsav for which it was required to pay a fixed amount. The reported transfer price of such payment was ₹ 1,28,06,30,400/-

With regard to procurement of content, assessee was remunerated at cost plus 7.5% by the AE. Assessee adopted TNMM to be the most appropriate method for these three transactions.

3. From the analysis of the financial statements, it was noted that assessee functioned as a distributor and advertising agent for other Star group channels such as Star One, Star Gold, Star Vijay, Channel V, Star World, V International and Star Movies also. It was seen that the distribution and advertising rights for these channels were given by the non-resident STAR LTD to five (5) down-linking companies (called Down Linking Entities ie DLEs) viz. One Entertainment Ltd, Gold Movies Ltd, V Music and Interactive Ltd, Star International Ltd, and VTPL. It was represented by Assessee that these DLEs were formed to comply with the regulations of the Ministry of Information and Broadcasting.

During TP scrutiny, it was noticed that consequent to their agreements with STAR LTD, these five DLEs entered into back to back arrangements with assessee ie Star India Pvt Ltd. With regard to sale of advertisement air time, the assessee retained 9% of the collected amount as its commission and the balance 1% was given to the DLEs. Star Ltd would get 90% of the advertisement revenue after deduction of total commission of 10% (9% retained by the assessee and 1% paid to DLEs). With regard to distribution activity, the assessee would pay a fixed licence fee to the DLEs which in turn paid a fixed amount to STAR LTD.

Analysis of the documentation furnished by assessee revealed that the DLEs did not carry out any of the advertisement or distribution functions and acted only as mere conduits. All the advertisement or distribution functions pertaining to the channels of DLEs were carried out by assessee. The assessee was remunerated at 10% of advertisement revenue collected for its direct ad airtime sales transaction with the same AE STAR Ltd. However, it was remunerated at 9% for the same advertisement activity carried out through the conduit DLEs. Consequently, an issue arose as to why the distribution and advertisement transactions carried on by the assessee for the other 5 channels owned by STAR LTD (through the conduit Indian DLEs) should not be considered as international

transaction and subject to transfer pricing analysis in the hands of the assessee.

4. Whether for benchmarking the ALP of advertisement and distribution activity, the assessee's comparables which were essentially brokers, traders, agents could be considered as functionally comparable? More so, in the background of Assessee's FAR analysis and documents and especially in view of the elaborate functions carried on by the assessee as marketer, distributor and collection agent for the AE.

5. Whether in the light of the agreements entered by the assessee with the third parties for content development and supply and the Agreements signed with the AE, the assessee's activity of supplying content to the group channels could be characterised as that of content creator and not a mere content procurer.

6. Whether for benchmarking the ALP of 'supply of content activity', the assessee's comparables which were essentially software traders, could be considered as functionally comparable, especially in view of the elaborate functions carried on by assessee as content developer and content creator as evidenced in the FAR analysis, agreements and other documents.

7. Whether the extended interest free credit period of more than 180 days to AE, for receipt of consideration for supply of content was at Arm's Length when the assessee was required to make payment to the content developing team within 30-45 days. The assessee was asked to explain why interest should not be attributed for the extended credit period made available to the AE.

8. Whether assessee had received appropriate compensation for promotion of AEs brands in India and creation of marketing intangible for the AEs in India when the analysis of financial statements revealed substantial advertising, marketing and promotion (AMP) spend as under:

	AMP expenses (INR)	% of revenue	Comparable
Advertisement	59,71,27,752	52.65%	1.28%
Distribution	35,11,84,41	27.87%	1.28%

9. The distribution and advertisement activity carried on by the

assessee for the non-resident STAR LTD through back-to-back arrangements with the down-linking Indian entities was considered as "international transaction', as it was found that the down-linking entities were mere conduits and admittedly have not performed any distribution or advertisement functions. The assessee collected and remitted 90% of the advertisement revenue generated from these channels directly to the non-resident. Such an arrangement which had an intrinsic nexus with the non-resident clearly fell within the purview of "international transaction". The value of international transaction for the advertisement activity was found to be ₹ 113,42,09,477/- as against ₹ 79,07,87,418/- reported by the assesseee. With regard to distribution activity, the value of international transaction subject to TP audit was ₹ 286,55,31,101/- as against the reported amount of ₹ 128,06,30,400/-.

10. The companies selected by the assessee for benchmarking distribution and advertisement functions were found to be not functionally comparable and hence rejected. The average mean of the PLI of the comparables identified by the TPO were found to be higher than the PLI of the assessee, which resulted in an adjustment of ₹ 19,51,29,329/- with regard to ad air sales transaction and ₹ 44,94,45,534/- with regard to distribution activity.

11. With regard to content procurement transaction, it was found that the assessee was involved in the entire gamut of activities beginning with development of concept, identification of artists, budgeting, arranging logistics etc. and was a content creator. The creative, commercial and business aspects of the content produced vested with the assessee right from the beginning of the project. Therefore, with regard to content procurement transaction, the assessee was found to be a content developer and supplier and not a mere content procurer as claimed. The companies identified by the assessee for benchmarking the content supply transaction were found to be not functionally comparable. The average mean of the PLI of the companies identified by the TPO was found to be higher than that of the assessee which resulted in adjustment of ₹ 51.0 crore.

12. It was found that the average credit period for the assessee to make payment to the content producing team did not exceed 60 days. On the other hand, the assessee had extended more than 180 days

credit period to the AE, which did not meet the requirements of ALP. Hence, an adjustment of ₹ 16,96,51,481/- was made by way of determination of interest compensation from receivables.

13. Assessee objected that AMP spend would not constitute international transaction as the payments were made to third parties in India, that these expenses were incurred in the regular course of business, were targeted towards promoting programs and not the brands and that brand promotion, if at all, would be only incidental. These were not accepted. The assessee was neither the owner of the brands nor of the channels. An independent third party distributor would not incur such huge expenses which involved promotion of brands owned by someone else. The assessee was required to incur some expenses to market and distribute the channels. However, the entire benefits of such expenses did not accrue to the assessee alone but also to the brand and channel owner. Moreover, the benefiting entities were parties to the Distribution and Advertising Agreement, ie. the assessee and AE.

14. It is in respect of these directly benefiting parties that the issue was considered. As the contracting parties were directly benefitted, it was not a case of incidental third party benefits. The total adjustment made in this assessee's case was ₹ 220.33 crore.

Names of the Officers : R. Gurusamy, TPO II (1) & (6), Mumbai
Sangeeta Singh, DIT (TP) – II, Mumbai

DETERMINATION OF ARM'S LENGTH PRICE BY RE-DEFINING THE COST BASE AND USING CORRECT PROFIT LEVEL INDICATOR

Taxpayer was a normal distributer and had not benchmarked the transaction of purchase of finished goods. The PLI (Berry Ratio) used by taxpayer was incorrect. ALP for purchas of finished goods was determined by TPO at ₹ 15.50 crore i.e. lower than determined by the taxpayer.

The taxpayer namely UT Starcom Inc. India Branch had entered into the following international transactions.

Nature of international transaction	Method selected	Value of international transaction (INR)
Provision of Software Development Services	TNMM	87,375,167
Provision of IT Enabled Services		41,578,076
Cost Recharges (Paid)		374,658,501
Purchase of finished goods		1,789,180,735
Reimbursement of expenses (Received)	CUP	934,146

The largest international transaction of the assessee was purchase of finished goods. The taxpayer had used Transactional Net Margin Method (TNMM) as the most appropriate method and the profit level indicator (PLI) was Operating Profit/Value added expenses (OP/VAE) also called Berry Ratio. The cost base that the taxpayer had used did not include the value of finished goods purchased. The taxpayer had thus calculated its OP/VAE to be 19% and that of the comparables to be 2.75%. The cost base of the comparables was the total cost.

The taxpayer while justifying the exclusion of the purchase value of the goods from the cost base had stated that it had no part to play in

the final negotiation of the price of the goods sold to the final customer. The taxpayer stated that this responsibility was cast upon the head office. It was the claim of the assessee that since it was more like a services provider rather than a distributor the cost of finished goods imported was not part of it cost base.

2. During the analysis by the TPO, it was noticed that the international transaction that needed to be benchmarked involved purchase of finished goods. Since the taxpayer was a distributor of finished goods, the goods had to necessarily enter its inventory. This was borne out by the audited accounts of the taxpayer. This meant that the taxpayer was actually bearing an inventory risk. The PLI of OP/VAE keept out the cost of goods from the cost base and the benchmarking of purchase of goods by this process became meaningless. Besides this, Rule 10B (1)(e) that describes the method of application of TNMM does not recognize the concept of value added costs. It only describes cost and so in the taxpayers case total cost included the value of the goods that had been purchased.

3. During the course of discussions with the AR it emerged that there were two possibilities when the role of the taxpayer in the matter was examined. The taxpayer was acting either as trader or as a commission agent. The fact is that in either case, the taxpayer must be concerned with the final price that is negotiated with the final purchaser of goods. Typically, service providers don't hold inventories. The taxpayer did. Service providers do not enter buy-sell models in their business. The taxpayer did. Service providers are generally allowed a mark-up on their total costs. The taxpayer did not get a mark-up. The taxpayer had incurred a loss at the net level. Service providers are rarely seen to make such losses. Therefore, it was concluded that the taxpayer was not a service provider. Accordingly, the claim that the taxpayer had used OP/VAE to benchmark the transaction of purchase of finished goods, was not supported by facts. In the taxpayers case there was no doubt that it was trader. The goods that passed through its books of accounts were purchase from the head office. The buy-sell model that the taxpayer followed with its head office was not in doubt.

4. The transaction between the assessee and its H.O. is covered by the Indian transfer pricing regulations as entities like the taxpayer

are covered by the definition of 'enterprise' in Sec. 92F (iii). Once the transactions between the taxpayer and the head office have to answer the arm's length principle, the entire arrangement that the taxpayer has with its head office/AE takes on a different hue.

5. If the taxpayer had admitted the position that the AE does not allow it a say in the price negotiations with the final customer, it can only be concluded that the arrangement between the taxpayer and its AE does not answer the arm's length principle. It can be said that, it was this arrangement of the taxpayer with its AE, which was not at arm's length, that has left the taxpayer in a loss.

6. It was pointed out in the show cause notice issued, that the taxpayer was actually holding the inventory risk as the goods actually entered the inventory of the taxpayer. If separate entity principle is followed, the taxpayer was an entity separate from its head office and bore all the risks that are associated with a trader.

7. The taxpayer during the course of the proceedings mentioned that its AE is also facing losses. The taxpayer did not appreciate that the AE's profitability cannot be a deciding factor in the question whether the assessee paid an arm's length price or not. The AE's profitability had more to do with the dynamics of the market that it operated in and that loss cannot be factored into setting the arms length price for the taxpayer. Besides that, the main focus of the TP audit had to be the correct calculation of the margin of the tested party. Attention was drawn to the decision in Gharda Chemicals [2009-TIOL-790-ITAT-MUM] wherein it was held that the amount of tax paid by the foreign AE is not relevant in determination of correct tax liability of the taxpayer. The Supreme Court had held similarly in the case of Mazagon Dock Limited v CIT [34 ITR 368 (SC)].

8. The use of Berry ratio as PLI is not permitted under Indian transfer pricing rules. The TPO, after examining whether the use of Berry Ratio in this case was appropriate or not arrived at the following conclusions:-

a. Berry ratio is used in some of countries for tested parties that do not have significant operating assets. That was not the case the taxpayer.

b. Berry ratio is very sensitive to cost base and due to the difficulty in making a determination based on public

database, the exact accounting treatment given to the cost items by the comparable entities and the difficulty in making adjustments for accounting differences, Berry ratio was not the ideal PLI to be used.

9. The final determination of the TPO was based on the following conclusions/facts:

(i) The taxpayer was a normal distributor who entered into buy-sell transactions as a normal trader would.

(ii) The taxpayer had not benchmarked the transaction related to purchase of finished goods.

(iii) The use of OP/VAE as PLI was not appropriate as it did not correctly benchmark the international transactions related to purchase of finished goods. That apart, it is not a PLI recognized by the Indian transfer pricing regulations.

(iv) The taxpayer had attempted to classify itself as an entity providing 'distribution service'. Such a classification was not correct as such an entity is not a reality in the corporate world. The taxpayer was engaged in distribution of finished goods purchased from AE

(v) The correct PLI to be used was OP/Sales since the cost of goods was to be benchmarked.

10. The OP/Sales margin of the taxpayer was found to be -11.80% and that of the comparables was 2.75%. The ALP of the international transaction related to purchase of finished goods was determined at ₹ 1,54,97,46,751 as against ₹ 1,78,91,80,735 determined by the taxpayer, to bring it to arm's length. The resultant adjustment amounted to ₹ 23,94,33,984

Names of the Officers : Bhaskar Goswami,
Transfer Pricing Officer-II(4), New Delhi
Rashmi Saxena Sahni,
DIT (Transfer Pricing)-II, New Delhi

DETERMINATION OF ARM'S LENGTH PRICE ON SALE OF CALL CENTRE AND CALL OPTIONS

The Arms Length Price of the assignment of call option to the subsidiaries of Vodafone was valued at ₹ 6178.88 crore.
Taking the Arm's Length P/E ratio of 34.96, the Arms length sale consideration for call centre was arrived at ₹ 2414.20 crore. Hence, an adjustment of ₹ 2350.2 crore was made.

The assessee namely Vodafone India Services Pvt. Ltd. was formerly known as GSPL. GSPL was incorporated in March, 1999 as a wholly owned subsidiary of a Mauritian entity, viz. Hutchison Teleservices (India) Holdings Ltd. Hutchison Teleservices (India) Holdings Ltd. was in turn a wholly owned subsidiary of CGP Investment Holding Ltd, Cayman Island ("CGP"). Until May,2007, CGP was an indirect wholly owned subsidiary of Hutchinson Telecommunications International Ltd, Caymans Islands (HTIL).

2. On 11th Feb, 2007, HTIL & Vodafone International Holdings B. V. (VIHBV) entered into an agreement (SPA/Global Agreement) to transfer the share Capital of CGP, Cayman Island to VIHBV. As a result of this SPA, 51.96% equity interest in the downstream operating company i.e. Hutchison Essar Ltd. (HEL) got vested with VIHBV.

3. GSPL was operating a Call centre for Hutch Operations in Australia, UK & Ireland. It held valuable options, became an indirect subsidiary of VIHBV upon completion of the transaction of sale of CGP share under the SPA. Thereby, GSPL became a group company of Vodafone which was a group company of Hutch earlier.

4. The sale of call centre business was made in pursuance of a Business Transfer Agreement (BTA) dated 7th May, 2007. Transaction of sale of Call Centre Business was not reported in Form 3CEB. GSPL submitted that the sale of call centre business was not an international transaction, as the sale of Call Centre business was made by GSPL (an Indian Company) to another Indian Company, i.e. Hutchison Whampoa Properties (India) Ltd (HWP).

5. On perusal of the SPA (Sale purchase agreement), dated 11th Feb, 2007, it was found that Hutch and Vodafone had agreed for the

sale of Call Centre business by GSPL, to an entity of Hutch, as one of the condition for execution of the SPA. The terms and conditions of BTA were substantially determined in accordance with SPA. Since, GSPL sold the call centre Business to HWP, India, an AE of Hutch, in pursuance of a prior agreement between the AE of GSPL (i.e. VIHBV) and the purchaser, it was held as deemed international transaction u/s 92B(2).

6. The business was sold as a going concern for ₹ 64 crore only, for a call centre of 7000 persons. The valuation of the call centre business was done by GSPL using Profit Earning Capacity Value (PECV). The valuation was rejected as it was based on past earnings and after allocation of same weight to last 3 year's earnings and that too without making adjustments for Transfer Pricing adjustments of earlier years. Moreover, for determining the value of HEL for the purpose of framework agreements with AG and AS, P/E multiple method was used. P/E Multiple is the ratio of enterprise value to the yearly earning. The P/E ratio of comparable companies based on NASSCOM Reports and based on listing of similar businesses by these companies was determined at 34.96. Taking the Arm's Length P/E ratio of 34.96, the Arms length sale consideration was arrived at ₹ 2414.20 crore and an adjustment of ₹ 2350.2 crore was made.

7. Before sale of its stake in Hutch Essar Ltd.(HEL) , Hutchison Telecommunications, Cayman Island (HTIL) had 52% holding in HEL through CGP Investment Holding Ltd, Cayman Island ("CGP") and others and 15% option with GSPL to buy shares of HEL held with Analjit Singh (AS), Asim Ghosh (AG) and their companies & IDFC. GSPL was the only Indian Company which was a wholly owned (100%) subsidiary of HTIL in complex maze of holding companies. These were back to back Call and Put options which entitled GSPL to purchase shares of HEL from these companies or these companies could exercise Put options to ask GSPL to purchase shares of HEL. However, other than GSPL, no entity could have bought these shares.

8. Due to FDI limit of 74%, Hutch had to keep 15% stake of Hutch Essar Ltd (HEL) , in options with Asim Ghosh and his group of companies, Analjit Singh and his group of companies, and the IDFC Group of companies. The options were held by GSPL being an Indian entity, controlled by Hutch. Vodafone had to keep these options with

GSPL for the same reason of FDI restriction.

9. GSPL had acquired valuable options rights in pursuance of 3 Framework Agreements, two of them dated 1 March, 2006, with Asim Ghosh and his group of companies, Analjit Singh and his group of companies, and the third Framework Agreement dated 7 August, 2006, with the IDFC Group of companies. After Global sale, it became imperative for Vodafone to keep GSPL, as it held valuable options to purchase 15% shares, of Hutch Essar Limited (HEL).

10. After the Global sale, New Framework Agreements dated 5th July 2007 were entered with Analjit Singh and his group of companies and Asim Ghosh and his group of companies.

11. VIH BV (the present associated enterprise of the GSPL) was specifically made a party to the 2007 Framework Agreement even though the earlier associated enterprise of the GSPL (i.e HTIL or any other company in the Hutchison group) was not a party to the 2006 Framework Agreement. Secondly, though under the 2006 Framework Agreements the GSPL did not have any right to nominate any other company to purchase the shares when it exercised its call option, the 2007 Framework Agreements specifically provide that GSPL could nominate a wholly owned subsidiary of Vodafone Group plc to take the benefit of the options. Thirdly, the annual payments to be made to Asim Ghosh and Analjit Singh under the 2007 Framework Agreements were made by non-resident companies in the Vodafone group on behalf of the GSPL. Fourthly, the GSPL, being 100% owned subsidiary of VIH BV, was a company controlled by VIH BV and could never have exercised the call option of its own volition and would actually be exercised only by Vodafone Group plc.. In light of these facts, the call options were assigned by the GSPL in favour of the VIH BV, as the GSPL being a Vodafone group company would surely nominate a company within the Vodafone group to exercise the call options. Accordingly, the assignment of call options to any subsidiary of Vodafone Plc was held to be an international transaction.

12. Before the rewriting of the Framework Agreements, GSPL had unrestricted right to call options. After the rewriting of the Framework Agreements, the subsidiaries of Vodafone Group Plc became entitled to subscribe to the call options, which were earlier exclusively held by GSPL. By re-writing the Framework Agreements

the wholly owned subsidiaries of Vodafone Group plc were specifically named as nominees for the call options. There was a substantive change in the call option rights by the re-writing of the Framework Agreements as a result of which the options rights were assigned to the Vodafone group by the GSPL. GSPL did not charge any consideration for assignments of these call options.

13. For the purpose of valuation, Internal CUP was used as GSPL through Vodafone paid an amount of ₹ 62.24 crore to IDFC in consideration of relinquishment of IDFC's right to cashless option to purchase 0.1234% shares of HEL. The valuation of call option of 12.25% was done on the basis of IDFC payment as follows :

$$\frac{62.24}{0.1234\%} \times 12.25\% = 6178.88 \text{ crore}$$

14. It resulted in an adjustment of ₹ 6178.88 crore.

Names of the Officers : Peeyush Sonkar, ACIT (TPO)-I (5), Mumbai.
Anuradha Bhatia, DIT (Transfer Pricing) – I, Mumbai.

SHORT TERM CAPITAL GAIN THROUGH FOREIGN CURRENCY CONVERTIBLE BONDS

Short term Capital Gain arising from sale of shares acquired through conversion of Foreign Currency Convertible Bonds do not fall under the purview of section 115AC of the Income Tax Act. Appellate order upheld the enhancement of short term capital gain.

In the above case, the assessee even though had earned short term capital gain on sale of shares of NIIT Ltd at ₹ 165.73 crore but offered for taxation only ₹ 20.72 crore contending that the difference of ₹ 145 crore was not taxable in view of the provisions of 'issue of foreign currency convertible bonds and ordinary shares (through depository receipts mechanism) Scheme 1993' rws 115AC of the Income Tax Act.

2. The Assessing Officer discussed the entire scheme of taxation of income including the capital gains to arrive at a conclusion that the cost of acquisition was to be taken at ₹ 200 per share instead of ₹ 873.33 and ₹ 858.08 per share as claimed by the appellant and accordingly determined the short term capital gain at ₹ 163.62 crore as against ₹ 20.72 crore declared by the appellant. However, the AO did not address the specific issues raised by the assessee in respect of exemption of short term capital gain till the date of conversion of FCCB to shares according to the scheme.

3. In the appellate order passed, the issues raised by the assessee were dealt and it was held that short term capital gains arising from sale of shares acquired on conversion of FCCBs were not covered under the provisions of Section 115AC of the Income Tax Act. It was also established that the scheme notified for the assessment year 2002-03 and subsequent year was applicable only in respect of interest on bonds and income from dividend on global depository receipts and accordingly it was held that the cost of the acquisition of the shares had to be taken at ₹ 200 per share and it is also held that the date of acquisition of such shares for the purpose of computation of capital gain would be the date of conversion of FCCB into shares.

Name of the Officer : O. P. Yadav, CIT(A), Bengaluru

AMOUNT PAID TO FOREIGN SUPPLIERS IS ROYALTY AND CHARGEABLE TO TAX

Amount paid by the taxpayer to foreign software suppliers was in the nature of Royalty as per the provision of Section 9(1) (vi) of the Income Tax Act read with explanation (2) thereto and was chargeable to tax in India u/s 195 of the Income Tax Act and respective DTAA provisions. Accordingly TDS was attracted

In the case of M/s Samsung Electronic Co. Ltd (being the lead case), the matter was remanded back to the Hon'ble High Court of Karnataka by the Hon'ble Apex Court setting aside the judgment of the Honorable High court dated 24.09.2009.

2. The Hon'ble High Court of Karnataka vide its order dated 15.10.2011 upheld and restored the appellate order passed by CIT (A) -V Bangalore in the lead case of M/s Samsung Electronic Company Limited (wherein the order passed by the ITO TDS-I was confirmed by CIT (A) and accordingly the order passed by the ITAT was set aside.)

3. While remanding the issue to the High Court the Honorable Apex Court had framed the following substantial question of Law:

"Whether the ITAT was justified in holding that the amounts paid by the appellant(s) to the foreign software suppliers was not royalty and that the same did not give rise to any income taxable in India and therefore the appellant(s) was not liable to deduct any tax at source?"

4. The question of law has been held in favour of the Revenue and against the assessee. In a detailed appellate order, CIT (A) held that the impugned amounts paid by the appellant to the foreign software suppliers was in the nature of Royalty as per the provision of the section 9(1)(vi) of the Income Tax Act read with explanation (2) thereto and accordingly the same was thus a sum chargeable to tax in India u/s 195 of the IT Act, as well as under the respective DTAA provisions.

5. To arrive at this conclusion, CIT(A) critically analyzed the respective contractual agreements and respective DTAA. Global views on such issue as contained in the OECD manual and in Klaus Vogel's commentary on double taxation convention were studied in

depth. Similarly, the view of the Internal Revenue Service of USA on such issues as well as the views of the High Powered Committee of Govt. of India, set up to study the tax implication in respect of specific international transaction were discussed in detail in the appellate order and so also the Indian Copy Right Act 1957, which had a bearing on the issue.

6. Thus after a detailed discussion on the relevant aspects of the issue, CIT (A) held that the impugned payments made by the assessee to the non-resident foreign companies were for importing shrinkwrapped off the shelf software, further holding that as per the contractual agreement entered into by the assessee with such non-resident companies r.w.s 9(1) (vi) of the IT Act. Act and explanation (2) there to and also keeping in view the respective DTAA the asseessee was given a right to use the software and therefore would constitute 'royalty' within the meaning of Sec. 9(1) (vi) r.w explanation 2 thereto of the Act and relevant clauses of DTAA agreement and thus become a sum chargeable to tax in India and hence provisions of Sec. 195 would be applicable. It was accordingly concluded that as the assessee had not effected TDS on such payments, the ITO TDS had rightly treated the assessee as an assessee in default and therefore the orders passed by the ITO TDS u/s 201 of the IT Act r.w.s 201(1A) was confirmed by CIT (A).

7. The Hon'ble High Court vide its order dated 15.10.2011 has restored the orders passed by CIT(A). The revenue implication in this group of cases is substantial amounting to crore of rupees and will be exponential keeping in view similar transactions for the present and future.

Name of the Officer : K. K. Misra, CIT(A)-V, Bengaluru

CHAPTER XIX – A OF THE INCOME TAX ACT RELATING TO SETTLEMENT OF CASES

Under Chapter XIX-A of the Income Tax Act relating to Settlement of Cases, the case involved three non-resident companies of the Outotec Group – Outotec GmbH, Outotec OYJ and Outotec Canada – an internationally renowned group engaged in the business of providing services and equipments to clients in the metals and minerals processing industry. Misinterpretation of explanation (iv) of section 245A (b) and clarificatory circular no. 3 of 2008 of CBDT.

The case of Outotec GmbH only has been discussed here. M/s Outotec GmbH a foreign company, had been doing business for a number of years. It did not file any return of income in India for the income earned in India for any of the assessment years even though it had earned taxable income from its operations in India. The assessee filed an application on 29.06.2010 before the Income Tax Settlement Commission, Additional Bench, Kolkata (ITSC) for settling the assessment of its taxable income for the assessment years 2004-05 to 2009-10. The ITSC allowed these applications for settlement to be proceeded with by passing an order u/s 245D(1) of the IT Act, 1961 on 02.07.2010.

The Directorate in its report under Section 245D(2B) of the IT Act had argued that the Settlement Application filed by the applicant was not valid as there was no pendency of assessment proceeding. This was so because the applicant had never filed any return of income for the relevant assessment years and further, even if proceedings were deemed to be pending, they could not remain so beyond the normal period of limitation for completion of assessment.

2. The ITSC passed an order on 11th August, 2010 under section 245D(2C) of the IT Act holding the application of M/s Outotec GmbH to be valid. The ITSC held inter alia that as per the Explanation (iv) to Section 245A(b) the assessment proceedings are deemed to have commenced from the 1st day of the assessment year and concluded on the date on which the assessment is made. Since in the instant case the returns were never filed and no assessment was ever made, the

proceedings were deemed pending by the ITSC. It was also held that in view of the amendment made in Finance Act, 2007 with effect from 01.06.2007 there was no legal requirement of filing the return of income so as to treat that the assessments were pending.

3. In arriving at this conclusion, the ITSC relied on its own earlier decision of the Special Bench of Hon'ble Settlement Commission, Kolkata in the case of M/s Rescuwear Corporation dated 13.6.2008 as reported in 217 CTR 597 (ITSC).which is as follows:

M/s Rescuwear was an Indian resident. The Special Bench of ITSC in this case had held that as per the provision of the 'Act' though a pending proceeding is a must before any Settlement Application can be admitted but as per the provisions of Section 245A(b) read with Explanation (iv), if no assessment is made or served, the assessment would be deemed to remain pending.

4. The ITSC also relied on the CBDT Circular No. 3 of 2008, dated 12-3-2008 which reads as under:

> *"Under the existing provisions, an assessee may make an application to the Commission at any stage of the proceedings in his case pending before any income-tax authority. After 31-5-2007, an assessee can make an application to the Commission only during the pendency of the proceedings before the Assessing Officer. It is further clarified that (a) since intimation under section 143(1) is not an assessment order there will be no bar in filing an application for settlement subsequent to receipt of an intimation under section 143(1). It is not material whether time-limit for issue of notice under section 143(2) has expired or not (b) the assessment shall be deemed to have been completed only on the date of service of assessment order to the applicant."*

5. Such an interpretation, as taken by the ITSC in Rescuwear case, meant that the proceedings could be held as pending ad infinitum for the purpose of Chapter XIX-A of the Act as long as no assessment was made but the ITSC restricted itself and held that 'the meaning and scope of the “date of conclusion of proceeding” under clause (iv) of the explanation to the Section 245A(b) is that the proceedings for assessment can be said to be pending before an Assessing Officer in respect of those assessment years only for which the Assessing Officer can still take action/initiate the proceedings

under the Act'.

6. This decision of ITSC in the case of M/s Rescuwear was not challenged. As a result, many cases had been settled by the ITSC in the past on the basis of the above decision in the case of M/s Rescuwear. The case of M/s Outotec Gmbh was the first case of a non resident attempting to obtain the benefit of Rescuwear's decision. It was noted that a conflict had crept in the wordings of Section 245A(b) of the Act. While Section 245A(b) specifically excluded proceedings for assessment or reassessment or re-computation under Section 147 from the purview of the Settlement Commission, Explanation (iv) was misconstrued and misinterpreted to allow a view, though misplaced, that as long as assessment was not made, proceedings could be deemed to be pending even after the normal time period for issuing notices u/s 143(2) had expired. It was also noted that the clarificatory Circular of the CBDT, No. 3 of 2008, had been misinterpreted since its clarifications regarding expiry of the time-limit for issuing a notice under Section 143(2) or intimation under Section 143(1) were not applicable in the present case as these provisions would come into play only when there was a return of income. But no such return of income had ever been filed by M/s Outotec Gmbh.

7. Accordingly, a Writ Petition (W. P. No. 341 of 2011) was filed before the Calcutta High Court. After regular hearings and follow up, the Calcutta High Court issued its order of the single Judge on 1.8.2011. The Learned Judge noted that if Parliament in its wisdom excluded proceedings under Section 147 from the purview of pending proceedings, then Explanation (iv) to the definition of 'case' in Section 245A(b) cannot be construed to include within the purview of pending proceedings, the time period otherwise covered by a notice u/s 147. It was also held that proceedings could only be said to be pending for as long as any normal proceedings could be taken i.e. excluding the proceedings under Section 147 which have consciously been excluded by Parliament. The Order held as under:

> *"This Court is constrained to hold that irrespective of whether returns were filed or not, a case would be deemed to be pending but only for twenty one months from the end of the assessing year in question, i.e. the period within which an assessment could have been made. Once the aforesaid time period expires, it cannot be*

said that the proceedings are pending. If the time period to make an assessment had not expired on the date on which the settlement application was made, the commission might entertain and proceed with the same, irrespective of whether income tax returns had been filed or not. However, where the period of twenty one months from the end of the assessment year expired on the date of making of the application, the settlement application cannot be proceeded with."

The assessee subsequently challenged the order of the Single Bench in appeal. The Division Bench, while admitting the appeal, held that the matter was a pure question of law. The hearings in the case are under progress.

Names of the Officers : Lalit K Singh Dehiya, Addl DIT (Int. Taxation) - II, Kolkata
Shahi Sanjay Kumar, Addl DIT (Int. Taxation) - I, Kolkata
Sanjay Kumar, DIT (Int. Tax & Transfer Pricing), Kolkata

PAYMENT RECEIVED FOR OFFSHORE SUPPLIES TAXABLE IN INDIA

The Authority for Advance Rulings was convinced that the assessee and SEC formed an AOP for the purposes of Income Tax Act and therefore held that the consortium of the applicant and SEC would be taxable in India in that status i.e as an AOP. It was further held that the entire contract would be taxable in India including the off-shore supplies / services component.

The assessee (or the 'applicant') had formed a Consortium with Samsung Engineering Corporation ('SEC'). This consortium was awarded a contract by ONGC Petro Additions Ltd.('OPAL') for design, engineering, procurement, construction, installation, commissioning and handing over of the plant on a lump sum turnkey basis for the Dual Feed Cracker and Associated Units of Dahej Petrochemical Complex in Gujarat. The contract amount was over ₹ 4000 crore.

The assessee had filed an application u/s 245Q of the I.T Act before the Hon'ble Authority for Advanced Rulings ('AAR') seeking a Ruling on the following two issues primarily:

A. Whether the consortium of the assessee along with Samsung Engineering Corporation (SEC) would constitute an AOP for the purposes of Indian Income Tax Act.

B. Whether the payments received for off-shore supplies and services rendered in connection with the contract entered into between the consortium and OPAL would be taxable in India.

2. It was argued that the assessee and SEC did not form an AOP since their work was clearly and separately identified as per the contract and for which they would receive separate payments from OPAL. The second main contention of the assessee was that the contract with OPAL is a divisible Contract and that it can be divided into off-shore and on-shore supplies/services and further that off-shore design, engineering and supplies are not taxable in India.

3. The applicant had contended that the contract was a divisible one in reference to:

a. Scope of work & obligation of each member of the consortium.

b. Consideration payable by OPAL directly to each member of the consortium.

c. Further that, the part of the OPAL contract relating to the applicant was also divisible in three parts (i) supply of design, engineering of equipment, materials and (ii) fabrication, procurement and supply of equipment and material outside India to OPAL and (iii) supervision of installation, testing, and commissioning of the equipment, materials, at site in India.

On the basis of above submissions, it was contended that off-shore design, engineering and supplies shall not be taxable in India.

4. The argument of the Department, before the AAR, was that the consortium of the assessee with SEC would constitute an AOP for the purposes of taxation in India. It was brought out that consequent to amendment in Section 2(31) w.e.f 1.4.2002, it is not essential that an AOP should necessarily produce income. In view of the change in the position of law it would be sufficient that two or more persons should come together for a common objective. The concepts like agency, sharing of profits, separate payments, separate bank of accounts, separate field of work etc. would not be relevant to determine if the AOP existed. In this case the two consortium partners had come together to execute a project under a common contract with OPAL. Although the spheres of work to be undertaken by the two partners were separate and independent, the project cannot be completed without both the activities being undertaken. To that extent there was commonality of interest from the commencement of the project till the end. Therefore the applicant's argument that the Consortium does not constitute an AOP was strongly rebutted and pleaded to be rejected by the Authority.

5. Till the time of this Ruling, the issue of taxation of Off-shore supplies was primarily covered in favour of the taxpayer's by virtue of Supreme Court's Rulings in the cases of Ishikawajima Harima Heavy Industries and Hyundai Heavy Industries. The AAR had also on earlier occasions given relief to the taxpayers on the same issue by relying on the judgments mentioned supra. Therefore, the assessee had also relied upon these cases to seek a favourable Ruling. It was argued that the contract with OPAL was a divisible contract and that the off-shore supplies would not be taxable in India and the ratio laid down in the judgments mentioned supra would apply. This argument was strongly rebutted by quoting straight from the contract itself to drive home the point that the contract in question was a composite contract. The cases relied upon by the assessee were discussed threadbare before the Hon'ble Authority and they were distinguished by elaborately discussing various provisions of the contracts in the cases relied upon vis-à-vis the provisions of the contract at hand. The arguments of the assessee's counsel during the hearing were taken one on one and were rebutted by strong counter arguments. A strong case was made by arguing that the contract was one and no artificial separation or distinction could be made between the off-shore and on-shore supplies/services merely for taxation purposes.

6. The Hon'ble Authority was convinced that the assessee and SEC formed an AOP for the purposes of Income Tax Act and therefore held that the consortium of the applicant and SEC would be taxable in India in that status i.e as an AOP. It was further held that the entire contract would be taxable in India including the off-shore supplies/services component. The Authority relied upon the Supreme Court judgment in the case of Vodafone International Holdings B.V. vs. UOI and another [(2012) 341 ITR 1 (SC)] in ruling against the assessee and holding that a transaction should be looked at in its entirety and a dissecting approach from the angle of taxation should not be resorted to. The Authority further agreed with the arguments and contentions of the officers of the Department that the contract involved was a composite and indivisible contract and that the off-

shore supplies in respect of the same would also be taxable in India. In doing so, the Authority made a departure from the law laid down by the SC in the cases of Ishikawajima Harima Heavy Industries and Hyundai Heavy Industries pertaining to taxation of off-shore supplies. The entire contract under consideration amounting to over ₹ 4000 crore was held to be taxable in India.

Names of the Officers : Shashi Saklani, DDIT(IT), Circle 3(1), New Delhi
Md. Tarique Kalim, Addl. DIT (IT), Range-3, New Delhi
Dinesh Verma, DIT(IT)-I, New Delhi

APPELLATE ORDERS

" Judges shall discharge their duties objectively and impartially so that they may earn the trust and affection of the people "

- Kautilya

APPELLATE ORDERS

ACTIVITY HELD TO BE PROCESSING - DEDUCTION U/S 80IB DENIED

Deduction u/s 80IB denied– Statistical data used to establish that activity undertaken processing and not manufacture –Inconsistencies in DIC certificates and initial assessment year high-lighted.

The main issue in dispute in the appeal filed by Mrs. Anju Saraf was whether the appellant was entitled to deduction u/s 80IB. On facts, it was elaborated by the CIT(A) with reference to statistical data of consumption and production, that the appellant was only undertaking an activity of processing in the nature of screening, crushing and sorting of ore. Simply said, the appellant was selling iron lumps which it purchased from its sister concern – R. B. Seth Shreeram Narsingdas. There was no evidence of any manufacturing ever undertaken. There was neither any shortage/wastage nor generation of scrap. Accordingly, the decisions in Gem India Manufacturing 249 ITR 307 (SC), SACs Egle Chicory Vs CIT 255 ITR 178 (SC), V. N. Salgaonkar Bros (P) Ltd. 217 ITR 849 (Kar), CIT Vs Meenakshi Asphat 266 ITR 626 (Mad) and Computer Graphics Ltd. Vs ACIT 308 ITR 96 (Mad) were found apposite.

2. On the issue of determining the initial assessment year, the CIT(A) showed the prevarication in the appellant's claim and patent misrepresentation to DIC. Whereas at one part the appellant cited 1996 as the year of commencement of its business, at another, on the basis of the DIC certificate, it had claimed AY 2002-03 as the initial assessment year.

3. The AO noted disparities in the claim of investment in plant and machinery during Assessment Year 01-02 of the applellant before him and before the DIC, who issued the SSI Certificate. These un-reconciled infirmities in applellant's claim under Sec. 80 IB apart, more germane was the anomaly in its claim of deduction for the first time in AY04-05, when according to the appellant, its initial assessment year was either 1996 or AY 02-03. Taking support from CIT Vs. Wipro Ltd. 344 ITR 6 (Kar) and Bharti Shah Vs. ACIT 329 ITR 534 (Del), it has been held that the claim of deduction u/s 80 IB, if

not made in the earlier year when the unit had commenced commercial production, does not enure to the appellant in a subsequent year.

Name of the Officer : Geetha Ravichandran, CIT(A)-I, Nagpur

LIMITATION PERIOD FOR FINALISATION OF PENALTY- SECTION 275 INTERPRETED

Time limit for levying penalty in terms of section 275- not to be determined with reference to the original assessment order- Consequential order u/s 143(3) read with section 263 needed to be referred to determine the period of limitation -Benefit of Explanation 5 below section 271(1)(c) denied

Two issues were raised before the CIT(A) by the appellant, M/S Gupta Domestic Fuels (Nagpur) Ltd. First issue was whether penalty u/s 271(1)(c) was time barred with reference to section 275 of the Act and second was whether penalty should have been levied in view of Explanation 5 to section 271(1)(c). Both the issues were decided by the CIT(A) in favour of Revenue. On the first issue, CIT(A) placed assessment as well as appellate history of the case in proper sequence by noting that there was an original order u/s 153A read with section 143(3) which referred to initiation of penalty proceedings u/s 271(1)(c). This order was set aside by the CIT after invoking provisions of section 263. The AO had initiated penalty proceedings u/s 271(1)(c) in the consequential order u/s 143(3) read with section 263. It was held in the appellate order that penalty proceedings in the original assessment order had no doubt subsided after passing of the revision order u/s 263; and therefore the time limit for levying penalty in terms of section 275 could not have been determined with reference to the original assessment order. It was the consequential order u/s 143(3) read with section 263 which only needed to be referred for determining the period within which the penalty was required to be levied. Since time was available for the AO to levy penalty with reference to the penalty initiated in the consequential order, the grounds thereof were dismissed.

2. Second set of grounds that, appellant was covered within the immunity provided in the Explanation 5 to 271(1)(c) read with section 132 (4), was controverted by CIT(A) both on facts and in law. It was noted that there was no disclosure in the statement u/s 132(4) , but only in the series of letters after completion of search; the return was not filed within time as per section 139(1) of the Act; taxes due on

returned income were not paid on time and moreover, mode of earning the income, which is a condition precedent for availing immunity as per Explanation 5 to section 271(1)(c), was not even specified. On the basis of facts and law as per reasoning aforesaid, penalty of ₹ 53 lakh levied u/s 271(1)(c) was held to be justified.

Name of the Officer : Geetha Ravichandran, CIT(A)-I, Nagpur

DEPRECIATION NOT ALLOWABLE AND TAXABILITY OF SALE PROCEEDS OF LAND

Hyderabad Metropolitan Development Authority (HMDA) – Depreciation on Roads, Flyovers etc. denied – Assets held not used for the purposes of business – Authority held not to be an agent of State Government – Profit from sale proceeds of land taxable-

The appellant, HMDA, claimed depreciation of ₹ 6.69 crore on certain 'mega city projects' consisting of assets like roads, flyovers, etc. The AO had disallowed the depreciation on the grounds; firstly, that the assets did not fall within the definition of 'building' and secondly, that the assets had not yielded any revenue or income to the assessee. Both these arguments were rejected in appeal, the first because with the amendment of the term, 'building' in the depreciation schedule w.e.f. 01.04.1998, the narrow interpretation of the word 'building' was not acceptable, and the second because the Act merely requires 'use' of the asset for the purposes of business for depreciation to be allowed and not generation of revenue or income.

2. However, the disallowance of depreciation was upheld on the ground that the assets were not used for the purposes of business of the assessee. The nature of activities that the assessee was engaged in was examined to establish that while the assets had been constructed by the assessee as part of its regular activity, not all such activities could be considered to be in the nature of business and the assets had not been used by the assessee in any of its business activities. Depreciation cannot be allowed merely because the assessee is engaged in business unless it is established that the assets in question had been used for the business.

3. In addition, it was established on facts by the CIT(A) that the assessee had claimed depreciation on two assets, both in the nature of commercial complexes, on which it had returned income under the head Income from House Property. Consequently, the AR withdrew the claim of depreciation on these two assets in the course of appellate proceedings.

4. The second issue related to the taxation of sale proceeds of land by the appellant. During the year the appellant had undertaken sale of three categories of land:

i) Land alienated by the State Government for specific purpose ₹ 446.01 crore

ii) Land alienated by the Government without specific purpose. ₹ 255.38 crore

iii) Land acquired by HUDA ₹ 684.37 crore

5. The AO had brought the sale proceeds from the second and third categories of land to tax. The appellant had contested the same on the ground that it was merely acting as an agent of the Government for sale of these lands. A detailed examination of the Government orders, alienating the land, was made by the CIT(A) to show that the ownership over the land had been duly transferred to the appellant. Similarly, the sale deeds were also examined by CIT(A) to establish that the assessee had executed the sale as 'vendor' and was the transferor in its own right. An examination of the provisions of the Andhra Pradesh Urban Areas Development Authority Act was also done to show that the assessee was entitled to sell land only in such cases where the land had been 'transferred' to it, not as an agent. Other claims of the assessee, viz. its reliance on the fact that it had remitted the sale proceeds to the Government, and that the Government had issued a post-facto G.O. declaring the assessee as its agent were also discussed in detail and dismissed on merits.

6. On the third issue related to taxation of sale proceeds of land alienated by the Government with specific purpose, the Ld. CIT(A) took the view that the liability to tax arises from the fact that the assessee had undertaken the sale in its own right after the land had been duly 'transferred' to it by the Government. Consequently, it was held that the fact that the Government had specified the purposes for which the sale proceeds were to be utilized was not relevant. CIT(A) also examined in detail the G.O.s alienating the land to show that the appellant's claims of such specification of purpose was either factually incorrect or that the manner in which the purpose had been specified did not create any obligation on the appellant leading to diversion by over-riding title. This was also borne out by the fact that the appellant, instead of utilizing the sale proceeds as specified, had remitted it to the Government. This view led to an enhancement of assessment by a sum of ₹ 446.02 crore.

Name of the Officer : Vasundhara Singh, CIT(A)-VI, Hyderabad

PROFIT ON SALE OF SHARES IN A J V HELD AS ANTICIPATED FUTURE BUSINESS PROFITS

Sale of shares in joint venture with an overseas group-Resulting profit offered to tax as capital gains- CIT(A) held amount received to be not only towards transfer of shares but also on account of restructuring of all the joint venture businesses between appellant and overseas group including the JV in question- Transfer of shares in JV held to be a modality adopted for such restructuring- Amount received held to be anticipated future business profits - Provisions of Sec.55(2)(aa) held as not applicable for determining 'cost of acquisition' of shares of privately held companies.

The appellant M/s JM Financial Limited's claim that ₹ 1771.36 crore was consideration for sale of 49 lakh shares of J. M. Morgan Stanley Securities Pvt. Ltd. and resulting profit from such sale was taxable as capital gains, was not accepted by the CIT(A). It was held that the sum of ₹ 1771.36 crore was anticipated future business profit, which accrued in the current year as a result of negotiated settlement. Amount received was held to be revenue receipt taxable as business income. It was also held by the CIT(A) that amount of ₹ 12.66 crore being cost of purchase of shares could not be deducted from revenue receipt for the purpose of determining profit of business u/s 28. Assessment was enhanced to such extent.

2. Further, appellant's claim regarding computation of long term capital loss of ₹ 54.90 crore and short term capital loss of ₹ 465.44 crore as per provisions of Section 55(2)(aa) was rejected by holding that provisions of Sec.55(2)(aa) were not attracted to sale of shares of a privately held company.

Name of the Officer : Raj Kumar Lachhiramka,
CIT(A)-II, Kanpur

SHARE PREMIUM- NOT CAPITAL EMPLOYED FOR DEDUCTION U/S 35D

Claim of deduction u/s 35D –Factual examination by the CIT(A) – Finding that new project was not completed in the previous year –Held that share premium was not includible in the 'capital employed in the business of the company – Disallowance made by AO on legal ground strengthened on facts.

The appellant M/s Jagran Prakashan Ltd. filed a return of income for AY 2006-07 declaring a total income of ₹ 13,29,31,280/-. In the assessment u/s 143(3), one of the core issue involved was allowability of deduction of ₹ 19,80 crore claimed u/s 35D. No such claim was initially made by the appellant in the return of income. The AO rejected the said claim which was challenged by the appellant before the CIT(A) .

2. In the appellate proceedings, apart from dealing with the legal issue of admissibility of the fresh claim made during the assessment proceedings, the CIT(A) also dealt this issue on facts. Since the deduction u/s 35D is allowable only from the year in which the extension of the undertaking is completed and the new unit commences operation, to verify the facts, the CIT(A) analyzed the prospectus of the public issue brought out by the appellant. From the prospectus it became clear that none of the new projects were to be completed before 31.03.2006. Hence it was held that on facts, the appellant company was not entitled to any deduction u/s 35D also for AY 2006-07.

3. Further, the CIT(A) also found that the appellant had issued shares of face value ₹ 10/- at a premium of ₹ 310/- per share. On these facts the CIT(A) held that for the purposes of allowing deduction u/s 35D, the premium collected on the shares issued could not be considered as part of the capital employed in the business of the appellant. As a result, the total allowable deduction u/s was reduced from ₹ 19.80 crore to only ₹ 50.20 lakh.

Name of the Officer : A. A. Shanker, CIT(A)-8, Mumbai

EXPORT PROCEEDS TAXED U/S 68 - DEDUCTION U/S 10B DENIED

Deduction u/s10B – Export receipts held not relatable to exports –No expenses incurred on software development-Enquiries from STPI –Bank did not confirm remittances were against export proceeds – Remittance taxed u/s 68

The only issue in dispute in the appeal filed by Mr Jugal Kishore H. Maniyar was denial of deduction u/s 10B of the Act in respect of the so-called software exports and taxing u/s 68 of the Act the so-called export proceeds of ₹ 6.69 crore. From the records and appropriate facts placed in the appellate order, the CIT held that the agreement for development and export of software to a Hong Kong national was not credible for many reasons: one, where as the appellant is an Indian National and the counter party was a Hong Kong national, the agreement is said be governed by the laws of the State of California (USA); two, the agreement did not bear the signature of the developer or the client nor did it show when the agreement was executed; three, there was no evidence to corroborate the transmission of the documents said to be in pursuance or in furtherance of the so called agreement. Second fact, which bore upon this case, was the claim that the appellant spent nothing towards software development costs, meaning thereby that the export proceeds came all by itself without a single rupee of investment under software development. The third finding of CIT(A) was in the context of the appellant's claim that STPI's certificates of its export proceeds was final and conclusive and could not have been challenged by the AO on the basis of AO's surmises and hypothesis. A finding has been rendered with reference to STPI's own admission that STPI only endorses self declaration of exporters and in no way generally scrutinizes the claim made. The fourth limb of CIT(A)'s order hinged on the endorsement by bankers in respect of appellant's inward remittances and facts have been incorporated in the appeal order to show that the banker nowhere confirmed that the remittances were against export proceeds. On the basis of above reasoning, the AO's order was confirmed in full, both on facts and points of law.

Name of the Officer : Geetha Ravichandran, CIT(A)-I, Nagpur

DEFAULT IN TDS U/S 194C FROM PAYMENTS UNDER SEPARATE CONTRACTS

TDS from the payment made under contract claimed to be purely purchase/supply contract-Interlacing and interweaving of contract with a single object- Found that appellant's case did not involve manufacture or supply of a product but a pure construction contract -Payments made held to be in terms of a composite contract –Default of not deducting tax u/s 194C of the Act.

Appeal of Maharashtra State Power Generation Co. Ltd. was against levy of interest of ₹ 11.77 crore u/s 201(1)/ 201(1A) read with section 194C of the Act. Whereas AO had held a particular stream of payment as originating from a composite contract, it was appellant's claim that the payments in question emanated from three different letters of award. The CIT(A) analysed series of payments in question and placed on record facts to show that the payments for supply of main plant BTG package; for erection, testing and commissioning of the main plant and for civil and construction work for the main plant were all made to L&T with a single objective: Koradi Expansion 3 X 660 MW main plant. The bid documents clearly pointed to a single source responsibility and that separate contracts were part of one composite package. It was also pointed out with reference to covenant in the contracts that there was interlacing and interweaving of contracts with a single object of expansion of Koradi plant.

2. On issues of law, the CIT(A) distinguished the case from that of CIT Vs. Glenmark Pharma 324 ITR 199 (Mumb) relied on by the appellant and placed reasoning and basis as to why decision in Essar Oil Ltd.vs ITO 77 ITD 92 was more apposite to the facts of case. Finding of fact was rendered that appellant's case was not one involving manufacture or supply of a product but was a pure construction contract, which was sought to be commercially achieved through a common source responsibility. It was therefore held that due to payments being made in terms of a composite contract, appellant had committed default by not deducting tax at source u/s 194C of the Act in respect of contractual payments to L & T.

Name of the Officer : Geetha Ravichandran, CIT(A)-I, Nagpur

TAX DEDUCTION AT SOURCE –APPLICABILITY OF SECTION 194J & 194I

Payments to deductees not for simple works contracts, but for performance of contracts involving specialized technical knowledge, expertise and qualified manpower-Held that tax deduction at source should have been u/s 194J and not u/s 194C. Payments made to contractors for hiring of cranes -Liable for tax deduction at source u/s 194I instead of section 194C.

The ground taken in this appeal by deductee M/S Oil India Ltd. was against application of section 194J instead of section 194C in respect of payments made to contractors. During survey conducted u/s 133A, it was found that appellant had made certain payments for obtaining technical services but had not deducted tax thereon correctly. AO had held that payments in question were not for simple works contracts, but were for performance of contracts which involved specialized technical knowledge, expertise and qualified manpower and tax should have been deducted at source u/s 194J and not u/s 194C.

2. CIT (A), after detailed discussion and considering material before him, held that appellant was liable to deduct tax at source u/s 194J instead of 194C from the payments made to contractors and sustained the order of AO He took into consideration relevant case laws, language of two sections as well as appellant's submissions and then gave his analysis, in a speaking order as to why section 194J was applicable to facts of the case.

3. Appellant had also taken another ground of appeal against application of provisions of section 194I instead of section 194C in respect of payments made to contractors for hiring of cranes. During the year under consideration, appellant had made payments of ₹ 88,51,120/- to M/s. Choudhary Transport, New Delhi in respect of which TDS was made u/s 194C whereas the AO held that TDS ought to have been made u/s 194I.

4. After considering the arguments of appellant and material on record, CIT (A) sustained the order of the AO and dismissed the ground raised by the appellant.

Name of the Officer : P. C. Mody, CIT(A), Bikaner

CAPITAL GAINS LEVIABLE ON TRANSFER OF ADDITIONAL FSI UNDER A REDEVELOPMENT AGREEMENT

FSI available is an asset u/s 2(14) -Additional FSI granted under DC regulations of Greater Mumbai redevelopment agreement - Capital gains leviable – Cost of acquisition and transfer date ascertainable

The appellant Mr Sarve Rattan Verma had inherited a land having an old bungalow constructed on it. On the said plot, as per the Municipal Corporation Rules FSI of 9018 sq ft was available, out of which FSI of 3750 sq ft was consumed in construction of the old bungalow. Later, as per Development Control Rules (DCR) 1991, the allowable FSI on the plot was doubled to 18,036 sq ft. In the AY 2003-04, the appellant entered into a redevelopment agreement with the developer as per which the developer was to pay the appellant ₹ 1.2 crore and also give him flats measuring 9018 sq ft. in the new tower. For the remaining FSI of 9018 sq ft available on the plot, the developer was free to load the TDR and sell the flats to third parties.

2. The appellant contended that, as all rights in the land still remained with him and as he still enjoyed the original FSI of 9018 sq ft, there was no transfer of any property belonging to the appellant and thus no capital gains could be levied on the transaction. Alternatively, it was also argued that even if it were to be held that there was transfer of additional FSI to the developer, as the cost of acquisition for such additional FSI could not be computed, no capital gains would be leviable in light of decision in the case of B. C. Srinivas Shetty 128 ITR 294 (SC). As against this claim of the appellant, the AO held the receipts of ₹ 1.2 crore and value of the 6 flats received by the appellant of ₹ 90.18 lacs as income from other sources.

3. During appellate proceedings the appellant contented that there was no transfer of property when a developer was only given permission to load TDR on additional FSI available on a plot and that as there was no cost of acquisition for the additional FSI granted under DCR 1991, the capital gains on the transfer of same could not be computed .

4. The CIT(A) held that and phrase "property" u/s 2(14) included any right which could be called property and the term "property" was of widest import and it would include the 'right to develop' the land being one of the 'bundle of rights' emanating from the land and hence the same was also a right in immovable property being capital asset u/s 2(14)

5. The CIT(A) further held that the appellant not only transferred the additional FSI but also transferred the original FSI and thus the total FSI transferred was a consolidated asset and there being cost of acquisition for the original FSI, it could not be said that there was no cost of acquisition of the asset so transferred. He held that the bundle of rights in a land might be absolute or restricted, corporal or in corporal, legal or equitable, vested or contingent which might be restricted by law. The additional FSI could not exist in vacuum without being attached to any land and it was part and parcel of the land only and not a separate or distinct or a new asset. The fact that the additional FSI permitted as per DCR 1991 was granted to the land of a particular area/zone only and not to the all owners of land individually, further show that the additional FSI was part and parcel of the land. Therefore, but for the restriction in use of FSI, the right to construct the FSI was an inherent and embedded right in the land and it was not something alien or new right which was added in the land by virtue of grant of additional FSI under DCR. The amendment in DCR 1991 only relaxed such restriction on the ceiling of FSI, which still emanated from the ownership of land only and hence it could not be said that the additional FSI had cropped de hors the ownership of original plot for which there was definitely a cost of acquisition. Therefore, total sale consideration was assessable as LTCG subject to allowance of deduction of cost of acquisition and deduction u/s 54 for 1 flat only.

Name of the Officer : Ajay Kumar Srivastava, CIT(A)-32, Mumbai

PROVISION FOR REWARD POINT REDEMPTION AND CREDIT CARD ACQUISITION EXPENSES

Issuer of credit cards –Disallowance of 'provision for reward point redemption' –Held no scientific basis for quantifying warranty provision- Disallowance of card acquisition expenses upheld –Deviation from accounting standard -

In this case of SBI Cards & Payments & Services (P) Ltd., addition of over 133 crore had been made by the Assessing Officer. In the appeal the additions were upheld and an enhancement to the income by ₹ 5.80 crore was also made.

2. The appellant had claimed deduction of ₹ 4.02 crore on account of "provision for reward point redemption" in the case of credit card holders. Although the appellant claimed that the issue was covered by the Jurisdictional High Court's decision in the case of **CIT vs. Vinitec Corporation Pvt Ltd 278 ITR 337 (Del)** and Supreme Court's decision in the case of **Rotork Controls India Pvt Ltd vs. CIT (2009) 314 ITR 62 (SC),** after analyzing the facts of the case, it was proved that the Supreme Court's decision cited by the appellant actually favours the Department since such warranty provisioning had not been made on a "scientific basis". Looking at the historical trend of such provisioning and the actual amount spent on redemption of reward points, it was found that such provisioning had been made at more than 3 times of the actual redemption. Thereafter, taking into consideration the accounting standards notified u/s 145(2) of the I.T. Act and considering the ratio of Supreme Court's decision in the case of **CIT vs. British Paints India Ltd (1991) 188 ITR 449 (SC),** the addition made by the AO was upheld.

3. The AO had also disallowed a sum of ₹ 23.24 crore on account of card acquisition expenses by alleging that the same was providing enduring benefit to the appellant. Although the appellant claimed that it was clearly allowable u/s 37(1) of the I.T. Act, on verification of the accounting policy adopted by the appellant, it was found that the appellant had deviated from the **Accounting Standards-5 (AS-5)** issued by the Institute of Chartered Accountants of India in as much as while the amount had been amortized by the appellant in its books

to the subsequent years, only for I.T. purposes, the same had been claimed as a revenue expenditure. Referring to the ratio of Supreme Court's decision in the case of **CIT vs. Woodword Governor India Pvt Ltd (2009) 312 ITR 254 (SC),** wherein it had been provided that in view of the provisions of section 211(3A) and (3C) of the Companies Act, every company was bound to comply with the Accounting Standards and considering the ratio of various High Court and Supreme Court's decision on the issue of amortization of expense beyond the accounting, not only the addition was upheld but a further enhancement of ₹ 5.80 crore was made.

Name of the Officer : D N Kar, CIT(A)-X, New Delhi

DEDUCTIONS U/S 80IA- INTEREST ON INSTALLMENTS TOWARDS PREMIUM PAYABLE

Deduction u/s 80IA claimed on interest income earned on account of installments in respect of premium payable on lease of industrial land- Interest income earned on installments towards lease premium held as not "derived from" eligible business- Further held that nexus between source of income and income was not of 1st degree.

The appellant U.P. State Industrial Development Corporation Ltd. was carrying on business of development of Industrial Plots and providing the same to entrepreneurs for setting up industries. It was also running two industrial parks, namely, Tronica City Industrial Model, Greater Noida and Export Promotion Industrial Park at Agra for which it claimed deduction u/s 80IA @ 100% during the year. CIT(A) resorted to enhancement u/s 251 in respect of deduction u/s 80IA claimed on interest on installments of premium payable on lease of industrial land. Impugned interest income was earned by the appellant on account of installments granted by the appellant to respective entrepreneurs in respect of premium payable on lease of industrial land. It was an admitted fact that in case where premium was paid in one lump-sum at the time of allotment, there was no charge of interest. On these facts, interest income earned on premium installments granted by appellant was held to be not "derived from the eligible business". CIT(A) also held that earning of interest on installments granted could be said to have some link with the business, but such receipts could not be said to be income "derived from" such eligible business since it had no 1st degree nexus with the eligible business. CIT(A) enhanced the assessment after considering various judicial pronouncements of Supreme Court.

Name of the Officer : Raj Kumar Lachhiramka,
CIT(A)-II, Kanpur

TDS SURVEYS & ORDERS

"All undertakings depend on finance. Hence foremost attention must be paid to the treasury"

-Kautilya (Arthashastra)

TDS SURVEYS & ORDERS

LEASE PREMIUM PAID TO MMRDA - LIABILITY FOR TDS U/S 194-I

The lease premium paid to Mumbai Metropolitan Regional Development Authority (MMRDA) - Subject to deduction of tax u/s. 194-I of the Act –Being in nature of Rent

Discreet enquiries revealed that no TDS was made by various entities on payment of lease premium to the Mumbai Metropolitan Regional Development Authority (MMRDA) despite the fact that such premium was in the nature of rent, as laid down in Section 194-I of the Income Tax Act, 1961. Accordingly, the CIT (TDS), Mumbai charge, carried out a survey u/s.133A on the office premises of MMRDA. During the course of survey proceedings, it was revealed that various entities had paid lease premium to MMRDA for acquiring the land on lease in Bandra-Kurla Complex area (BKC) of Mumbai. It was further noticed that from the F.Y.2007-08 onwards, around 93 entities paid lease premium to MMRDA aggregating to several thousand crore of rupees without deduction of tax at source.

2. The payment of lease premium is prima facie in nature of rent as defined under the provisions of section 194-I of the I.T. Act, 1961. The expression rent has been defined in clause (i) of the explanation to section 194-I to mean, any payment, by whatever named called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the year of either separately or together any land or building etc. The lease agreements entered into by the entities with MMRDA specified a nominal amount payable as rent, whereas substantial payments were made by way of lease premium. It was further noted that the agreement so entered into by the entities with MMRDA were replete with restrictive covenants which clearly indicated that the transaction under reference was not for acquisition of right in the land rather the payments were made for the use of land, thus in nature of rent only. The bifurcation of the payment between rent and lease premium did not signify the real nature of transaction wherein the entire amount, including lease premium was paid to MMRDA for securing the land from it, over a period of 80 years. The payment of premium was in nature of advance rent, on the basis of which the

lessees had secured the rights for the use of land. Under these circumstances, these entities were liable to deduct tax at source on such payments u/s.194-I of the I.T. Act, 1961.

3. On the basis of survey, notices were sent to lessees who had not deducted tax at source u/s.194-I on the payments of lease premium exceeding ₹ 5700 crore to MMRDA for the period F.Y. 2008-09 to 2010-11.

4. Taking cue from the TDS Wing of Mumbai, on similar basis, orders u/s. 201 and 201(1A) were passed in other regions.

Names of the Officers : Abhijeet Patankar, Addl, CIT (TDS), Mumbai.
A. C. Shukla, CIT(TDS), Mumbai

LIABILITY OF TDS ON DISTRIBUTOR'S COMMISSION BY DTH SERVICE PROVIDER

Relationship of Distributor with Direct to Home Service provider is in nature of Agency – Remittance retained by distributors out of proceeds/Subscription receipts being in nature of Commission, liabile to TDS @ 10%.

A survey u/s. 133A was carried out by the TDS Wing, Mumbai on Tata Sky Ltd., a leading Direct to Home (DTH) Service provider in July 2011. The said services were provided through subscription contracts entered into by TSL who provided hardware such as set top box, dish, Low Noise Black Feeder (LNBF) and antenna to the customers through a network of distributors/agents. The ultimate consumers subscribed to DTH services by purchasing recharge vouchers from the distributors. Accordingly, the distributors/agents performed two functions for TSL namely providing DTH hardware to consumers and sale of recharge vouchers to the subscribers.

2. It was found that although TSL show sale of set top box, dish, Low Noise Black Feeder (LNBF) and antenna to the distributors/agents but it was not the transaction of sale for the simple reason that the distributor of the assessee had relationship in nature of agency with the service provider, namely TSL. For both the services of installation of hardware as well as for sale of recharge vouchers, the distributor/agents received a commission from TSL. However, instead of the commission being paid upfront to the distributors/agents for the service it was in fact retained by them while remitting the proceeds/subscription receipts to TSL.

3. The survey clearly revealed that the amounts being retained by the distributors/agents were in the nature of commission or brokerage u/s.194H of the Act on which TDS was required to be deducted @ 10%. The nomenclature or nature of entries in the assessee's books of account were not conclusive and what was of relevance was the substance and effect of the transaction. Applying the test of substance, in effect, the mode of payment was of no consequence and it was also immaterial as to whether consideration for services was received by the DTH provider and then commission was paid to the

agent or whether the agent received the entire consideration, retained a part of it as his commission and remitted the balance to TSL. As per the material gathered in the course of survey it was apparent that TSL had failed to discharge its statutory liability in deducting TDS @ 10% on the commission paid to the distributors/agents for providing DTH hardware and recharge coupons to the customers.

4. The survey revealed that for the F.Y. 2008-09 to 2011-12 [till date of survey] the commission paid/payable to distributors for providing DTH hardware was ₹ 10.91 crore and the commission paid for sale of recharge vouchers was ₹ 155 crore. In view of the fact that similar modus operandi was being adopted by other DTH service providers, the revenue impact of the survey is likely to be much higher.

Names of the Officers : A. N. Sontakke, ACIT(TDS)-3, Mumbai
Chandrajit Singh,
Addl.CIT(TDS) Range-3, Mumbai,
A. C. Shukla, CIT(TDS), Mumbai

LIABILITY OF TDS ON CARRIAGE FEES TO CABLE OPERATOR

Non Deduction of TDS on Placement Charges / Carriage Fees paid to Cable Operators – Held to be in the nature of Fee for Technical Services – TDS @ 10% U / s 194J

A survey was carried out in the case of Zee Entertainment Enterprises Ltd. by the TDS Wing, Mumbai which is engaged in broadcasting and distribution of TV channels, film production and distribution. The company hires transponders for up-linking and down-linking of channels which are then carried by cable operators for which placement/carriage fees are paid to place their channel on the network at a band of their choice.

2. Right frequency is very important to ensure a good viewership of the channel and get high TRP ratings resulting into better advertisements. This issue has assumed the importance since there are over 400 television channels available for viewership while the analog cable distributor platform can carry only 70 to 80 channels. Thus in order to ensure that channels are 'carried by the cable operator' in the prime frequency bands which carry highest visibility, the television broadcasters/channel distributors pay huge amounts of carriage fees to the cable operators. The survey revealed that the assessee company was deducting tax at source u/s.194 C of the Act. It is apparent that the rendering of these services involve certain technical know-how and expertise and is not merely contractual. Furthermore, the process of placement of channels onto the desired frequency in the prime band involves human intervention and application of mind by technical persons. Further, it was seen that the carriage fees was paid by 40 to 50 top influential broadcasters and they paid higher amounts than standard fees for getting their channels placed in the prime bands. Accordingly, the nature of services rendered clearly fell within the ambit of the expression 'fees for technical services' under section 194J of the Act and was liable for deduction @ 10%.

3. Alternatively, the payment on account of placement charges might also be said to be in the nature of commission as defined in

Explanation to section 194H since the cable operators facilitated the delivery of products of the broadcaster to the viewers. Further, it could also be argued that the placement charges were paid by the broadcasters for use of commercial equipment of the cable operators and would be taxable as 'royalty' as item (iva) of explanation to section 9(1)(vi) of the I.T. Act on which TDS would be deductible u/s.194J.

4. The total amount paid as placement fees/carriage fees by the assessee company during the period F.Y. 2008-09 to 2010-11 was in excess of ₹ 275 crore. Surveys on similar lines were carried out in other TV broadcasting/distributing companies in Mumbai and hence the overall revenue impact of these surveys would be much higher.

Names of the Officers : Ashish Pophare, DCIT(TDS)-3, Mumbai
Goli Srinivasrao,
Addl.CIT(TDS) Range-3, Mumbai
A. C. Shukla, CIT(TDS), Mumbai

TDS ON AMOUNT RETAINED BY BANKS ON CREDIT CARD TRANSACTIONS

Credit card transactions - Application of provisions of section 194-H on amounts retained by facilitating banks-liability

Customers make payments for all kinds of purchases through credit cards like Master card, Visa card, Diners Card, American Express Card etc. Various banks are the processors and members of these world-wide card services For this purpose they install an electronic capture terminal at the merchant's establishment / point of sale where the card is swiped and the swiping machine prints out the credit slip indicating the amount of sale and this is signed by the customer. At the end of the day, the batch total of all the transactions on the specific card swipe machine is taken out by the merchant, who sends it along with the signed credit slips to his bank for collection. The bank deducts certain amount named as service fees/ discount/ merchant discount rate (MDR)/ commission etc.) and remits the balance payment to the merchant, who is the 'assessee' in respect of this discussion.

2. The parties involved in a credit card transaction are as under:-

(i) Cardholder: The purchaser.

(ii) Card-issuing bank: It pays the sales consideration to the seller.

(iii) Merchant or seller: The individual or concern accepting credit card payments for products or services sold to the cardholder.

(iv) Acquiring bank: The financial institution accepting payment for on behalf of the merchant.

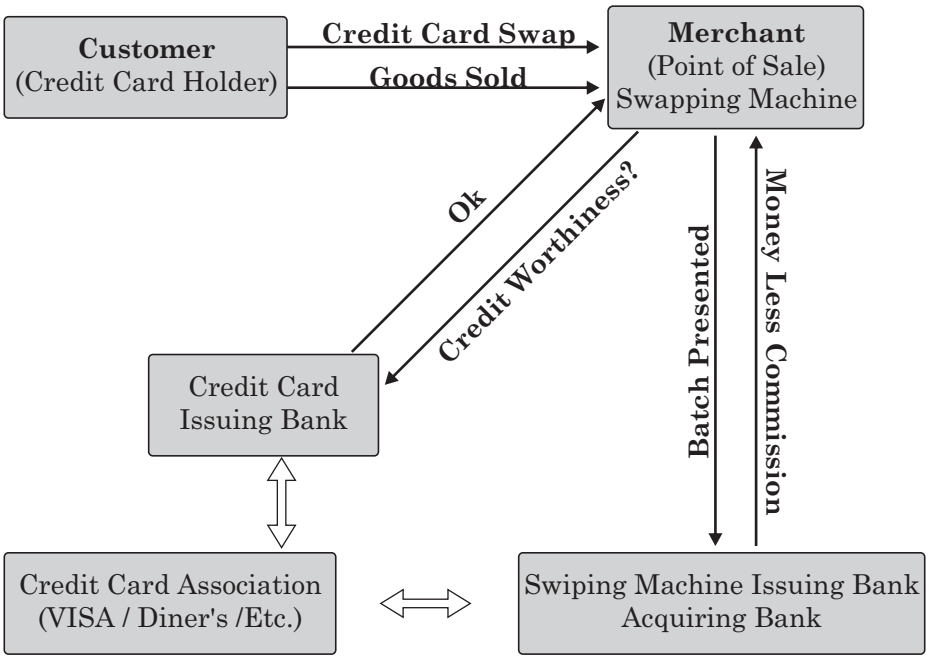
(v) Credit Card association: An association of card-issuing entities, such as Visa, set transaction terms for merchants, card-issuing banks, and acquiring banks.

3. Following events take place when a merchant swipes a credit card :

- The swiping machine at a merchant outlet is connected to the bank's database which, in turn, is connected to the card system owner's database.

- As the card is swiped, the magnetic strip instantly transmits the data (card no., amount of purchase) to the card issuing bank's database. It checks the credit status and sends an electronic approval to the swiping machine of the acquiring Bank. On its approval the swiping machine prints out the credit slip.
- The acquiring bank charges a small fee of about 2% from the merchant and gets balance money

4. The schematic diagram of transactions involved is given below.



5. Under the 'merchant contract', the acquiring bank exchanges funds with issuing banks on behalf of the merchant, and pays the merchant for the net balance of their daily payment card activity: gross sales, minus reversals, and acquirer fees. A relationship of principal and agent is established whereby the principal i.e. the merchant assessee authorizes the bank (being the agent) to act for him in business dealings with a third party (the customer). The agent bank represents the merchant and derives its power and authority to collect the money from the customer / customer's bank and also to deal with the appropriate card associations and / or card issuers. For these

services, the banks are compensated by way of payment of commission by the merchant.

5.1 The agreements entered into by merchant establishment (shopkeepers) with various banks were perused and in depth analysis made. Though worded differently, the basic services provided by the banks are the same.

5.2 The contention that the bank was acting on behalf of the card holder and not on behalf of the merchant assessee was not found acceptable, as the contract was signed between the merchant assessee and the bank and not between the card holder and the bank. The merchant authorizes the bank to collect payments from the card holder - a service for which the merchant assessee agrees to pay the bank a certain commission. Thus, it cannot be said that the bank is representing the card holder as an agent.

5.3 It is also pertinent to note that all these banks are paying service tax on income from services rendered above and showing these commission receipts as their income.

6. The fees of about 2% charged by acquiring bank is squarely covered under the explanation (1) of the Section 194H. The fact that the payments have been made to the bank and that the assessee has not paid any sum to the acquirer bank does not absolve the assessee from deducting tax thereon. It is only under Section 194A (3) that the provisions of sub-section (1) does not apply. There is no such provision u/s 194H which forbids deduction of tax in the case of banks.

6.1 Circular No. 619 Dated 4/12/1991 on Instructions for deduction of tax at source from commission, brokerage, etc. clearly foresaw this situation:-

"…It may be clarified that since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission. ……"

6.2 The assessee's plea that this payment is discount and not commission, does not hold ground on the basis of the facts and legal position discussed above. Further, the case of

CIT v/s Singapore Airlines Ltd & Other Airlines, 213 Taxation 441 is squarely applicable as the difference of actual sale amount and net amount paid by the acquiring bank to the seller is a commission and not a discount attracting the provisions of section 194H of the Act.

6.3 Even if the assessee contends that payment to the bank is a fee charged by the bank for its services then also it is liable for deducting tax u/s 194J in view of Canara Bank v/s ITO, ITAT, Ahmedabad bench 305 ITR (AT), 189

6.4 This view has been taken while making disallowance u/s 40(a)(ia) and the same have been confirmed by Commissioner of Income-tax (Appeals) I and III, Jaipur respectively and Dispute Resolution Panel-I, New Delhi.

7. This issue has wide national ramifications as the quantum charged by the banks as commission is phenomenal.

Names of the Officers : Sanjiv, Addl.CIT Range-2, Jaipur
Richa Khoda, Addl.CIT Range-7, Jaipur

SEARCHES & SEIZURES

"Just as fruits are gathered from a garden as often as they become ripe, so revenue shall be collected as often as it becomes ripe. Collection of revenue or of fruits, when unripe shall never be carried on, lest their source may be injured, causing immense trouble"

-Kautilya (Arthashastra)

SEARCHES & SEIZURES

OUTSTANDING USE OF INFORMATION AVAILABLE ON THE NET

Information available on NSE Website used to detect manipulation of share prices to benefit promoters and other major investors - non-descript paper companies making huge investments in share capital / share premium / land - focussed pre search work leads to bogus purchases, unaccounted investments and cash credits.

The Amtek Group is a leading automotive component manufacturer in India with a significant global presence, and has lately diversified into real estate business. Two companies of the group are listed on the National Stock Exchange.

2. A search and seizure operation was carried out on the group on 22.03.2011. The main allegation against the group was that it was inflating expenses by booking bogus purchases. The purchases were sourced through two consignee agents. Pre-search enquiries revealed that none of these entities existed.

3. There was also information that the two listed companies of the group indulged in manipulating their share prices to benefit the promoters and other major investors. This issue was investigated pre-search by analysing the data (shareholding pattern) of these companies available on the NSE website. The analysis revealed that various non-descript companies were making huge investments (share capital / share premium) in the two listed companies. On further analysis of their financial statements downloaded from the Registrar of Companies, it was found that all these companies operate from one of the office premises belonging to the Amtek Group. These companies did not carry out any business activities. Their source of funds was share premium from other non-descript companies which were again found to be paper companies of the group. It was further gathered that these paper companies had made huge investments in land, mainly in Gurgaon, Haryana. The Directors in these companies were low level employees of the group and most of their addresses were not correct.

4. In the search, the consignee agents and some of the Directors of

the paper companies were also covered. During the course of search incriminating documents were found relating to bogus purchases, unaccounted investments in land and cash credits appearing in some of the group companies. Some of the employees, who were also directors in the paper companies, confirmed their non-functional role in these companies and that they were controlled by the management of the Amtek Group.

5. The main person of the group was confronted with the incriminating documents seized in the search and the statements of various employees. The confrontation was done in a phased manner and at crucial junctures of his statement. He took considerable time in understanding and appreciating these documents and finally disclosed an additional income of ₹ 530 crore. The search also resulted in seizure of cash of ₹ 34.44 lakh. The group has so far paid tax to the tune of ₹ 30 crore, with an assurance to pay the balance tax before filing of returns.

Names of the Officers : Sanjiv Kumar, DDIT (Inv.) U-I(2), New Delhi
Sushil Kumar, Addl. DIT, (Inv)U-I, New Delhi
H. P. Kain, DIT (Inv)-I, New Delhi
K V Chaudhary, DGIT (Inv), New Delhi

AN EXCEPTIONAL CASE OF DECIPHERING COMPREHENSIVE DIGITAL EVIDENCE

Detection of tax evasion in real estate business, tax payer acting as a venture capitalist - advancing loans for buying property-creating a lien, and then vacating the same at a price, partly in cash. Digital evidence seized and deciphered, and modus operandi established by follow up surveys.

Shri P Dayananda Pai is a well-known figure in the field of real estate in and around the city of Bangalore for over thirty years. Like a venture capitalist in the real estate business he advances loans, a substantial part of which is in cash, for purchase of property and creates a lien on the said property by means of an agreement or GPA. Later he relinquishes his rights over the said land for a consideration. Substantial part of the consideration is received in cash which is not disclosed for taxation.

2. Exhaustive pre-search enquiries were caused and various methods of surveillance were adopted. Unsuspecting and innocuous looking key persons and premises were identified. A middle aged lady with a very low profile was one of the key persons zeroed in. The quality of evidence found during search bears testimony to the accuracy of the pre-search enquiries done in this case.

3. During the search and seizure operations, carried out on 12.04.2011, several incriminating documents containing details of unaccounted transactions of the assessee were recovered from the residence of the said lady. Documents seized included a set of CDs containing the entire data pertaining to unaccounted receipts and payments by Shri P Dayananda Pai and Group for the period 01.04.2002 to 14.06.2008. Data was in Tally application and was password protected. The password was cracked despite the recalcitrant and highly non-cooperative attitude of the assessee. The total volume of unaccounted transactions as per the Tally data ran into hundreds of crore and entries therein matched with the hard copy evidence for cash transactions seized from various other premises. The authenticity of the data contained in the CDs was also validated by the fact that several entries pertaining to accounted transactions

were also recorded in the same CDs. The data contained in Tally, as found in the CDs, was found to represent systematic and comprehensive day to day recording of unaccounted transactions. Their correctness was established through penetrative enquiries with banks and other parties.

4. Comprehensive and sustained post search investigations revealed the following modus operandi of the assessee - substantial portion of Receipts and Payments were not accounted for in books of account; borrowing of huge sums in cash from a group of money lenders who in turn deployed unaccounted money of others as loans to real estate players; procuring services of the group of money lenders to convert unaccounted cash into cheques and vice versa in the guise of advance received or given for property; non-recognition of revenue upon completion of sale transaction; and continuing to show the consideration as advance.

5. The assesse sought to challenge the authenticity of electronic evidence seized and even alleged tampering of evidence. To rebut his allegations, surveys and enquiries were conducted in about 20 cases within a month. Several of these parties confirmed the transactions detailed in the digital evidence. It lent credence to the truthfulness and accuracy of the data. The sustained investigations and confirmations compelled the assessee to withdraw the allegation. The assesse and his business associates had no option but to admit undisclosed income to the tune of ₹ 194 crore on account of the transactions detailed in the seized documents, including the digital evidence. Till December 2011, returns admitting undiscosed income of ₹ 80 crore had been filed and taxes paid thereon.

Names of the Officers : Vamadevan, ITI, Bangalore
Mahadeviah, ITI, Bangalore
Vijayaraghavan, ITI, Bangalore
Shailesh Thakur, DDIT (Inv), Unit–1(3), Bangalore
V. Palanivel Rajan, Addl. DIT(Inv), Unit – 1, Bangalore
P R Dhayal, DIT (Inv), Bangalore
Ronmoy Das, DIT (Inv), Bangalore
G. Rajeswara Rao, DGIT (Inv), Bangalore

UNEARTHING NEXUS WITH BOGUS CONFIRMING PARTIES IN THE SALE DEEDS TO JACK UP SALE PRICE

Small clue from police leads to nexus between persons for collecting 'on money' – creation of confirming parties for showing payments made for purchase of land – no payments actually made – done only to route the on money received in cash.

The Galaxy group of Ahmedabad is engaged in the business of construction of residential and commercial complexes, real estate development and trading of land, in the eastern part of Ahmedabad. Shri Uday Bhatt and his close associates Shri Motibhai Prajapati and Shri Haribhai Thakkar are the key persons in the group. In a very short time, its activities have spread to other cities like Vadodara, Nagpur and Mumbai. The group accepts and pays a large portion of the consideration in cash but through an extremely crafty mechanism.

2. The search was developed suo-moto and materialised as a result of in-depth and extensive pre search inquiries. The group would keep an eye on the department and would shift the location of their important documents in no time. The Police Department informed of a seizure of ₹ 50 lacs from Shri Sanjay H. Thakkar for action u/s. 132A of the Act. The inquiries gave valuable insight into the close association between Shri Haribhai Thakkar (father of Shri Sanjay H. Thakkar) and Shri Uday Bhatt, and that Shri Haribhai Thakkar was collecting huge 'on-money' on sale of land. CIB Data pertaining to transactions of land and the returns filed by the entities of the group were studied. Instances of registration at a price even lower than the Jantri Rate were noticed. Particulars of their land holdings were obtained from the Land Revenue Department which revealed a land holding of more than ₹ 100 crore. Majority of this land was in Vastral (eastern part of Ahmedabad), where the local mafia bought disputed land at throw away price and later sold it at huge profit after forcibly clearing encroachments. The group was also found to be showing huge work-in-progress even after completion of the schemes.

3. Searches were conducted simultaneously at various places at Vadodara, Mumbai and Nagpur on 21.07.2011 in 33 premises, while

surveys u/s. 133A of the I.T. Act were carried out in 21 premises. 41 lockers were traced out. Since the group had blessings of the land mafia, ample police force was deployed.

4. Post search enquiries revealed that the group was earning substantial cash from its business, which was used for further purchase of land, and when the land was sold, again substantial cash was earned. Such transactions were brought in the books by creating confirming parties. To bring the value of transactions to the Jantri Rate (Rate determined for levy of stamp duty), confirming parties (mainly family members) were created and payments were shown to have been made to them. No tax was paid on the amount shown as paid to these confirming parties. It was even confirmed from such parties that the cheques mentioned in the sale deed executed in March, 2011 were never deposited in the bank accounts till August, 2011 i.e. in the month in which post search enquiries were carried out.

5. As a result of post search enquiries, various persons who had been shown as confirming parties paid up taxes on the amounts shown against their names. Several other incriminating facts also emerged: cash payment of ₹ 35 crore for Vastral Land over and above the documented price; valuation report with a date 40 days after the execution of sale deed; undervaluation of sale deeds of land by more than 50 crore; and huge wealth tax liability on non-agricultural land etc.

6. The group made a disclosure of ₹ 165 crore, and there was a seizure of ₹ 3.58 crore, including cash seizure of ₹ 98.22 lakh, and gold and jewellery of ₹ 2.60 crore. There was an immediate realisation of tax of ₹ 17 crore.

Names of the Officers : Urjit Shah, ITO (Inv), Mehsana
Rajeev Kumar, Addl. DIT (Inv)-II, Ahmedabad
Y. K. Batra, DIT (Inv), Ahmedabad
A. K. Jain, DGIT, (Inv), Ahmedabad

INNOVATIVE METHOD USED TO UNEARTH SALE OF FRANCHISE

DDIT poses as a prospective franchisee – offers to make payment in cash - elicits information about modus operandi - invites the VP – searches the premises – huge amount surrendered

M/s Gitanjali Gems Limited was selling its franchise. It was gathered by the DDIT that the assessee company while doing so was accepting a substantial part of the payment in cash as well. The DDIT contacted the Vice President of the company posing himself as a person from Patna who was having a lot of money, and understood the whole modus operandi of the deal. He also made an agreement in which initial amount of franchise was shown as ₹ 10 crore. Then he proposed to the Vice President that he wanted to pay asubstantial amount only in cash. The Vice President of the company agreed to take the substantial amount in cash and prepared another agreement for an amount of ₹ 2.5 crore and the remaining amount was agreed to be paid in cash. The DDIT also recorded the conversation with the officers of the company. He also sought an appointment with the M.D. of the company on the date on which the search was to be conducted to ensure his presence at the premises.

2. The DDIT informed that he was coming from Patna by flight and the Vice President of the company received him at the airport from where the DDIT took him to the main office, where the search party was waiting. The Search operation started immediately, on 29.11.2011.

3. During the course of the search, the assessee agreed to surrender an amount of ₹ 120 crore as undisclosed income towards undisclosed franchise fees received by him in cash, stocks and other irregularities in the books of accounts.

Names of the Officers : Pankaj Singhania, DDIT (Inv), Unit 8 (1), Mumbai
Sunil Kumar, Addl. DIT (Inv), Unit – 8, Mumbai
Sushil Chandra, DIT (Inv) – I, Mumbai
B P Gaur, DGIT (Inv), Mumbai

MULTI PRONGED INVESTIGATION FOR DETECTING MULTIPLE WAYS OF TAX EVASION

Infrastructure Company uses its Subsidiaries and SPVs to reduce profits in the taxable entities and increase the same in exempt entities by transferring expenses. Suppression of receipts also unearthed in toll collecting Company – numbers on vouchers decoded and use of undisclosed income trailed – leading to huge disclosure

IRB Infrastructure Developers Ltd. (M/s. IRB for short) is a private road infrastructure company into road BOT and road construction projects. All its works related to the road projects are executed by a 100% subsidiary, Modern Road Makers Pvt Ltd (MRMPL). It participates in the bids through SPVS which are its subsidiary companies, and which claim deduction u/s 80IA. MEP Toll Road Pvt. Ltd. (MEP for short) is in the business of securitization for financing BOT and OMT Projects, and is actively involved in maintaining, repairing and beautification of flyovers, and also participates in Revenue Collection Tenders.

2. From the data collected and analysis of records it was found that MRMPL had taken accommodation entries and given subcontracts in the name of bogus companies to inflate expenses. From the discreet enquiries it was learnt that MEP Toll Group is indulging in suppression of receipts.

3. Searches and Surveys were carried out at 45 premises belonging to the Group and its associates, spread across Nagpur, Pune, Ahmedabad, Surat and Cuttak. It was found that the Group had been obtaining bogus purchase bills from bill providers, as proved by non availability of material received notes (MRNs) and there was no entry in the stock registers. A survey and search action at the residence and office of the entry provider was also conducted on 21.07.2011, during which the Director of the entry providing company admitted that his company had actually not supplied any material to the IRB group and only accommodation bills had been provided. The commission, cash was being returned to IRB group. The Managing Director of IRB Group admitted booking accommodation/bogus bills

amounting to ₹ 59,60,72,978/-.

4. It was further found that its SPVs like Surat Dahisar and IRDP Kolhapur etc claim 100% income tax deduction u/s 80 IA of the IT Act. On the other hand MRMPL had to pay taxes on its income. Since the entire execution was carried out by MRMPL, it under invoiced the contract to the group concern. This way there was an increase in the net profits for the SPVs, which were claiming 100% deduction and an equivalent reduction in the taxable profits of MRMPL.

5. It was also found during the search that the contract of SD project was certified at an estimated cost of ₹ 2434 crore earlier and the same had been accounted in the books of M/s. Modern Road Makers P. Ltd. However, on the basis of actual cost analysis, the actual quantum came to ₹ 2479 crore. Similarly contract revenue from IRDP Kolhapur was certified at the estimated cost of ₹ 315 crore, which should have been ₹ 322 crore. On being confronted with the evidence, the group admitted an additional income of ₹ 52,69,86,949/-

6. Survey action was simultaneously carried out at all the five Mumbai Entry Points, i.e. Dahisar, Mulund East, Mulund West, Vashi and Airoli Check naka along with toll naka at Rajiv Gandhi Sea Link (RGSL). Evidence was gathered, which proved the fact that money was being siphoned off from these toll nakas, and as per the directions of Director Shri Jayant D Mhaiskar, was spent on various unexplained expenses. The figures reflected in such vouchers were in coded figures and in multiples of 1,00,000/- i.e. in ₹ lakh (unless specified separately) which was explained and admitted by Shri Jayant D Mhaiskar in his statement during the Search proceedings. On being confronted with the above evidences, Shri Jayant D Mhaiskar, the group CMD, admitted an amount of ₹ 145 crore as undisclosed income.

7. Other areas of tax evasion detected included non deduction of TDS on brokerage/commission of ₹ 128.42 crore u/s 194H of the I.T. Act, 1961, deemed dividend u/s 2(22)(e) on interest free loan of ₹ 220 crore, on-money of ₹ 10 crore paid for purchase of factory land at Nagpur, cash payment to employees as remuneration/commission of approximately ₹ 35 lakh, unexplained jewellery and cash of ₹ 3 crore, undisclosed income by sub-contractors of ₹ 2 crore, and cash loans in

the form of hundis amounting to ₹ 25 lakh

8. Hence there was an overall seizure of ₹ 8.50 crore and a disclosure of unaccounted income of ₹ 272.30 crore.

Names of the Officers : Ravikant Gupta, DDIT (Inv), Unit 1 (1), Mumbai
Ankur Garg, Addl DIT (Inv), Unit – I, Mumbai
A K Singh, DIT (Inv) – I, Mumbai
B P Gaur, DGIT (Inv), Mumbai

EFFECTIVE USE OF STRs TO UNEARTH BOGUS CONTRACTS AND PAYMENTS

Contractor involved in misappropriation of huge funds from BCCL, a Coal PSU, by raising fake bills on bogus contracts, detected through STRs on several bank accounts which showed no evidence of payments for effecting contracts.

Shri L. B. Singh had made deposits in banks in respect of 135 firms, which were being operated in the name of his family members and close associates. The contractual work was obtained from BCCL, Dhanbad to be executed by these firms. Enquiries revealed that neither independent offices of the aforesaid firms were found to be maintained nor were the books of accounts of the firms found at any of the premises. It was claimed that the same were at the office of the CA, who however denied having the books of accounts or primary documents in respect of the aforesaid firms.

2. A case for search was developed on the basis of STRs indicating huge unaccounted deposits in bank accounts of Shri L. B. Singh, his family members and associates. On investigation, the suspicions were confirmed and a search and seizure operation was conducted on 23.11.2011 at the premises of Shri L. B. Singh, his family and close relatives and associates. During the course of search and verification of accounts of the aforesaid firms with the Jharia Branch of the Bank of India, cash of ₹ 70,76,96,673/- was found and seized. Shri L. B. Singh had introduced these account holders and none of them could explain either the source of the deposits or the other business conducted by these firms. No evidence for execution of contract work by these firms was found. The source of deposits was established to be misappropriation of funds from BCCL on the basis of fake bills and bogus contract works.

3. On enquiry from the BCCL it was found that ₹ 231 crore had been paid by them during the FYs 2009-10, 2010-11 and 2011-12 (till the date of search) to these firms. The misappropriation of funds of ₹ 231 crore from BCCL by raising fake bills towards settling bogus contracts was unearthed by examining deposits of the cheques received in a number of saving bank and current accounts maintained

in the name of Shri L. B. Singh, his family members, close relatives and associates. The amounts so deposited did not reflect incurring of expenditure towards execution of work for which contracts were awarded by the BCCL, Dhanbad to these individuals and firms. Neither any books of account were maintained nor was there any evidence of conducting any business.

4. The searches led to seizure of cash of ₹ 75,78,24,953/-. Fixed deposits of ₹ 18,24,00,000/-, unaccounted investment of ₹ 11,92,09,000/- in KVPs, ₹ 20,18,83,200/- in immovable property and ₹ 80,90,330/- in shares and mutual funds were detected. On analysis of seized documents and computer media further cash deposits of ₹ 4,01,28,880/- and FDs of ₹ 17.90 crore were found.

5. So far, credit entries for ₹ 108 crore have been located. The matter has, therefore, been taken up with other banks. Pursuant to these searches, CBI and Vigilance Department of BCCL also conducted searches and investigations are in progress.

Names of the Officers : Suman Kumar, DDIT (Inv), Ranchi
Ajit Kumar Srivastava, Addl. DIT (Inv), Ranchi
Ajay Kumar, DIT (Inv), Patna
Y. K. Batra, DGIT (Inv), Patna

DETECTION OF BOGUS EXPENDITURE AND UNDISCLOSED INCOME IN ACCOUNTS OF TRUSTED EMPLOYEES AND FIRMS

Enquiry into low profits declared and booking of bogus expenditure leads to detection of deposits of unaccounted income in several bank accounts in the names of firms opened by trusted sub-contractors and employees of the group.

Madhucon Group of Companies is a leading Group having a pan India presence and is mainly into Infrastructure, Irrigation Projects, Power, Sugar and Granites. Madhucon Projects Limited (MPL) is the flagship company of the group.

2. Pre-search study of the financial results of the flag ship company revealed that though the turnover of the company had shown a steady and substantial growth, the net profit had shown a steady decline and were abnormally low compared to the industry average. Discreet pre-search inquiries also revealed that the flag ship company was involved in booking bogus expenditure.

3. During the course of search on 04.02.2011, the modus-operandi detected was that MPL had used the bank accounts of its subcontractors to withdraw monies which were used to fund huge unaccounted expenditure and investments by the core promoters.

4. During post search investigations, evidence was unearthed indicating that MPL had transferred large amounts through banking channels to the accounts of various firms which were withdrawn immediately with the help of a few chosen and trusted employees of MPL by utilizing the signed blank cheques handed over by the subcontractors. In the books of the subcontractors, the cash withdrawn was brought into cash book and depleted over a period of time by booking expenditures, all below ₹ 20,000/-, which were not supported by any evidence. It was noticed that one of the sub-contractors had lifted the names from a BSNL telephone directory to book bogus labor expenditure.

5. The initial challenge was to identify the subcontractors from a list of more than 250 subcontractors during pre-search inquiries. Since the main promoters hailed from Khammam district, all the subcontractors based in and around Khammam were shortlisted. Then the names of the partners in these firms were verified through

the ITDMS data base. It was noticed that in four cases, one or two partners had the same surname or family name as that of the main promoters. It was also noticed that all the four firms had given the same address which, on verification, was found to be not existent. On further discreet inquiries, it came to light that the notices addressed to these sub-contractors were received by one CA who was also the CA for the main promoter. When the CA was confronted with these facts, he led the team to a small room on the terrace of a residential building belonging to a relative of the promoters which was shown as the office of the above mentioned four firms. Warrant under section 132 was then executed on these premises.

6. On verification of the cash books of the sub-contractor firms, it was noticed that despite having huge cash balances in hand, the firms were withdrawing small amounts from banks for meeting their day to day expenditure. Further, it was noticed that these firms had opened bank accounts in New Delhi where they had no business activity. Huge cash drawn from these accounts were shown to have been physically brought to small towns in Andhra Pradesh where their actual work was in progress. It was also noticed that a few persons, identified as employees of MPL, had withdrawn the huge cash from all the sub-contractor firms. MPL had used 10 bank accounts of the sub-contractors in 4 different bank branches to siphon off the monies. Later, some of them were also subjected to search, and evidence showing withdrawals and their application was seized. The withdrawals were properly linked to their application, in the form of huge expenditure and investments in properties, with the help of direct as well as corroborative evidence.

7. On being confronted with these evidences, MPL admitted undisclosed income of ₹ 71 crore. In the Appraisal Report, the same was estimated at ₹ 139.55 crore.

Names of the Officers : Y. Prasad, ITI, Hyderabad
R. Mohan Kumar, DDIT (Inv), Hyderabad
G. Srinivasa Rao, Addl.DIT (Inv), Hyderabad
N. Biswal, DIT (Inv), Hyderabad
D. D. Goel, DIT (Inv), Hyderabad
Mukesh Kumar, DGIT (Inv), Hyderabad

DETECTION OF NOVEL METHOD OF HIDING 'ON MONEY' BY LAND DEALER

Land dealer charging on money – employs unique method to hide the same – detected by the investigating officer posing as a buyer – search confirms the pre search findings

Maruti-Savyy Group are builders and land dealers and were generating unaccounted income by charging 'on-money' against the sale of residential/commercial units and investing the same in real estate.

2. As part of pre-search operations, the investigating ADIT and his Inspectors under the guise of prospective customers were able to convince the builders that they were genuine investors looking for avenues to park their black-money. The target group were so taken by this act that not only did they accept that they were receiving a high percentage of 'on-money' but also revealed their exact and unique modus-operandi. It was found that the group was keeping small diaries with the buyers themselves wherein entries for cash/cheque were entered by the builder for every instalment. As a further improvisation, they came up with a novel idea which can be illustrated by an example - say, if the real cost of the unit is ₹ 20 lakh (10 lakh by cheque and 10 by cash); a record is maintained as follows - the buyer has to give a cheque of ₹ 10 lakh and for the cash payment of ₹ 10 lakh, he has to furnish another cheque of ₹ 10 thousand. Both these cheques would be deposited and reflected in the bank accounts of both the buyer as well as the builder and were proof of the transactions. No other receipt of cash transaction was made. But for the excellent recce, this arguably fool-proof method would not have been unearthed. This entire conversation between the builders and the conducting team was stealthily recorded.

2.1 Discreet enquiries were also carried out at various Talati's offices to ascertain recent land deals undertaken by the target group as well as the opposite parties (sellers/buyers). The identified persons were also covered in the search action.

3. The Group was searched on 27.04.2011. Search was carried out on 23 premises and surveys on 25 business premises. Premises were

located in Ahmedabad, Mehsana and Gandhinagar. The timing (afternoon) and venue for mounting of search operation was also changed to incorporate an element of surprise. The teams were able to find and seize critical and incriminating documents from invariably all premises. In all, disclosure of ₹ 66 crore was made on the day of search.

4. During post search operations, the entire books of accounts (including electronic media) were analysed and the small cheques seized were tabulated. A number of buyers appearing in the seized documents were examined and they admitted that they had paid on-money to the builder. Based on these findings, the assessees of the group further disclosed an amount of ₹ 37.80 crore taking the total amount of disclosure to ₹ 103.80 crore. In 2 group concerns, suspicious share premium entries were found and a trail of the cash flow was prepared which led to detection of unaccounted income of ₹ 24.9 crore via this route. Further, an additional unaccounted income of ₹ 57.63 crore was detected. Tax amounting to ₹ 17.63 crore has since been collected.

Names of the Officers : Rajdeep Singh, ADIT (Inv) Unit I (3), Ahmedabad
M. Mathivanan, Addl. DIT(Inv)-I, Ahmedabad
Y. K. Batra, DIT(Inv), Ahmedabad
B. N. Dutta, DGIT(Inv), Ahmedabad

UNRAVELING THE MYRIAD DIMENSIONS OF ILLEGAL MINING IN KARNATAKA

Rampant illegal mining resorted to with a nexus between businessmen, politicos and bureaucrats, by circumventing laws of the land – methodology unravelled inspite of distances, informal networks, threat to life and alertness of targets. Massive operation launched in absolute secrecy, ring penetrated, and voluminous incriminating evidence in the nature of unaccounted transactions seized, and digital evidence decoded, leading to huge disclosure. This business has since shut down.

Karnataka has been endowed with rich iron ore deposits in the Bellary-Hospet-Sandur belt. The nature of the trade and the lax regulation induced certain influential persons to manipulate the sector with the view to loot Mother Nature. Illegal mining became the order of the day. Ingenious methods were used to derive undue benefits. Laws of the land were circumvented. There was a paradigm shift with the emergence of a nexus between the political elite, bureaucracy and avaricious miners and traders. The year 2008 saw the emergence of new modus operandi in the form of 'Risk Movement'. Risk movement is the movement of illegally sourced iron ore without any valid permits or payment of statutory dues. Such material in local parlance is described as 'Zero material'.

2. The signals were duly picked up by the Directorate in Bangalore and direct intervention was sought to be made to retrieve the huge loss caused to the exchequer. There were enormous challenges to be met, such as a) Physical distance and Interior locations b) Wide and deep informal network set up by the targets, c) Active assistance of State machinery, d) Real threat to life and limbs, e) Hostile environment including a sense of alertness on the part of targets. All the odds were overcome. Reliable network was built assiduously by a committed team to elicit authentic information. Exhaustive and intensive surveillance and reconnaissance operations were mounted. A house was taken on rent in Ground Zero and the team stayed and interacted with the local populace. The concerted human intelligence helped in penetrating the ring and in

identifying the close confidantes and key associates.

3. Execution and Logistics were meticulously planned based on brain storming sessions. It was decided to touch the key associates, in phases. The first phase was rolled out on 25.10.2010. It was the largest ever search operation in South India. Around 500 officers and officials of the Department drawn from Karnataka, Tamil Nadu, Andhra Pradesh, Mumbai, Pune, Bhubaneshwar and New Delhi participated in the search operations at 79 premises. Considering the sensitivity, high profile political nature of the targets and security risk, the services of 179 CRPF personnel were procured.

4. The strategy of covering the peripheral and associates first and then to tackle the core elements paid rich dividends. Despite maintaining alertness, the targets could not foresee the width and reach of the operations. Key associates were caught unawares. The quality of evidence unearthed was impeccable, direct and implicating. The evidence gathered became the bedrock of the investigations initiated by other investigating agencies. Forensic tools with the help of experts were used to retrieve and analyse digital evidence recorded, electronic storage devices and mobile phones. The second and third phases were executed in December 2010 and February 2011.

5. Voluminous incriminating evidence in the nature of unaccounted transactions in the illegal mining operations were seized. The erased data were retrieved. Different dimensions of illegal mining including the modus operandi adopted were unraveled, such as extraction of ore beyond the permissible quantity, encroachment of forest and private lands, sharing arrangement(s) with the Mine owners by entering into raising contracts, takeover of dead mines by using the dead mines legally valid permits, routing the illegally mined ore through shell entities and collection of 'hafta' both in cash and in kind (iron ore). Also detected were the creation of shell entities showing purchases from unregistered dealers (URD purchases) to layer the illegally sourced ore into the mainstream making it difficult to follow the trail to reach the origin of the iron ore as well as the final destination of the fund flow, fund flow through benami bank accounts, and excessive claim of deduction under section 10B, etc.

6. Unaccounted cash of ₹ 10.20 crore was seized. The assessees admitted undisclosed incomes of ₹ 302.47crore. The investigation has

resulted in detection of unaccounted income of ₹ 1605 crore, besides identifying other thrust areas.

7. The action has created a climate of effective deterrence in the sector. The movement of zero material came to a grinding halt. Meaningful and productive sharing of information with Lokayukta and the CBI has armed them with solid and potent ammunition in their pursuits. Shri Santosh Hegde, the Hon'ble Lokayukta of Karnataka has formally complimented the help rendered by the team in preparing his report on illegal mining.

Names of the Officers : Merwyn D Paes, ITO, Belgaum
Shiva Selvi. T, ITO, Bangalore
Kiran D, ADIT (Inv.), Bellary
Guru Prasad B L, DDIT (Inv.), Bangalore
M. Rajasekhar, JDIT (Inv.), Belgaum
Palanivel Rajan, V Addl.DIT, (Inv.), Bangalore
P. R. Dhayal, DIT (Inv.), Bangalore
G. Rajeswara Rao, DGIT (Inv.), Bangalore

DETECTION OF TAX EVASION MODUS IN "MULTI-LEVEL MARKETING OF INSURANCE POLICIES"

Multi-level Marketing model found to be used for evading tax in the business of selling Insurance policies, by creating a mirror company and other dummy companies, booking expenses and pay outs not permissible under governing laws, and transferring expenses from one company to another.

M/s Team Life Care India Private Limited (TLC for short) is the largest corporate agent of M/s Bajaj Allianz Life Insurance Company Limited, contributing almost 15 % share in the total business of the insurer. TLC set up a sister concern, a mirror company, named TLC Universal Private Limited,(MLM entity, for short) which marketed insurance policies through a dubious Multi-Level Marketing scheme. The group had risen to its premier corporate agent position within a small span of 5 years.

2. Pre-search enquiries involved a detailed study of the MLM business model adopted by the assessee, analysis of issues that could have implications in terms of tax evasion, tapping of members or coordinators of the MLM scheme, and intensive field verifications including continuous physical surveillance of the key persons over a period of time.

3. Search and seizure operation was carried out on the group on 20.10.2011 and there was conclusive finding regarding the actual working and modus operandi of tax evasion of the assessee group.

4. It was revealed that the corporate agent TLC was passing on its commission receipts from insurance business to the MLM sister entity through a channel of intermediary dummy concerns .The MLM entity promoted an incentive scheme whereby the buyer of an insurance policy also became an agent/member of the scheme and received payouts for introducing further buyers. Moreover, the members received referral payouts when the persons introduced by them brought in further members (called 'downlines'), or when the down lines brought in further members, and so on. Bonus or special incentives like cars, bikes, pension policies, free tours were also given for higher achievements.

5. The schemes of this variety, for various reasons, are

unsustainable and have the potential to dupe a large number of subscribers who join late, and benefit only the early birds, who are none other than the promoters themselves, who get more and more incentives as the downline grows. This arrangement of carrying out the MLM business through a different entity was to bypass the insurance regulations that prohibited 'rebating' or passing on of commission to customers/sub-agents while soliciting insurance policies. Also, the intermediaries were created to hide the linkage of the corporate agent with the MLM business which for its potential adverse effects risked being declared illegal (and was declared so in many places) as per the Prize Chits and Money Circulation (Banning) Act, 1978.

6. The group was found to adopt a systematic and deliberate manner of tax evasion. The unsustainable MLM entity incurred losses continuously whereas the corporate agent TLC was making continuous profits. Expenses were shifted from the unsustainable MLM entity to the corporate agent leading to a substantial reduction in the net tax liability. Inflation of expenses and unaccounted investment in property were also detected during the investigations. On the basis of the evidence seized, the assessee group admitted undisclosed income of ₹ 75.42 crore..

7. Apart from the detection of modus operandi of tax evasion in a non-conventional business model, the case also helped expand the reach and role of the department to operate when the frontiers of other economic laws are breached by viewing payments (here, payouts to members of the MLM scheme) made in contravention of any law to be disallowable expenditures under the Act.

Names of the Officers : Prem Kumar, ITI, Unit-1(1), Bangalore
Balasubramaniam, ITI, Unit-1(1), Bangalore
Sambit Mishra, DDIT(Inv), Unit-1(1), Bangalore
V Palanivel Rajan, Addl.DIT(Inv), Unit-1, Bangalore
Ashutosh Chandra, DIT(Inv), Bangalore
Rani Singh Nair, DGIT(Inv), Bangalore

DETECTION OF DIVERSION OF TRUST FUNDS FOR THE BENEFIT OF THE TRUSTEE

Siphoning off of Trust funds and fees paid in cash by the students in Educational Institutions run by the Trust and inflation of expenses for the benefit of the Trustee

The Oxford Group is engaged in running the Oxford Public School, Ranchi under the aegis of the Tribal Rural Education and Welfare Society. The other associate concerns are a charitable society namely "Manzil" and a construction company, M/s Maurya Heritage Inn (P) Ltd. The Director of the group is Dr. S.B.P. Mehta.

2. Information was received from CIB regarding the purchase of land by Dr. S.B.P. Mehta in the name of M/s Maurya Heritage Inn (P) Ltd. Discreet inquiries about the activities of the company were made but no source of income of Dr. Mehta or the company could be located through his association with the above trust. It was then decided to process the case for search action.

3. A search and seizure operation was conducted in this group of cases on 25.02.2011 at the offices of the Trusts/companies and residences of the directors/trustees. Incriminating documents, CPUs and hard disks etc. were seized. The allegation that the group diverted the huge amounts received through donation, admission fee, development fee, tuition fee, fee from Management/NRI and special quota towards personal investments of Dr. Mehta and his business activities was confirmed. Dr. Mehta was found to have made huge investments in real estate and his personal business activities by diversion of tuition fees of the school. It was found that two sets of books of account were made and the tuition fees received for Nursery to Class – V were not recorded in the regular books of account and were handed over in cash to Dr. Mehta by the cashier and other employees, whose statements were recorded and relevant cash receipt signed by Dr. Mehta were seized. The day to day expenses of the school were found to be inflated to divert further sums to enable Dr. Mehta to purchase immovable property at a prime location in Ranchi.

4. When confronted with the evidence found, the assessee group

made a disclosure of ₹ 11 crore. Reference has been made to the CIT for cancellation of registration under section 12A and denial of exemption under section 11.

5. The search brings out the unauthorized withdrawal from and personal use of trust funds by the key trustee and his associates and violation of conditions for exemption of Sec. 11 and Sec. 12 by educational institutions.

Names of the Officers : Amaresh Tiwari, DDIT (Inv), Ranchi
Ajit Kumar Srivastav, Addl. DIT (Inv), Ranchi
Ajay Kumar, DIT (Inv), Patna
Y. K. Batra, DGIT (Inv), Patna

PLANNING AND TEAMWORK HELP IN UNEARTHING SUPPRESSION OF INCOME

Mining and trading group supressing income by inflation of expenses – extraordinary efforts made to maintain secrecy of search action far away from the Directorate Head- quarters – teams taken from three different routes to avoid detection and stationed at different places – unique example of inter unit co-ordination

M/s. RBSSN is an Iron Ore mining and trading group, mainly doing business in Hospet, District Bellary, Karnataka, which has gained wide media coverage owing to large scale mining irregularities. The group was found to be indulging in inflation of expenses, mainly transportation expenses in order to reduce taxable profits and to have made large scale unaccounted investments.

2. This case was developed for search suo moto, by conducting discreet enquiries into the affairs of the Group. Search was conducted in this case on 24.09.2010. Simultaneous search was also conducted on the Chartered Accountant of the group at Nagpur, who was known to be a close aide in managing financial affairs of the group.

4. The search is an excellent example of team effort. As the main premise of action was situated at Hospet, the teams had to put in extra efforts for successful execution. To maintain secrecy (as there was only 1 case of Nagpur linked with Hospet), teams were taken to the destination through 3 different routes. A part of the team was taken by road via Andhra Pradesh. Another group was taken via Mumbai and Belgaum and the third group via Bangalore. The surprise element was therefore intact, which is evident from the seizure. Around 14 officers and officials of the Investigation wing working in the office of DIT (Inv.), Nagpur camped at Hospet for 7 days. The Addl. DIT (Inv.), Nagpur himself camped at Hospet for the last 2 days of the action. The Investigation teams of Bangalore Directorate co-operated in conducting action at Hospet and Bangalore including an additional important premise in Bangalore located after commencement of search. The Addl. DIT (Inv.), Belgaum supported the team by stationing himself at Hospet on the first day of the search.

The Nagpur team successfully executed the search by tirelessly working day and night on the case. This search action is a classic case of optimum team work where inspite of the least familiarity with the city, language etc., the officers and officials put in the best of efforts to make the case a success.

4.1 Even during the post search period, everyone irrespective of their posting in the Directorate, contributed to the post-search investigation, and even the appraisal report in the case was prepared by another ADIT (Inv.), Shri S. P. G. Mudaliar who was not the conducting officer.

5. The search resulted in seizure of unaccounted cash of ₹ 2.08 crore. The assessee voluntarily disclosed an additional income of ₹ 33.03 crore including ₹ 15 crore on account of overbooked expenses. Return of income incorporating the undisclosed income in the hands of the firm has already been filed. Tax and interest of ₹ 3.4 crore has already been paid.

6. This search and seizure operation will act as a deterrent to the business houses carrying on business operations at places far removed from the place where they file the returns to hoodwink the Department. The assessee firm has filed the return of income for the relevant Assessment Year offering the additional income disclosed.

Names of the Officers : Riddhi Dassani, DDIT (Inv.), Unit-I, Nagpur
V Sreekar, Addl DIT (Inv), Nagpur
Shailendra Handa, DIT (Inv), Nagpur
B P Gaur, DGIT, Pune

CUE FROM FIU INFORMATION LEADS TO DETECTION OF BOGUS SUB CONTRACT PAYMENTS

Infrastructure Company – booking sub-contract payments to benami parties – payment through bank – cash withdrawals from bank by company's employees - cash used for business purpose – identification of benami parties - admission of ₹ 75 crore.

M/s Sai-sudhir Infrastructure Limited (SSIL), an Infrastructure Company from Hyderabad, during the course of a FIU-IND enquiry, was found to have transferred funds in to the bank accounts of two proprietary concerns and the same were withdrawn in cash. The bank accounts of the two entities were obtained and the pattern of transfer of funds by the Company and withdrawal of cash was examined. It was noticed that in one account, more than 40 RTGS credits amounting to ₹ 40 crore were received from SSIL and these Credits had been immediately withdrawn in cash. In another bank account, more than 20 RTGS credits with cumulative amount of around ₹ 20 crore were found and the same were also withdrawn in cash.

2. For the purpose of enquiry, the KYC details of those parties were obtained from the bank. The addresses of the concerns were identified. It was found during enquiries that these were small residences where the above persons had been staying on rent, and had vacated the premises about a year back. Local enquiries revealed that they were persons of ordinary means. These two persons had never conducted any business at the given address. Also, as per their PAN and AST data, they were non-filers.

3. Further enquiries were made with the Bank. Xerox copies of all debit cash instruments of the two accounts were obtained. It was seen from the copies of these instruments that cash was withdrawn from these accounts by persons whose signatures and mobile numbers were mentioned on the reverse of the instruments. The names of the persons were Mr. M. S. Reddy, Mr. Ajay and Mr. T. Shankar. On verification of ITDMS data, it was seen that the above mobile numbers were in the name of SSIL. Further, on verification from the quarterly e-TDS returns (Form 24Q) of SSIL, downloaded from AST,

it was confirmed that the above persons were employees of the Company. Further, from the Quarterly e-TDS returns (Form 26 Q) of SSIL it was noticed that the payments were made to them as sub-contract payments u/s 194C of the I.T. Act. Thus the company was siphoning off money through bogus sub contract payments.

4. On basis of the above inputs, a search and seizure operation u/s 132 was carried out with two warrants executed on SSIL and its Managing Director Mr. D. Sreedhar Reddy, Hyderabad, on 30.11.2011. During the course of search, one person namely Mr. M. S. Reddy was found at the office. He worked as Asst. Manager (System) in the company. Similarly Mr. T. Shankar working as driver in the company was found at the residence. Also, Mr. Ajay was contacted over phone as he was travelling to his native place Kadappa and was asked to present himself before the ITO, Kadappa. Sworn statements were recorded from all the three persons in which they confirmed that they used to withdraw cash from the said account on the directions of the company and give it to M.D. of the company. During the course of search more subcontract payments on a similar pattern were found.

5. The search resulted in an admission of undisclosed income of ₹ 75 crore by the M.D. of the company on the day of the search itself.

Names of the Officers : A. Sitarama Rao, ADIT(Inv.), Unit-I(2), Hyderabad
T. Vijaya Bhasker Reddy, Addl. DIT, Unit-I, Hyderabad
Narhari Biswal, DIT (Inv.), Hyderabad
Mukesh Kumar, DGIT(Inv.), Hyderabad

DETECTION OF INFLATION OF PURCHASES AND EXPENSES THROUGH CIRCULAR TRADING

Significant use if FIU information, in-depth pre-search investigation, extensive coverage of assessee's premises all over India, seizure of vital information on circular trading, inflated purchases, unaccounted expenses/investments, and introduction of unexplained share capital.

M/s Shiv-Vani is one of the leading upstream contractors in the Hydro Carbon Sector having sites and rigs across India and at various ocean bases. Its flagship concern is M/s. Shiv Vani Oil and Gas Exploration Services Ltd, which is publicly listed and having a turnover in excess of ₹ 1000 crore. One of the group concerns, namely M/s.Bobmin Impex Pvt. Ltd. (BIPL) had suspicious banking transactions as per FIU information. The FIU information was initially processed through open inquiries. It was seen that the Directors/Promoters of BIPL were family members of the Singhee family, who were controlling the Shiv-Vani group.

2. Some of the Directors of BIPL and M/s Shiv Vani Oil and Gas Exploration Services Ltd. were common. During open inquiry itself, purchase and sale details of BIPL were gathered and it was found that BIPL was having a turnover of around ₹ 250 crore and the entire sales of BIPL was done to M/s Shiv-Vani on account of stores and consumables. However, the entire purchase of BIPL was from one concern namely M/s. Subco Services based at Silchar, Assam, whose proprietor was one Shri Ayon Paul.

3. Extensive pre-search inquiries revealed that BIPL did not have any establishment or VAT registration for supplying store items to M/s. Shiv-Vani to the tune of ₹ 250 crore. Pre-search inquiries further revealed that M/s. Subco Services did not have any business establishment and Shri Ayon Paul was himself a Director in a group company of M/s. Shiv Vani Group, who was residing at a guest house of Shiv Vani Group at Guwahati.

4. Search u/s. 132 was carried out on 06.01.2011 at various business and residential premises belonging to group concern, all over India. During the search, it was found that the group had inflated

expenses to the tune of ₹ 1463 crore for the block period. The group admitted bogus purchases but explained that part of it was pertaining to circular trading, wherein the sales have also been inflated. Some of purchases were on account of acquisition of fictitious assets which resulted in inflated claims of depreciation in several years and some had the effect of inflating purchases in revenue items like stores and consumables. Unaccounted cash so generated was being used by Directors and Promoters for conspicuous personal consumption and was also being brought back as share capital in M/s. Shiv-Vani to the tune of ₹ 40 crore, as forfeiture of preferential warrant application money.

5. Post-search inquiries revealed that the companies through which the above amount was introduced did not exist. Documents seized indicated evidence of on-money payments in acquisition of immovable properties to the tune of ₹ 35 crore. Seized documents also indicated substantial cash loans outside books of account and unaccounted cash payment for various non-business purposes, as also fictitious share capital introduction in group concerns.

6. The Group disclosed additional income ₹ 101 crore and has since paid tax to the tune of ₹ 17 crore.

Names of the Officers : R. K. Singh, ADIT, Unit II (1), New Delhi
Pushpinder Choudhary, DDIT U II (1), New Delhi
A Pattnaik, Addl DIT (Inv) U-II, New Delhi
S K Singh, DIT (Inv)-II, New Delhi
K V Chaudhary, DGIT (Inv), New Delhi

UNEARTHING MODUS OPERANDI FOR CONVERTING BLACK MONEY INTO WHITE THROUGH ACCOMMODATION ENTRIES

Entry operator engaged in converting black money into white on commission – operating a large number of bank accounts and companies in benami names – multi layered movement of funds – seizure of extensive and conclusive evidence and records of entries of more than ₹ 3800 crore in five years

Shri Surendra Kumar Jain and Shri Virendra Kumar Jain (Jain Brothers) were receiving cash from beneficiaries, through intermediaries. This cash was introduced in the banking channel through dummy concerns run by them or by outsourcing to various parties working on their behalf. Cheques/RTGS were issued to the beneficiaries through intermediaries for a commission.

2. During pre-search enquiries, names of few of the group companies of Jain brothers were traced from records, such as the Jagat Group, as well as from the website of Ministry of Company Affairs. Subsequent enquiries led the investigating team to a few addresses, which were shown to be registered offices of these group companies of Jain brothers, but physical verification revealed that at these addresses no activities were being performed. Most of the premises were rented to unrelated persons and some were non-existent. Further, it was also gathered that Jain Brothers kept all the documents and computers containing the record of the transactions related to providing accommodation entries in a Maruti Suzuki Versa van. Whenever the Investigation wing conducted any search and seizure operation, this van remained on the roads and returned to Jain Brothers' premises only after it was known that Jain Brothers' premises had not been covered in that action.

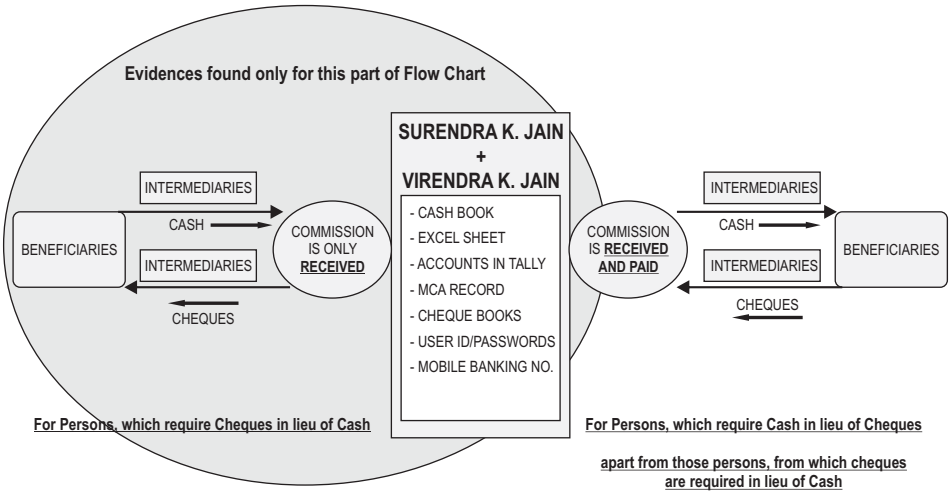
3. Search was conducted on the Jain Brothers on 14.09.2010 along with the Jagat group, which had secured accommodation entries from them. Documents seized revealed 'entry business' of ₹ 3800 crore. All the records pertaining to this business in the form of CPUs and cloth bags containing registers and loose sheets were seized from the said Maruti Suzuki Versa van. These bags and CPUs

contained handwritten as well as computerized record of the business of accommodation entries of Jain Brothers from 2005 onwards including the details of beneficiaries; intermediaries; and group companies of Jain brothers. Chronological record of cash amounting to thousands of crore of rupees, which was received from beneficiaries, was found in the shape of cash books, maintained on daily basis.

4. Post search actions revealed that daily cash books were maintained by Jain brothers and which contained handwriting of both. Excel sheets containing details of cheques/RTGS issued to beneficiaries in lieu of commission were regularly maintained. Blank signed and unsigned cheque books of group companies, firms and individuals, Books of accounts of group companies in tally as well as excel format, user ids and passwords, acknowledgements of filing of returns of group companies, bank account opening and closing letters for various group companies and authorization letters for attending the assessment proceedings recovered in soft copy format from the Hard Discs were analysed. Enquiries from the banks revealed that mobile numbers of Jain brothers were used in the bank account opening forms of different group concerns, wherever the option of mobile banking was exercised. Further, Jain brothers along with the wife of Surendra Jain, Smt. Priti Jain were directors in many of the group companies at one point of time or other.

5. From the analysis of documents seized from Jain Brothers, it was detected that BPTP group, a real estate group of Delhi- NCR, had secured accommodation entries from Jain Brothers. Based on this information, this group was subsequently covered under a search and seizure operation and BPTP group surrendered ₹ 325 crore on the account of securing accommodation entries from the Jain Brothers. Search and seizure operation was also conducted on an intermediary, namely Shri Rajesh Aggarwal who had arranged accommodation entries for Jagat group and whose name appeared in the records maintained by Jain Brothers. He accepted his role in arranging the accommodation entries from Jain Brothers on behalf of Jagat Group.

6. The whole process of providing accommodation entries to various beneficiaries in lieu of commission is summarized in the form of a flow chart.



Names of the Officers : Ravinder Maini, DDIT (Inv), Unit- VI (2), New Delhi

Raman Kant Garg, Addl. DIT (Inv), Unit-VI, New Delhi

S. K. Singh, DIT (Inv) - II, New Delhi

J R Sharma, DGIT (Inv), New Delhi

GET RICH QUICK SCHEME BUSTED THROUGH EXCELLENT SURVEILLANCE AND TIMELY ACTION

Ponzi operator - engaged in Multi-level marketing of Investments/Deposits – offering very high returns – modus unraveled - record seizure of cash

StockGuru.India (SGI) was engaged in accepting deposits from the public at large, offering them highly unrealistic return of 20 % pm. The group claimed to have expertise in commodity trading. Shri Lokeshwar Dev, the kingpin of the group, claimed himself to be a copper king. However, in reality, the business of the firm was accepting deposits from public following the modus operandi of multi-level marketing companies. The group had its agents at various levels for collecting money from hundreds of small investors on behalf of the SGI group, on payment of commission of up to 12% of the deposits collected, spread across 27 levels. Thus, the outgo in the first month was 32 % of the deposits collected, including return to investors and the commission to agents.

2. The investigating officer found that at their premises at Kirti Nagar there was a big rush of agents and investors. It was found that the group had collected ₹ 200 crore deposits within a span of only six months. The staff of the group stated that because of their expertise in stock/commodity market, the group was earning a handsome amount by investing public money and hence the payments to investors were being made out of such profits earned.

3. The group was holding conferences in five star hotels wherein the agents and the investors were invited. One such conference was attended by the Investigating officer at New Delhi. In this conference, Shri Lokeshwar Dev announced the launching of a brokerage house, launching of several companies and foray into sectors such as real estate, beverages etc. He also announced the intention of the group to launch an IPO within next few years! In fact, Sh. Lokeshwar Dev had shown all of them an easy way to become rich!!

4. The investigating officer analysed the returns of income of past years of Shri Lokeshwar Dev and his wife from AST. It was seen that

they had shown income of only ₹ 2-3 lakh in the last years. This strengthened the case against the group.

5. Key persons and the main agents were put on surveillance, including secret locations used by the group to hide cash and important documents. Shri Lokeshwar Dev was using a code word "NR" in respect of some premise. "NR" was finally decoded to be a residential tower by the name "Navratna" in Delhi. From the list of allottees obtained discreetly from the secretary of Navratna society it was found out that one of the flats was indeed in the name of Shri Lokeshwar Dev. This was a major breakthrough in the case. There was another secret location by the name "Cosmos". Acting on a clue, this residential tower was put on surveillance and ultimately it was found that the group had recently purchased two flats in this building, which were its secret location. Of the two other most important agents of the group, viz. Shri Nitin Sinha and Naresh Kharab, the address of Naresh Kharab was found out with recce and surveillance, but that of Shri Nitin Sinha was found within half an hour of initiation of search and it was also covered swiftly.

6. The search was conducted on the group on 18.01.2011. Cash amounting to ₹ 34.69 crore was seized from various premises. Out of this, ₹ 14.58 crore was seized from the premises referred to by assesse as "NR". An amount of ₹ 11.30 crore were seized from the residence of Shri Lokeshwar Dev. An amount of ₹ 4.88 was seized from the residence of Shri Naresh Kharab and ₹ 2.88 crore from the residence of Shri Nitin Sinha. Apart from cash, certain incriminating documents were found from the residence of Shri Lokeshwar Dev which suggested that the group had earned huge profit from speculative commodity trading. Confronted with the various documents and cash seized, the group agreed to disclose an income of about ₹ 115 crore in different hands.

7. Post search, Shri Lokeshwar Dev and others did not appear in response to the summons issued and were absconding. On 01.04.2011, a notice was put on the official website of the group declaring the firm as "Dead". On 28.05.2011, a "Wanted" notice was published by the Delhi Police in major national newspapers in respect of Shri Lokeshwar Dev and his wife Smt. Priyanka Dev. In fact, a number of

investors of SGI group have lodged a complaint against Shri Lokeshwar Dev in Police Station, Moti Nagar, New Delhi. Enquiries have also been initiated by SEBI to enquire into possible violations by the Group.

Names of the Officers : Yogendra Mittal, DDIT (Inv), Unit- VI (1), New Delhi
Raman Kant Garg, Addl. DIT (Inv), Unit-VI, New Delhi
S. K. Singh, DIT (Inv) - II, New Delhi
K V Chaudhary, DGIT (Inv), New Delhi

DETECTION OF CAPITATION FEES CHARGED AND RE-ROUTED AS BANK LOANS BY A TRUST

Detection of receipt of Capitation fees by a leading Trust – misuse of the provisions of Sections 11, 12A and 13 of the IT Act 1961 – camouflaged routing of undisclosed income - extensive pre search investigation – use of forensic tools to decode electronic data

M/s Subharti Krishan Kumar Bhatnagar Charitable Trust (The Trust) controlled and managed by Dr. Atul Krishan is running Swami Vivekananda Subharti University in Meerut and also a Medical College, a Dental College, with Engineering and various other professional courses. The group is also running a hospital owned by the Group Company, M/s Lok Priya Nursing Home Ltd.

2. During the pre-search enquiry, discreet sources revealed that the Trust was accepting huge capitation fees for admission into various courses like MBBS, BDS, MDS, B.Tech, B.Ed., etc. for the last several years, but these were not reflected in regular books of accounts. To confirm this information, the ADIT (Inv.) himself went to the University, ostensibly, as a seeker of a seat for "his brother" and was demanded capitation fee by one Shri R. P. Singh, who is a close confidante of Shri Atul Krishan. Further, it was found that two doctors Shri Ashok Kumar Goel of Delhi and Shri Gopal Agarwal of Mathura had paid substantial amounts as capitation fee for the admissions of their daughters in M.D. (Radiology) at Subharti Medical College. Consequently, the premises of these two doctors were also covered u/s 132 of the Income Tax Act, 1961.

3. The search operation on the Trust and Dr. Atul Krishan Group of cases, Meerut was conducted on 12.11.2010, covering 25 premises u/s 132/133A of the I.T. Act, 1961. During post-search investigation, 9 more warrants were executed. Shri Atul Krishan, the main person behind the group made a disclosure of ₹ 45.5 crore on the date of search itself which was subsequently withdrawn. Dr. Ashok Kumar Goel also admitted on oath that he had paid the capitation fee of ₹ 90 lacs for his daughter's admission to various courses, to Subharti Medical College, and surrendered the aforesaid sum. Subsequently, cash of ₹ 55,99,000/- was also seized from two lockers of Shri Ashok

Kumar Goel, which was surrendered by him u/s 132(4) of the I.T. Act, 1961. It proved the allegation that capitation fee was being clandestinely charged by the Trust. Further, several more documents relating to receipt of capitation fee and siphoning off of Trust Fund were found and seized.

4. During the post search investigation, it was found that three 'benami' Kolkata based companies, namely, M/s Sherawali Yarns Pvt. Ltd., M/s Roseberry Mercantile Pvt. Ltd. and M/s Sangyon Automotive Pvt. Ltd. were hiding undisclosed income of Shri Atul Krishan/the Trust and were re-routing them by an ingenious method in the books of the group concerns. To avoid detection of the trail of money, a unique modus operandi was adopted by the group and a circuit breaker was placed in the chain of transactions in the form of bank loans. The above mentioned benami Companies pledged their fixed deposits as third party guarantee for high value loans to the Trust. The interest cost on these loans was more or less offset by the interest earned on these fixed deposits which were nothing but the undisclosed income of Shri Atul Krishan and the Trust. This modus operandi ensured that on first look the capital infusion in the books of the Trust appeared to be from bank loans and not from the above mentioned benami Companies in the shape of share capital and unsecured loans, which attracts attention of the tax authorities.

5. The post search investigations proved that the effective management control on these companies was exercised by Shri Atul Krishan through his trusted associates, relatives, employees and trustees who were dependent on him for financial survival, and had no clue about the affairs and activities of the 3 Kolkata based companies. The total amount routed through the accounts of the above 3 benami companies in the year 2008-09 to 2010-11 worked out to ₹ 62 crore.

6. Further, a CD was seized from the office of the Trust which contained details of cash transactions of ₹ 86,13,40,803/- between 01.04.2004 and 27.07.2006. Shri Atul Krishan admitted this money to be his income. The electronic evidences like hard disks, CDs, DVDs, laptops, PCs found during search were analyzed and the relevant material used to work out the quantum of undisclosed income. In fact, the deleted files of these electronic evidences were retrieved with the

help of forensic experts and used as evidence. During the search, even the print out of messages in the phone of Shri Atul Krishan were taken out and seized.

7. The total seizure of cash, jewellery and other assets (FDRs etc.) was of ₹ 32,55,87,996/-. The detected amount of undisclosed income of the group is ₹ 2,11,56,17,291/- after post search investigation.

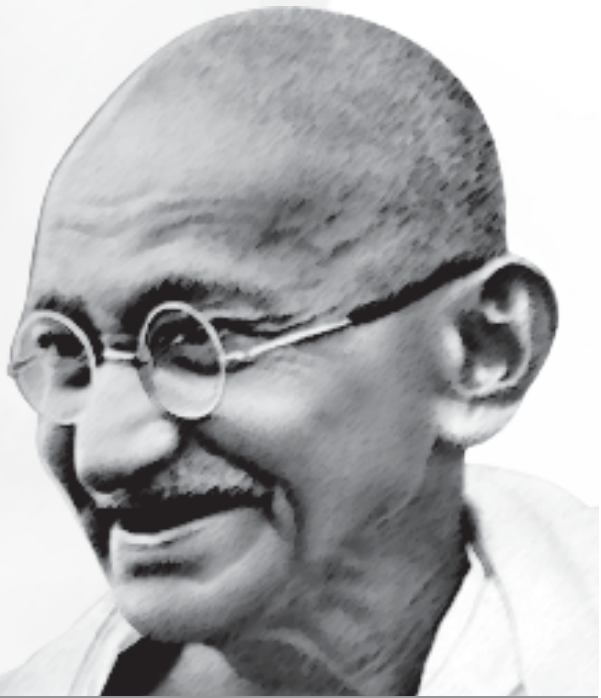
8. Information was disseminated regarding seizure of incriminating documents which established that the Trust was accepting donations and capitation fees for admission to various courses. The concerned CIT and AO have been informed to take suitable action to withdraw registration u/s 12A and disallow exemption u/s 11.

Names of the Officers : Yashvendra Singh, ADIT (Inv), Meerut
Ratan Singh, Addl DIT (Inv), Noida
Kunal Singh, DIT (Inv), Kanpur
S S Bajpai, DGIT (Inv), Lucknow

SURVEYS

"Anger and intolerance are the enemies of correct understanding"

- Mahatma Gandhi



SURVEYS

DETECTION OF INCORRECT CLAIM UNDER SECTION 10B

Assessee a manufacturer and exporter of granite – claiming non-inclusion of income u/s 10B – Survey reveals the machineries used were old – hence income taxable.

Shri Anantha Kumar (Biligiri Tiles) was engaged in the business of manufacturing and selling of granite blocks and monuments made from such blocks. The business was in operation since 1978, and from AY 1995-96 to 2003-04, the assessee had claimed deduction under section 80HHC on income from manufacturing and exporting of granite blocks. In March 2003, the assessee got a certificate from Cochin SEZ and started claiming deduction under section 10B as a 100% EOU from AY 2004-05.

2. For AY 2006-07 the assessee had claimed deduction under section 10B to the tune of ₹ 43,82,796/-. In the original assessment, the returned income had been accepted. Subsequently, it came to light that the assessee had claimed deduction to the tune of ₹ 11,17,230/- under the said provision on the profits earned from the activity of trading in finished goods although as per the provisions of section 10B, only profit earned from manufacturing and exporting activity is eligible for deduction. It was in order to check the correctness of the claim of deduction under section 10B for various assessment years that asurvey action u/s 133A was contemplated and carried out in this case.

3. It was found during the survey, conducted on 20.10.2011, that certain machineries used in the EOU unit were old machineries which had been employed in the earlier unit too. It was also seen that the value of such old machineries was more than 20% of the total value of the machineries. Thus the assessee was found to be in clear contravention of the provisions in the clauses (ii) and (iii) of the section 10B(2) of the I-T Act. Recourse to the CBDT's Circular No 1/2005 was also not available to the assessee since the eligibility period of ten years had already elapsed in this case.

4. When the assessee was confronted with these irrefutable facts, he was unable to provide a satisfactory explanation to defend the

claim of deduction. Consequently, the assessee revised his returns for AY 2010-11 & 2011-12 by withdrawing the claim of deduction under section 10B. ₹ 1,61,80,538/- was paid as tax for two years, in addition to the regular advance tax. The assessments for earlier years were reopened and additions of ₹ 43,82,796/- for AY 2006-07, and ₹ 2,14,01,671/- for AY 2009-10 were made after disallowing the claim of deduction u/s 10B.

Names of the Officers : Uma Devi, ITO Ward-I, Mysore
Dr. Rajendra Kumar, IRS, Addl.CIT , Mysore
K. K. Misra, IRS, CIT, Mysore
K Satyanarayana, CCIT-III, Bangalore

SURVEY REVEALS BOOKING OF BOGUS EXPENDITURE BY A CIVIL CONTRACTOR

Civil contractors not keeping proper books of accounts – books rejected and income estimated – suspicion of booking bogus expenditure – established through survey.

The assessee, B. P. Modi Group are leading civil contractors of Rajasthan state with a combined turnover in the range of ₹ 100 crore. The main person behind the group is one Shri Kirodi Mal Modi. M/s Braham Prakash Modi is a partnership firm belonging to the group, and is engaged in the business of road-building all across Rajasthan and Madhya Pradesh states. M/s Modi Construction Company, the proprietary concern of Shri Karun Modi, is also a group concern.

2. On verification of returns of income, it was suspected that the group's disclosed net profit was not in consonance with the nature of business and the standing enjoyed by the group. During assessment proceedings, it was found that for most of the expenses debited in P&L account, proper supporting bills and vouchers were not available. In earlier years, the Department had rejected the assessee's books of account and assessed its income at an estimated rate of net profit. Discreet enquiries revealed that the group was claiming bogus expenses.

3. A survey under section 133A was conducted on 14.07.2011 at the business premises of M/s Braham Prakash Modi (firm) at Jaipur. The premises also house the office of M/s Modi Construction Company, a sister concern.

4. During the course of the survey, incriminating evidence pertaining to inflation of expenses through bogus debit entries was unearthed. An amount of ₹ 5.90 crore, for instance, was found to have been debited through a single entry in the P & L Account under the head 'Sundry Account' on the last day of previous year 2010-11, i.e., 31.03.2011. The assessee had no explanation to the same. In fact, Shri Kirori Mal Modi (Partner) categorically admitted that the same was made in order to reduce the tax liability.

5. As a consequence of the survey, the group surrendered a total of ₹ 17.50 crore as undisclosed income for different financial years and

agreed to pay taxes thereon. This included and amount of ₹ 1.5 crore surrendered by M/s Modi Construction Company, the proprietary concern of Shri Karun Modi, on account of undisclosed investments and other irregularities. The surrender of ₹ 17.50 crore constitutes the highest disclosure in any survey operation in Rajasthan state till date.

6. The assessee has already filed the return of income for AY 2011-12 on 15.09.2011 disclosing ₹ 14.35 crore, which includes a surrendered amount of ₹ 14.33 crore. Taxes to extent of ₹ 4.74 crore have been fully paid on the surrendered income. The sister concern, M/s Modi Construction Co., which had made a disclosure of ₹ 1.50 crore for AY 2012-13, had made advance tax payment to the tune of ₹ 30 lakh by Dec. 2011 out of the total tax liability of ₹ 45 lakh.

Names of the Officers : Ramveer Singh, ITI, Circle 2, Jaipur
Chanchal Meena, ACIT Circle 2, Jaipur
Prasenjit Singh, Addl. CIT, Range 2 Jaipur
Amit Chatterjee, CIT-1, Jaipur
Mukesh Bhanti, CCIT, Jaipur

DETECTION OF INFLATED EXPENDITURE BY TAKING ACCOMMODATION ENTRIES FROM BOGUS COMPANIES

FIU information scrutinized – ITS details, TDS returns and information collected from Ministry of Corporate Affairs data base reveals nexus between the assessee and other bogus companies for taking accommodation entries – survey leads to huge disclosure.

M/s Concept Communications Limited, Mumbai, is engaged in media, communication and advertising business, and is a part of a group of three companies jointly referred to as the 'Concept Group' having a combined turnover in the region of ₹ 200-250 crore. The main person behind the group is one Shri Vivek Suchanti.

2. While investigating a piece of information received from the FIU, the Directorate of Income Tax (Inv.), Mumbai, unearthed a big entry-providing racket. Detailed investigations, inter alia, revealed that a company by the name 'Concept Communications Limited' had shown a number of transactions in the names of some of the bogus companies unearthed during the investigations. Following up on this lead, the Directorate extracted ITS details of these companies from the ITD system. As expected, the assessee's name cropped up in these details too. It became clear that the assessee was indulging in the practice of inflating expenditure by taking accommodation entries from bogus companies which were in no position to render any services to the assessee. On these facts it also appeared that the assessee company may have taken entries from other bogus billers too. Accordingly, the TDS returns of the assessee were studied carefully and the information available there was entered into Excel software for the purpose of analysis. The resultant data proved to be a storehouse of information. The nature, date, and quantum of transactions shown with some of the deductees gave rise to the suspicion that they also might be accommodation entries because they were huge in quantum, less in number and appeared quite abrupt and conspicuous. Details of such suspicious companies were also searched in the database available on the website of the Ministry of Corporate Affairs. The said database provided the names,

addresses and the DIN of the directors. In turn, the income tax returns of the directors were examined and it was found that they were persons of little or no financial standing. Further analysis of the Ministry of Corporate Affairs database revealed that one such person was a director in as many as 100 companies.

3. Summons were issued to many such directors and their sworn statements were recorded. They admitted to being a part of the entry-providing racket. Armed with extensive and specific information as above, a survey action u/s 133A was conducted in the case of the assessee, M/s Concept Communications Limited.

4. During the course of the survey conducted on 22.11.2011, a detailed analysis of accounts was undertaken from which details of other suspicious companies were also unearthed. The directors of the assessee company were confronted with the detailed and specific evidence gathered before and during the survey operation.

5. As a result of the investigations, the assessee accepted the bogus nature of the concerns and the corresponding entries in its books. The assessee accepted the allegations in their entirety and disclosed ₹ 57 crore in the hands of various entities of the Concept Group spread over different assessment years.

Names of the Officers : Sudhanshu Shekhar, ADIT (Inv.), Unit-5(3), Mumbai
Anurag Srivastav, Addl. DIT(Inv.) Unit-5, Mumbai
Sushil Chandra, DIT (Inv.)-I, Mumbai

DETECTION OF CONCEALMENT OF INCOME THROUGH JOINT DEVELOPMENT AGREEMENTS

Property dealer enters into a joint development agreement – gets refundable as well as non - refundable deposits –conceals non - refundable deposits through a separate agreement – unearthed through survey

M/s Gold Enterprises is a leading property developer in Bangalore with almost 20 projects to its name. The main person behind the group is one Shri Mohammud Shabbir. The assessee also had associated enterprises in the name of M/s Gold Enterprises & Property Developers and M/s Gold Enterprises Developers Pvt. Ltd., which were executing various joint development projects in Bangalore city.

2. On verification of the assessee's return of income, it was found that the Balance Sheet showed an amount of ₹ 47 crore as advance received from various customers, but the income declared for AY 2010-11 was a meagre ₹ 11 lakh, and consequently the case was being assessed in a Ward. Analysis of past records, secondary information available on related websites, and direct enquiries on phone revealed that the assessee had either executed, or was in the process of launching, nearly six projects in various parts of the city. Based on the above information, and in particular to verify the true nature of 'advance received', a survey was carried out at the assessee's premises.

3. During the course of survey, conducted on 08.08.2011, documents relevant to one project, 'Gold Towers' were unearthed, which had as many as 182 flats in the said apartment complex project. However, due to liquidity crunch, the assessee was forced to enter into a joint development agreement (JDA) with one M/s Sattva Developers. Per JDA, the assessee was to get 56 flats, and M/s Sattva Developers was to get 126 flats. The agreement also included a payment of refundable deposit of ₹ 2 crore and a non-refundable deposit of ₹ 6 crore. Interestingly, the non-refundable deposit was part of a separate supplementary agreement which was never disclosed either in the balance sheet or the profit and loss statement of the

assessee. The assessee had also not disclosed the profit from the receipt of advance money from 56 flats. The assessee had spent almost ₹ 18.52 crore on the project for purchase of land and initial foundation work. The total eventual consideration for 56 flats was ₹ 25 crore.

4. The assessee argued that there was no capital gain arising out of the JDA with M/s Sattva Developers as it was a business asset for him since he was a developer. However, on examination of other projects, it was found that the assessee was offering the income on 'percentage completion' basis and when questioned why the advances should not be brought to tax on the 'percentage completion' basis, the assessee agreed to offer an amount of ₹ 6.48 crore on advances received from the customers after deducting the relevant expenses incurred by him.

5. The assessee declared a total amount of ₹ 12.48 crore as the undisclosed income, including ₹ 6 crore of non-refundable deposit and ₹ 6.48 crore on the sale of flats. The assessee has filed its return of income for AY 2011-12 disclosing the surrendered income. Payment of taxes on the remaining amounts, which pertain to other financial years, is being monitored.

6. The case highlights the fact that in many JDAs, only the refundable deposit is reported while the non-refundable deposit is either made a part of separate supplementary agreement or paid entirely in cash. The supplementary agreements remain unregistered and can only be unearthed through surveys or search operations. The Department at Bangalore has initiated a larger enquiry against all JDAs registered in past six years.

Name of the Officer : M. S. Nethrapal, ACIT-Circle 6(1), Bangalore

RECOVERY SURVEY RESULTS IN HUGE CASH COLLECTION

Assessee reluctant to pay arrear demand – attempts to transfer its share-holding from a group company to avoid attachment, though provisional attachment was done to prevent dividend pay out - survey compels group company to pay up the entire demand.

Maharashtra Erectors Pvt. Ltd. (MEPL), Pune, is a company engaged in the business of providing cranes, trailers and other equipments for moving heavy and bulky objects. The company has since closed its business activities. Demands aggregating ₹ 5.85 crore pertaining for AYs 2007-08 and 2008-09, raised in December, 2010, were, however, outstanding.

2. Against the demand raised, the assessee submitted a stay petition which was disposed on 28.02.2011 directing the assessee to pay at least 50%. As the assessee did not comply with the said condition, its bank account with Saraswat Co-op. Bank Ltd. (Pimpri Branch) was attached under section 226(3). However, only an amount of ₹ 1.83 crore in all could be collected till July 2011.

3. It came to the Department's knowledge that the assessee company owned 1,45,00,000 shares of one Sanghvi Movers Ltd. (a group company) and dividend was going to be announced by the said company. On receipt of this information, the de-mat account in Saraswat Co-op. Bank which was tagged to its current account in the same bank, was attached. The bank confirmed that they had marked Department's lien in their records.

4. Further, the Principal Officer of Sanghvi Movers Ltd. was issued a notice under section 226(3) attaching any amount whatsoever held for or on account of the assessee, including dividend on shares held, till the amount of arrears are fully adjusted. Sensing that Sanghvi Movers Ltd. would shift the ownership of shares owned by the assessee company, another letter was written on 15.9.2011 drawing attention to the provisions of Sec. 281(1) of the I-Tax Act, 1961. The company was advised to keep this legal position in mind while issuing dividend, if any.

5. On receipt of information, however, that the company was

making an attempt to re-mat the said account and transfer the shares held to other parties, a recovery survey was undertaken at the premises of Sanghvi Movers Ltd., at Mulshi (Pune Distt.) on 23.09.2011.

6. During the course of survey action, a detailed statement of the Company Secretary was recorded to elicit complete facts about transfer of shares owned by the assessee. It was learnt that the shares had been transferred in the names of various family-members and that the assessee company (MEPL) was left with ownership only of a nominal number of shares. The management of Sanghvi Movers Ltd. was confronted with factual information regarding the efforts made by them to circumvent provisions of I-T Act, the likely consequence of which would be the non-realization of income tax arrears in case of MEPL. A statement of Shri Chandrakant P. Sanghvi, Chairman, MEPL, was recorded, in which, he promised to pay arrear demand standing in the name of the company in full within 8 weeks.

7. With the assessee showing its inclination to pay taxes, challans were issued on 03.10.2011 for payment of the outstanding demand (including interest), totaling to an amount of ₹ 4.25 crore. The said amount was paid online on 04.10.2011, and proof thereof was produced. Thus, the entire outstanding demand in the case of Maharashtra Erectors Ltd. could be fully recovered in a single stroke. Thus, through sustained efforts, which culminated in a recovery survey, a huge amount of tax arrears which would otherwise have been extremely difficult to recover could be recovered in full.

Name of the Officer : A. K. Mahala, ACIT, Circle-9, Pune

SURVEY REVEALS SUPPRESSION OF ACTUAL SALE CONSIDERATION OF PLOTS OF LAND

AO poses as prospective customer – uncovers assessee's modus of recording less sale consideration in the sale deed as compared to the Agreement to Sale – Survey confirms the suspicion – leads to huge disclosure

Shri Satish Vilas Narharshettiwar, Smt. Kavita Satish Narharshettiwar, and Shri Hemand Vilas Narharshettiwar, the assessee group, had recently started its activities as land developers. The business was being carried on by the three parties in their individual capacities from an office premises at Mohini Nagar, Wardha. They had floated real estate projects in and around Wardha under the name and style of 'Gajanan Nagari'.

2. The assessees purchased agricultural land and converted the same to non-agricultural use. Various plots so converted were sold under different schemes comprising many phases. Customers were attracted through various advertisements, hoardings and personally through agents employed by the assessees for this purpose. Certain incentive schemes were also attached to promote sales, such as gifts of Nano cars, motorcycles, refrigerators, TVs etc. Negotiations for sale of plot were finalized through an 'Agreement to Sale' where the actual amount of sale consideration was mentioned. A plot purchaser ledger was kept containing details with regard to each sale transaction. On receipt of full and final payment as per 'Agreement to Sale', registration of the plot was done through sale deed wherein a lower amount of sale consideration was mentioned.

3. The AO started making enquiries, especially since the group had only recently risen to prominence. The AO, along with his Inspector, posing as prospective customers, collected significant information regarding the activities of the assessees and the various plots and land development schemes the group had floated. Detailed inquiry into the affairs of the group revealed that these assessees were not recording true and correct sale price in the registered sale deed and sale proceeds to a large extent were being suppressed.

4. During the course of the survey, conducted on 13.10.201, a

large number of books of accounts, inter alia, containing details such as names and addresses of customers, plot numbers, area, selling rates, amounts received, status of registration etc., were impounded, examination of which confirmed the AO's suspicion regarding suppression of sale consideration. Crucial documentary evidence, including the actual amounts recorded in the sale agreements (which were later understated in the registered sale deeds), could be gathered.

5. In the face of such overwhelming and incontrovertible evidence, the assessee group was left with no option but to admit the actual receipts. In consequence of the survey, therefore, the group declared a total of ₹ 10.50 crore in the hands of the three assessees as additional income for current financial year. This disclosure is by far the highest in Nagpur Region. Tax liability in this case works out to approximately ₹ 3.15 crore, of which the assessee has paid ₹ 75 lakh by 27.02.2012 and has furnished a written undertaking to pay the balance amount by 15th March, 2012.

Names of the Officers : G. K. Bhoyar, ITO Wardha
Rajiv A. Pant, JCIT, Wardha Range, Wardha
Sunita S. Narain, CIT – II, Nagpur

MISCELLANEOUS ORDERS

"Glory lies in the attempt to reach one's goal and not in reaching it"

- Mahatma Gandhi

MISCELLANEOUS ORDERS

CANCELLATION OF REGISTRATION OF TRUST U/S. 12 AA(3)

Commissioner found the assessee trust to be primarily engaged in manufacture of ophthalmic products -The trust chose not to carry on the proclaimed main object of charitable activities - Registration cancelled - – ITAT Chennai upholds.

In this case, the assessee, The Aurolab Trust was granted registration u/s.12A of the Income Tax Act, 1961 on 09-10-1992. The CIT,while examining the enclosures and the report in Form No.3CD furnished by the assessee along-with its return for the AYs. 2007-08 to 2010-11, noticed that the assessee was carrying on business activities

He issued a show cause notice asking why the registration granted u/s. 12Aa should not be cancelled and subsequently, he made exhaustive enquiries with the Authorized Representative of the assessee to ascertain activities of the Trust.

As a result of these enquiries it was found that the trust was carrying on the business of manufacturing and selling of medical and ophthalmic items and the entire profit generated from the business was accumulated in the hands of the assessee itself as financial assets and wherever donations have been made, the same have been substantially made to its own associate concern M/s. Arvind Medical Research Foundation. Out of the 6 objects delineated on paper in the trust deed document, the assessee trust was carrying out activities limited to manufacture and sale of products only, as envisaged in the object clause 'e' and that the assessee trust carried on business under the guise of charity. The assessee trust was doing a full-fledged manufacture and sale of ophthalmic products such as lens, suture needles, medicines etc., by adopting various trade practices like payment of agency commission, incentive to dealers, advertisement expenses, sales promotion expenses etc. The assessee argued that the business activities generated surplus income which was applied for charitable purposes by way of legitimate donations. However, it was found that there was no significant and dominant charitable activity established by the assessee out of the profits earned out of its business

activity. The CIT found that though there were six objects for which the assessee Trust was established yet it pursued its object of business activity as laid down in Clause 'e' of the Trust Deed' which yielded huge profit and which multiplied steadily in volumes. The profits, so generated, was kept as bank deposits to generate further money as interest. Further, the interest so generated was never utilized to fulfill the objects as laid down in clauses (a) to (d) of the Trust Deed.

A comprehensive speaking order U/s. 12AA(3) was passed and registration granted under section 12A of the Income Tax Act,1961 was not renewed. The order challenged in the ITAT, Chennai was upheld by it.

Consequent assessment orders were passed for the Assessment Years 2008-09 to 2010-11 and tax of ₹ 37,18,33,471/- and advance tax of ₹ 13,80,35,000/- were collected from the assessee

Name of the Officer : M. Krishnasamy, CIT Madurai

DENIAL OF EXEMPTION U/S10(23)(iv) TO A TRADE PROMOTION ORGANISATION

The Organisation was involved in rendering services in relation to trade, commerce or business as laid down in the first proviso to section 2(15) of the Act- Denied exemption u/s.10(23C(iv) of the Act.

The assessee, namely M/s. Karnataka Trade Promotion Organisation filed an application seeking renewal of approval u/s. 10(23C)(iv) of the Income Tax Act. It is a joint venture company of Govt. of India and Govt. of Karnataka

2. In order to qualify for exemption, the applicant's case should fall under the sixth limb of the definition of 'charitable purpose' u/s 2(15) i.e. ***'the advancement of any other object of general public utility'.***

3. Further, the first proviso inserted to section 2(15) with effect from 1-4-2009, provides that the 'advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce, or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fees or any other consideration, …..' .

4. From the Memorandum of Articles and Association and facts, the CCIT ascertained that the applicant was in possession of exhibition hall and was primarily engaged in providing space to Companies, Business firms and Event Organisers on hire basis to conduct trade shows of their products and services by bringing them under one roof and thus hit by the newly introduced proviso to section 2(15).

5. More specifically, the applicant was hit by part (b) of the newly introduced proviso as it was rendering service of providing its exhibition ground for a fee to outside business organizations for promoting their trade and commerce and was assessed to service tax.

6. Hence, the CCIT rejected the application seeking renewal of approval under section 10(23C)(iv) of the Income-tax act, 1961.

Name of the Officer : M. L. Agrawal, CCIT, Bengaluru

ORDER SET ASIDE ON CLAIM FOR DEPRECIATION ON INTANGIBLE ASSETS

Claim of depreciation on know how, trademark and patents etc.- AO allowed claim of ₹ 10,69,39,469/ -Order found to be erroneous and prejudicial to the interest of Revenue – Commissioner of Income Tax set asides u/s.263

The assessee, Johnson Matthey Chemicals Pvt. Ltd.'s claim for depreciation of ₹ 10,69,39,469/- on know-how, trademark and patents etc. for AY 2007-08 was disallowed by the assessing officer. While scrutinizing the records in connection with filing of second appeal, the CIT noted that the claim of depreciation on know-how was not allowable.

2. He found that the company was set up in India in September 2002 to become the purchase vehicle for the synetix business of ICI India. Metthey Finance BV, a subsidiary of Johnson Metthey plc based in Netherlands has invested ₹ 420 million as share capital. The assessee acquired the synetix business in India w.e.f 31.12.2002. This was subsequent to ICI agreeing to sell its synetix business to JM plc. Synetix is the business name for the catalyst business. Global synetix business of ICI was purchased by M/s Johnson Matthey. In India, this business comprised of two divisions viz. Syngas division and PCEO division. The Indian business was purchased under the agreement called The Business Transfer Agreement dt. 02.12.2002. Accordingly, the Indian catalyst business was purchased as a going concern in a slump sale transaction without assigning any value to individual items of assets for a consideration of ₹ 19 million pounds (equivalent to ₹ 153 crore). Valuers of the assessee valued the tangible assets of PCEO division at ₹ 27.49 crore and intangible assets at the sum of ₹ 125.68 crore; ₹ 93 crore was allocated to the value of know- how.

3. The CIT noted that the business of Panki division and all of its assets were excluded from the purview of BTA and thus were not purchased. The assessee entered into another agreement with ICI as per which the Panki site and its assets would be used by ICI to manufacture products exclusively for the assessee on job charges basis using technical know-how as supplied by assessee to ICI. This

agreement also provided an option to the assessee to purchase Panki business along-with all its assets for a token consideration of ₹ 1 lakh Since option to purchase Panki business was not exercised by the assessee, the CIT held that the assessee was not the owner of the assets of Panki business including its intangible assets for which an amount of ₹ 83.5 crore was allocated out of purchase consideration. It was also noticed that in respect of tangible assets of Panki business such as building, plant and machinery etc. valued at ₹ 17,09,40,489, the assessee itself had not claimed depreciation for the reason that these assets were not purchased and thus were not owned by it. The Commissioner of Income-tax thus held that the assessee was not the owner of intangible assets of Panki division therefore depreciation on know how was not allowable to it.

4. The Commissioner of Income-tax also observed that the goods at Panki site are now being manufactured by ICI using the know how supplied by the assessee to ICI as provided in the TCA. He further observed that even if it is assumed that the assessee purchased technical know-how from ICI, it has not been used by it for its business, therefore, in such circumstances, depreciation thereon is not admissible at all.

5. The Commissioner of Income-tax also found that purchase consideration of ₹ 153 crore had not been allocated in a fair and reasonable manner in as much as no value had been assigned to the value of land at Panki as well as at Taloja. As per information received from KDA, Kanpur, the value of land at Panki in 2001 was over ₹ 174 crore and for stamp duty purposes, the value of land at Taloja had been considered at ₹ 19 crore. Thus, the value of land acquired itself was more than the total purchase consideration of ₹ 153 crore paid by the assessee and to which nothing out of purchase consideration had been allocated by the assessee and if out of purchase price of ₹ 153 crore, a fair and reasonable amount was allocated to the value of lands, then out of purchase consideration nothing would be left which could be considered as paid by the assessee on account of value of the intangibles assets such as know –how.

6. Hence, the Commissioner of Income-tax held that the claim of depreciation on know-how was wrongly allowed by the Assessing

Officer and he set aside the Assessment Order accordingly.

7. The total disallowance on account of depreciation as a result of finding in the order u/s 263 would be about ₹ 93 crore.

Name of the Officer : Vishwas Rattan, CIT-II, Thane

ORDER SET ASIDE U/S 263 FOR WRONG CLAIM U/S 10B

Claim of deduction u/s. 10B beyond 10 year period denied- based on Circular no. 1 of 2005 dated 06.01.2005 - Assessment enhanced u/s. 263 -Relied on documents such as certificate of Development Commissioner and Form No. 56G.

M/s. CCL Products Ltd., is engaged in the business of manufacturing instant coffee and was set up in the F.Y. 1995-96 in the domestic tariff area. Subsequently, in 1999 it was converted into a 100% EOU Unit. It availed deduction u/s. 10B on a sum of ₹ 29.91 crore for the AY 2006-07. Noticing that the assessee was not eligible for the said deduction, in view of the Circular NO. 1 of 2005 dated 06.01.2005, remedial action was taken u/s. 263.

2. It was the claim of the assessee that though the unit was started in F.Y. 1995-96, it did not claim the benefit up-to AY 1999-2000 since it was incurring losses. As per the then provisions of section 10B i.e., as effective from 01.04.1989 it was eligible to claim the benefit in any 5 consecutive assessment years falling within a period of 8 years beginning from the assessment year in which the industrial unit commenced its manufacturing activity or production. It also pointed out that its unit was recognized as 100% EOU in 1999 and there was an amendment in section 10B through Finance Act, 1999 to the effect that the benefit could be given for 'any' 10 consecutive assessment years under-section 10B and hence, the position of law was different as between the periods i.e. 01.04.1989 to 31.03.1999, 01.04.1999 to 31.03.2001 and later on.

3. The main contention of the assessee was that on account of these amendments the company was given the choice to select 'any' bank of 10 years to claim tax relief u/s. 10B irrespective of the year in which it first commenced its production or manufacturing activity and contested the applicability of Circular No. 1 of 2005

4. In the order u/s. 263 the history of section 10B was considered in detail along with the circular and the CIT held that the claim could be made "for a period of 10 consecutive assessment years beginning with the assessment year relevant to the previous year in which the

undertaking begins to manufacture or produce articles or things". Thus, the assessee having commenced production in the FY 1995-96 was eligible for relief only up-to FY 2005-06 and not later. In so far as the AO allowed the benefit in AY 2006-07, the order was prejudicial as well as erroneous to the interest of revenue and that the strict rule of interpretation of law was only applicable to the facts of the case. Circular No. 1 of 2005 was relied.

5. A fresh line of arguments was taken that it undertook substantial expansion between FYs 2001-02 to 2005-06 which led to increasing its output from 3000 metric tones to 10,000 metric tones and hence, new units were deemed to have been set up from AY 2002-03 onwards. Accordingly, it was stated to be eligible for the benefit u/s. 10B beyond 2005-06. The CIT pointed out that in the revisionary proceedings u/s. 263 such fresh claims could not be admitted

6. Thus, based on circular and correct interpretation of law, the claim u/s. 10B on a sum of ₹ 29.91 crore was withdrawn and assessment enhanced. It was also pointed out that there were no two opinions possible in the instant case and hence, the opinion taken by the AO was to be revised u/s. 263 as the same was not in accordance with law.

7. The assessee contested the matter before the ITAT, and the ITAT passed final order on 14.12.2011 dismissing the appeal.

8. The enhancement made u/s. 263 resulted in the positive tax effect of ₹ 13.48 crore and ₹ 31.82 crore as per orders u/s. 143(3) for the later assessment years.

Name of the Officer : T. Jayasankar, CIT-I, Hyderabad

DIRECTION TO TREAT RECEIPT FROM SALE OF SHARES AS BUSINESS INCOME

Income by a Share Trading Company from sale of shares offered under the head 'capital gains' – In assessment exemption u/s.10(38) was allowed – Commissioner of Income-Tax passed order u/s.263 directing the Assessing Officer to treat the income amounting to ₹ 19,18,77,121/- as 'income from business'– Hon'ble, ITAT Hyderabad, upheld CIT's action.

For Assessment Year 2006-07, the Assessing Officer allowed exemption from tax u/s.10(38) on the income claimed to be long term capital gains from the sale of quoted shares and Mutual Fund Units to Spectra Shares & Scrips Pvt. Ltd., Hyderabad. However, from the case records ,the Commissioner of Income-tax found that the Auditors mentioned the nature of the assessee's business as 'investment/ trading in shares and securities' and further buying and selling of a large number of shares several times during the year. Total number of shares of 53 listed companies and units of 121 Mutual Funds sold during the year were 1,01,23,003 and net sale consideration of ₹ 21,21,98,8822 was received. The CIT further noticed huge volumes of purchase and sales on a regular basis, with a turnover of ₹ 50 crore, in about 100 listed companies about 100 Mutual Funds.

2. On examination of the above information, the CIT opined that the assessing officer had erroneously accepted the claim of the assessee as LTCG though the assessee had been carrying on trading in shares and units extensively and regularly in huge volumes and high frequency. Accordingly, he issued notice u/s 263. After detailed consideration of the submissions, the CIT made following observations-

(i) The scale of activity of buying and selling shares, mutual fund units, debt funds, etc. was substantial, continuous, regular and it made repetitive purchases and sales of the same shares during the year with sole objective to derive profit and not to earn dividend.

(ii) The assessee had carried out day-trading.

(iii) The purchase and sale of shares and units was its main

business activity while running a marriage hall was only its ancillary activity.

3. In view of the above, he concluded that the shares were "stock-in-trade" and not "investments" and the activity was business activity. And consequently the income declared by the assessee from this activity was income from business. Order was set aside u/s 263.

4. Aggrieved , the assessee preferred an appeal before the Hon'ble ITAT, Hyderabad which upheld the conclusions of the CIT and opined that after considering the cumulative effect of the facts and circumstances of the case, the CIT was justified in treating the profit arising out of sale of shares acquired by the assessee as income from business.

Name of the Officer : A. Bhaskar Reddy, CIT-III, Hyderabad

COMPENSATION PAID BY COMPANY FLOWING BACK TO IT AS SHARE APPLICATION MONEY

Company involved in real estate and construction activities – Inadequate disclosure in survey – During investigation assessee filed application before Settlement Commission – With its approval investigation continued – Led to propose enhancement by ₹ 42 crore approximately-Accepted by the Settlement Commission

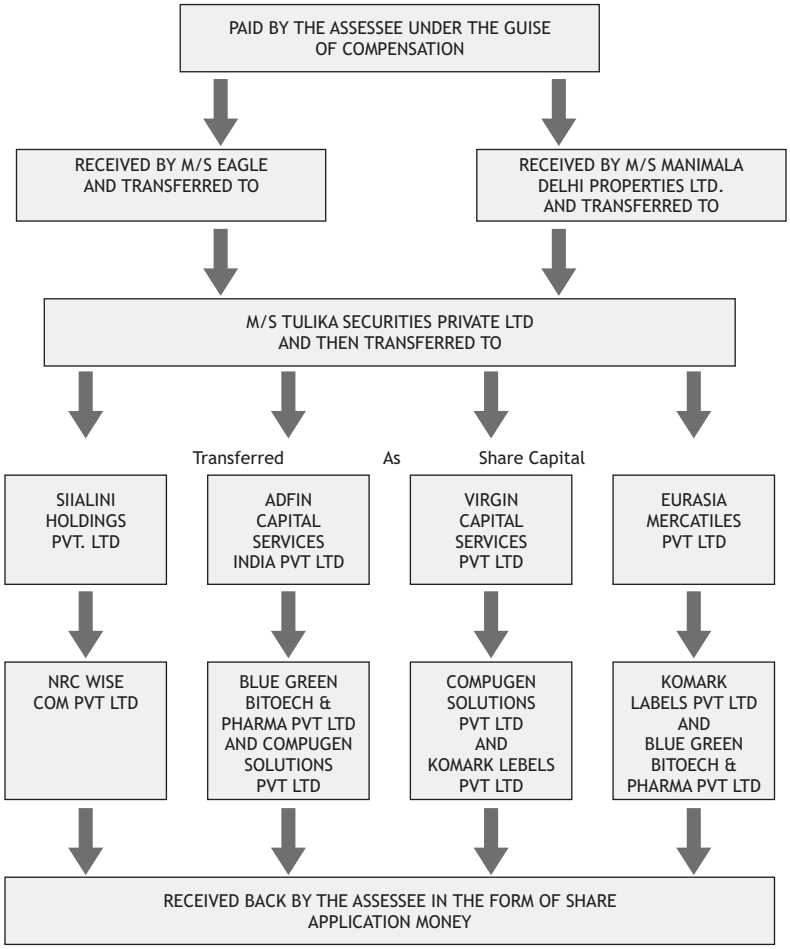
M/s Aparna Constructions & Estates Pvt. Ltd., engaged in the business of contracts, development of land, construction and sale of flats and rendering of management services, disclosed income of ₹ 20.46 crore and ₹ 21.94 crore for the AYs. 2008-09 & 2009-10. Subsequent to survey conducted, it disclosed additional income of ₹ 4.36 crore and ₹ 9.61 crore for the respective assessment years.

2. Suspecting the genuineness of transactions with the two Delhi companies wherein ₹ 40.71 crore was paid as compensation, investigation was launched. Assessee, to pre-empt further investigation, preferred to file applications before Settlement Commission disclosing nominal additional incomes as disallowable u/s 40A(3). Besides submitting the Rule 9 report, a case was made out for permitting the department to investigate into the case. After approval, a proper investigation was conducted at New Delhi to prove the bogus nature of compensation paid to the extend of ₹ 40.71 crore.

3. The assessee concern concluded agreements to sell 70 acres of land to M/s Manimala Delhi Properties Pvt. Ltd. and M/s Eagle Infratech Pvt. Ltd., based at New Delhi, in the month of March, 2008. It was the claim of the assessee that these deals were cancelled since assessee could not carry out 'mutation' with regard to the land and hence, it was forced to pay a compensation of ₹ 40.71 crore to both these companies in the month of June, 2008 i.e., after three months. Statements recorded from Sri Ravindra Arya and Sri S. K. Jain, the responsible persons produced by the assessee, brought out several inconsistencies. Besides this, the investigation carried out at Delhi showed that no such companies existed at the addresses given.

4. The Addl.CIT and his team visited Delhi to ascertain the

existence of the companies which received compensation. Since the visit to the premises of these two companies did not yield direct result, enquiries were conducted with Investigation Wing at New Delhi as to whether these premises or persons were covered earlier in any other action. This brought to light the fact that the DDIT(Inv.) Unit-VI(2) conducted search on 14.09.2010 at the residence of Sri S.K. Jain, the person involved in the transactions. The verification of seized records belonging to Sri S. K. Jain, was undertaken and the entries made therein clearly showed that the money allegedly received as compensation by these two Delhi companies flowed back to the assessee itself through intermediaries created in the garb of share application money. The flow chart is given below :



5. The four Hyderabad based companies which received this sum and passed on the same to the assessee company were controlled by the Director of the assessee company. Thus, the bogus nature of the transaction to inflate the expenditure was established. The Settlement Commission appreciated the report and accordingly brought to tax this sum of ₹ 40.71 crore over and above the disclosure made by the assessee.

6. On the whole, in the detailed reports submitted, a case was made out for taxing ₹ 151 crore for the tow assessment years involved. Ultimately, an income of ₹ 101.97 crore was subjected to tax by the Hon'ble Settlement Commission vide order dated 23.12.2011.

7. Additonal income of ₹ 42.16 crore was brought to tax by Settlement Commission based on investigation reports over and above the disclosure of ₹ 1.87 crore made by the assessee in its application.

Names of the Officers : K. Balamuralikrishnan, ITO, Ward-1(2)
T. S. Sekhar Naidu, DCIT-1(1), Hyderabad
YVST SAI, Addl.CIT, Range-1,
T. Jayasankar, CIT-I, Hyderabad

ARREST AND DETENTION OF DEFAULTER IN CIVIL PRISON

Income tax arrears – Non-payment - Drawing of Recovery Certificate – Defaulter's attempt to sell immovable property – Issue of warrant of arrest - Non-compliance to notice – Warrant of Arrest issued & defaulter imprisoned.

M/s Surabhi Builders constructed about 8 residential complexes on development basis in Visakhapatnam. A survey u/s 133A was conducted in 2006. Based upon material found and the sworn statement given by the managing partner, assessments were reopened for the AYs 2000-01 to 2005-06. Subsequently assessments were completed in March, 2007, raising a total demand of ₹ 1,49,24,782/-.

2. The CIT(A) dismissed the appeals with an observation that the appellant, by its conduct of not availing opportunities had clearly demonstrated that it was not interested in pursuing the appeal. The assessee firm did not prefer further appeal and thus the demands became final.

3. As the issue of notice u/s 220(2) and resorting to provisions of sec.226(3) for attachment of bank accounts by the AO did not result in any collection of tax, the matter was referred to the TRO for drawing of TRC in October, 2008. The TRO attached immovable property belonging to a partner of the firm u/r 48. One Ms. P. Sai Sudha filed a petition before the TRO objecting to the attachment stating that she was the absolute owner of the property which she had purchased for adequate consideration even before the attachment. She also filed a writ in the High Court of Andhra Pradesh seeking the Court to set aside the attachment. The Hon'ble High Court disposed of the writ at the admission stage itself with a direction to the TRO not to proceed further before disposing of the petition under Rule 11. The TRO dismissed the petition treating the transfer of the attached property as null and void as the transfer took place after service of notice under Rule 2. The petitioner did not challenge the TRO's order.

4. After taking into account such behavior, the TRO issued a show cause notice to the assessee to appear before him and explain why a

warrant of arrest should not be issued. The partner of the firm appeared and requested time to come with concrete proposals for clearing of arrears which had mounted to ₹ 3.59 crore on account of levy of several penalties. The TRO allowed some time on a condition that he pays ₹ 2 lakh within two days which was paid. He moved the concerned Commissioner of Income tax seeking stay on recovery proceedings. The partner, as usual, did not respond to the opportunity given by the Commissioner who dismissed the petition and directed the TRO to take all possible coercive action within 10 days.

5. The TRO once again issued a show cause notice for attendance to the partner of the defaulter-firm to present before him and to explain why a warrant of arrest should not be issued. But he did not appear before the TRO on the appointed day. The TRO, therefore, issued the warrant of arrest to the jurisdictional Circle Inspector of Police and served the warrant on him through the Commissioner of Police on 22-12-2012 directing him to arrest and produce the defaulter before the TRO. The police arrested the defaulter and produced the arrested defaulter on 24th morning. On being asked, the defaulter expressed his inability to pay. The TRO passed an order under Rule 73(1) committing the defaulter to civil prison and handed over the defaulter to the jailor of the district jail for imprisonment.

6. In the history of Visakhapatnam Region there has been no record of arrest made by the TRO previously. A press note regarding the arrest of was widely publicized in all the local and national newspapers in all the editions of Andhra Pradesh. It created huge awareness. Some of the defaulters immediately paid their dues.

Names of the Officers : D. Hema Bhupal, TRO
J. Siri Kumar, Addl.CIT, Range-4, Visakhapatnam
I.Suresh Babu, CIT-2, Visakhapatnam
A. K. Basu, CCIT, Visakhapatnam

AFFORDING EXCELLENT SUPPORT TO THE DEPARTMENTAL COUNSEL

Erstwhile and present Competent Authorities affording briefings to special Counsel before HC/SC- Filing of caveat giving opportunity of representation lead to confirmation of order u/s 269F- Current market value approx.- ₹ 1000 crore.

A property measuring 181818 sq. yards located in the prime area of Jodhpur was transferred by M/s Jai Marwar Co. (P) Ltd. to M/s Naveen Gruh Nirman Sahakari Samiti Ltd. in 1984 through a sale deed registered in 1986 for sum of ₹ 24,45,452/-. Since property was valued more than 15% of the registered value, notice u/s 269F was issued in 1986. Meanwhile, the Collector, Jodhpur also issued notice of acquisition of the said property under the provisions of Urban Land Ceilings Act. However the said Act was repealed in 1999 and thus the proceedings initiated by the Collector got abated.

2. After a time gap of about 14 years, proceedings were re-activated by the Department. Voluminous documents in the form of sale documents of various properties relied on by Valuation Officer of I.T. Department as well as Authorized valuer of transferee were examined. Adequate opportunity of hearing was given to both the transferor as well as the transferee. The transferee tried to justify the land value by bringing an agreement to sale entered into 5-6 years prior to the transaction and the said attempt was countered by proving it to be a fabricated document. Accordingly, order of acquisition of property u/s 269F of the I.T. Act was passed on 16-10-2002 by the Competent Authority.

3. The order of competent authority was upheld by ITAT vide order dated 25-04-2003. On appeal before the High Court also, the officer who passed the acquisition order ably assisted the Standing Counsel to counter all the objections and issues raised by the transferee. Accordingly, Hon'ble Rajasthan High Court vide order dated 28-03-2011 upheld the order of the competent authority.

4. Realising the importance of the matter, a caveat was filed before the Supreme Court. The officer who passed the acquisition order, the present competent authority as well as Standing Counsel in

the High Court went to Delhi and briefed the Addl. Solicitor General and all relevant records were made available for his perusal. Officers were present during the course of the court proceedings to effectively brief the ASG. As a result of such prompt action and effective briefing to the counsel on the facts and issues involved , Hon'ble Supreme Court vide order dated 29-07-2011 upheld the order of the Competent authority. In short, by paying sum of ₹ 18,12,270,the Department got property worth ₹ 1000 crore in today's market. This was achieved through prompt action and excellent support to the standing counsel as well as a strong and well reasoned order which formed the base.

Names of the Officers : Dileep Shivpuri, CCIT, Jodhpur, (Competent authority who passed the order u/s 269F)

Ranjeet Singh, Addl. CIT, Jaipur (present Competent authority)

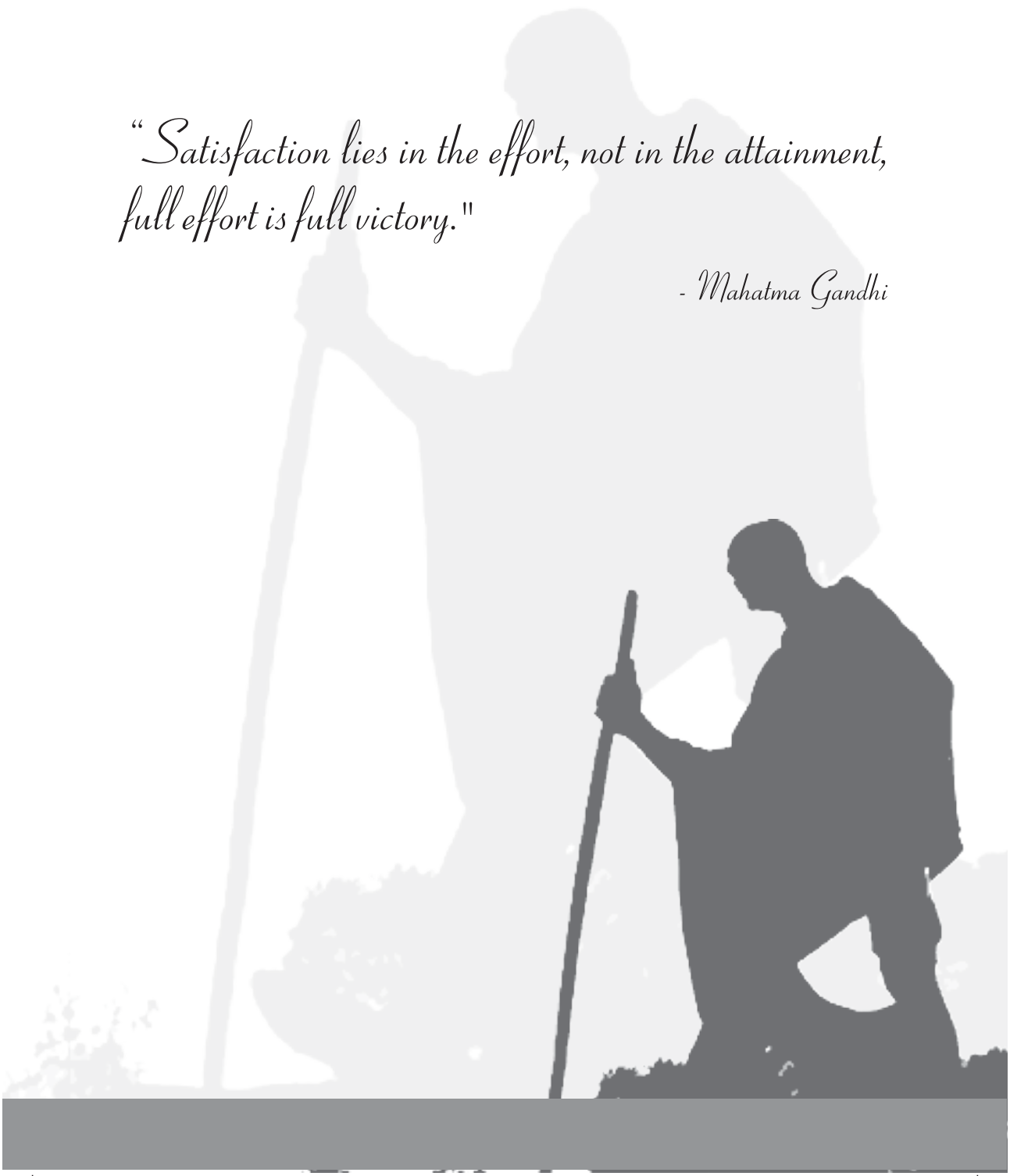
Mukesh Bhanti, Ombudsman, Mumbai (the then CCIT, Jaipur at the time of filing caveat and defending the writ petition in the Supreme Court)

Amit Chatterjee, CIT, Jaipur (Supervisory Officer at the time of filing caveat and defending the writ petition in the Supreme Court)

REPRESENTATION BEFORE TRIBUNALS, COURTS, ETC.

"Satisfaction lies in the effort, not in the attainment, full effort is full victory."

- Mahatma Gandhi



REPRESENTATION BEFORE TRIBUNALS, COURTS, ETC.

INCORRECT CLAIM OF EXPENSES AS ADVERTISEMENT EXPENSES AND DEDUCTION U/s 80 IB

Expenses on Pace Foundation- A philanthropic activity – Not deductible U/s 37(1) as advertisement expenses for 'Tyre' Industry. Tyre not being an integral part of Automobile – Manufacture of Tyres & Tubes not eligible for deduction U/s 80 IB

ACIT Vs MRF Ltd.
AY 2002-03 TO 2007-08; Date of Order : 11-03-11

A sum of ₹ 1 to 2.5 crore was spent by assessee in each assessment year mentioned above towards MRF Pace Foundation and claimed it as advertisement expenditure. AO held that it was not for the purpose of business of the assessee but was only a philanthropic activity and hence disallowed the claim u/s 37. On appeal, the CIT(A) allowed the claim. On further appeal by revenue before Tribunal, it was contended that assessee was in the business of manufacture of tyres and that training pace bowlers in the sports of cricket was not inextricably connected with the business of the assessee. If at all the assessee was doing any such service, it could only be treated as a gratuitous activity on the part of the assessee towards social welfare but it would not be allowable as deduction u/s 37 of the I.T. Act while computing its business income. ITAT after detailed discussion, confirmed the action of AO and held that the said expenditure was not incurred wholly and exclusively for the purpose of business of the assessee.

2. An important issue was regarding eligibility of deduction u/s 80IB. The AO denied the deduction since the product manufactured by the asseesse ie. tyre fell under the item "cork and other rubber fittings" of Eleventh Sch. After detailed discussion about what was "tyre" and what were its properties, Tribunal agreed with the D.R. that "tyre" was not an integral part of automobiles and instead it was only a fitting made of rubber. Assessee then contended that principle of ejusdem generic would apply and only fittings made of rubber which were similar to cork would fall under this category. In reply it was demonstrated that tyre was similar to cork as function of both are "to trap air". Considering the above arguments, the Tribunal upheld

the stand of revenue. This decision will have far reaching effect on other tyre manufacturers in the country as they are all claiming deduction u/s 80IB.

3. It was a stay granted matter wherein tax effect involved was more than ₹ 50 crore. Prompt follow up action resulted in timely collection of the demand before 31st March, 2011 itself.

Name of the Officer : Shaji P. Jacob, Sr. D.R., ITAT, Chennai

SHARE APPLICATION AND PREMIUM OF NON-EXISTENT COMPANY TAXABLE U/s 68 OF I.T. ACT

Share Capital and Share Premium by a non- existent company in a Pvt. Ltd. Company held Taxable U/s 68- Failure to prove identity & genuineness of transaction – Burden of Proof on assessee company- Decision of Apex Court in case of M/s Lovely Exports Pvt. Ltd. and M/s Stellar Investment Ltd. distinguished.

M/s Agarwal Coal Corporation Pvt. Ltd. Vs Addl. CIT
AY 2005-06 & 2006-07; Date of Order : 31-10-2011

The AO found that new share capital and share premium brought by companies namely Hindustan Continental Ltd. and Optimate Textile Industries Ltd. were non-existent and summons could not be served .Further assessee was asked to produce directors or employees of such companies along with books of account. Tt failed to do so and hence such amount was added in hand of assessee company u/s 68 of the I.T. Act. The CIT(A) confirmed these additions.

2. Before the Tribunal, the biggest challenge for revenue was to differentiate the judgments of Apex Court in case of M/s Lovely Exports Pvt. Ltd. and M/s Stellar Investment Ltd. without which the present case could be treated as covered against revenue. Hence the following arguments were placed :-

(a) The share applicant companies were found not existing at their known addresses and hence their identity was not established. Reliance was placed on jurisdictional high court decision in case M/s Rathi Finlease Ltd. (215 CTR 429) and also on full bench decision of Delhi High Court in case of Sophia Finance Ltd. (205 ITR 98).

(b) Onus/ burden to establish their identity was on the assessee and since they failed to discharge the same as neither any new address of such companies were given nor their directors/ employees and books of accounts were produced before the AO, onus remained fastened on assessee.

(c) Decision in the case of M/s Stellar Investment Ltd. would not apply as it was a public Limited Company

whereas the present case was that of private limited company. It was a material difference, as share applicants are unknown to directors in a public limited company whereas share applicants are relatives / friends of directors of Company in a Private Limited Company. Therefore burden to prove their identity in case of a Private Limited Company was much heavier

(d) Decision in case of Lovely Export Pvt. Ltd. would not apply to present case, as in that case AO did not do any investigation after receiving reply of assessee, but in present case summons and commissions were issued by AO and inspector conducted filed enquiry, through which AO came to conclusion that identity was not established.This decision was also not binding as SLP was rejected through a non-speaking order.

3. Tribunal agreed with the contentions raised by DR and confirmed the addition of Share Capital & Share Premium u/s 68 of the Income Tax Act. It made following important observations:-

(i) Registration of Companies, filing of Income Tax Return, PAN, Bank Account do not establish the identity of share applicant, as in none of these, physical verification of existence of share applicants is made. Neither the share applicants as operators of bank account nor introducers of Bank account were found. Share applicant Companies were found non-existent at all their known addresses.

(ii) Assessee did not comply with the directions of the Bench to produce any of the directors of these companies and hence it was held that such share applicants were non-existent and their identity was not proved.

(iii) Assessee is not a Public Limited Company but a Private Limited Company where shares are allotted to relatives/ friends, other known persons and therefore there should be no difficulty in producing them before the Bench. In view of this, decision in case of Stellar Investment Ltd. would not apply to the present case.

(iv) Onus was not discharged as the assessee neither

furnished correct addresses nor the creditors were produced.

(v) It could not be explained as to how the transaction materialized when the companies were not in existence.

(vi) On the decision of M/s Lovely Export Pvt. Ltd., it was observed that when share applicants were no more in existence meaning thereby that their identity was not proved, how the department could reopen their case and therefore decision of M/s Lovely Export Pvt. Ltd would not apply.

4. This decision has a wider ramification and will enable revenue in adding the bogus share capital received from paper companies.

Names of the Officers : Keshave Saxena, CIT(DR)
R. K. Choudhary, CIT
K. K. Singh, CIT, Indore

SEGMENTAL ANALYSIS FOR DETERMINATION OF ARM LENGTH PRICE

Indenting and Trading being different, segmental analysis necessary for determination of ALP – Using data relating to Comparable Controlled Transactions held permissible in the given circumstances.

Bayer Material Science Private Limited. Vs Addl. CIT
AY 2006-07; Date of Order : 16-12-2011

The main issue involved in this case was of an adjustment of ₹ 25,56,99,421/- made by TPO on account of determination of Arms Length Price of the transactions entered into by the assessee with the Associated Enterprises (AEs). The assessee had followed Trsansactional Net Margin Method (TNMM) and cost plus as Profit Level Indicator (PLI) for determining the Arms Length Price for the trading segment with the Associated Enterprises. The TPO noticed that the trading segment included indenting activity on which the assessee derived commission/incentive and the amount of turnover related to commission income was much more than the trading activity (ie. ₹ 736.54 crore of Indenting turnover as against ₹ 42.97 crore of trading turnover). TPO therefore held that the PLI of commission income from indenting business was to be separately considered for determining the ALP with the AEs and, accordingly, took into account turnover of the commission income and after allocating expenses debited in the trading segment in the ratio of turnover of the commission indenting business to the total turnvoer (Trading + indenting business), he found that the net profit margin in indenting business was 0.04% as against 9.63% in the trading segment. He also held that the TNMM applied by the assessee was not acceptable, instead comparable uncontrolled pricing (CUP) method should be adopted for determining ALP for the indenting buisness transactions with the AEs. Accordingly, he took three comparable instances under the CUP method and concluded that net pofit margin should be 5% as in comparable cases and proposed for an

adjustment of ₹ 25.55 crore. Such adjustmetn was upheld by CIT(A).

2. On appeal before Tribunal, DR contended that FAR analysis of trading and indenting activities were different and hence bench-markign should have been done separately for these activities. Tribunal held that the non segregation of the trading and indenting activity and the inadequacy of the split-up between the said activities, non furnishing of comparable data by the assessee to validate the application of TNMM to indenting activites, use of data relating to comparable controlled transactions identified by the TPO for the purposes of benchmarking was valid.

3. The important principles laid down by the ITAT in the above case are (i) in the absence of valid comparable data furnished by the assessee, the use of comparables / comparable controlled transactions for the purposes of benchmarking controlled transactions is permissible and (ii) segmental analysis (net profit margin) for each segment is necessary for determining the ALP of the transactions with the AEs.

Name of the Officer : Pravin Varma, CIT(DR), Mumbai

COMMISSION TO DIRECTORS NOT ALLOWABLE AS DEDUCTION U/s 36(1)(ii)

Bonus/Commission paid to Directors of Assessee Company not allowable as Deduction U/s 36(1)(ii) or U/s 37(1).

M/s. Dalal Broacha Stock Broking P.Ltd. Vs Addl. CIT
AY 2006-07; Date of Order : 22-06-2011

In this appeal, the issue was about allowability of commission expenses u/s 36(1)(ii). As there were contrary decisions on this issue by the coordinate benches, a Special Bench was constituted to adjudicate the issue.

2. In this case, the company had paid commission of ₹ 1.2 crore to 3 to its employee Directors which was disallowed by the AO u/s 36(1)(ii) of the I.T. Act. Clause (ii) of sub section (1) of section 36 of the Income Tax Act, 1961 allows deduction of any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission. It was argued by the assessee's Counsel that the above section was not applicable for the commission payment and alternatively it was argued that the payment made was allowable u/s 37(1). DR in turn argued that payment of commission was a device adopted by the assessee obviously with an intention to avoid payment of taxes and it was paid in lieu of the dividend. In fact, dividend should have been payable by the company on which dividend distribution tax should have been paid and to avoid the payment of income-tax and dividend distribution tax, the company had paid huge amount in the garb of commission to its Directors. Reliance was placed on the judgment delivered in the case of Laxmandas Sejram Vs. CIT reported in 54 ITR 763 (Guj) which was later followed by the Hon'ble Apex Court in the case of Shahzada Nand & Sons vs. CIT (108 ITR 358). Considering the above, Special Bench dismissed the appeal of the assessee wherein the total commission payment for 4 asst. years (AY 2005-06 to 2008-09) came to about 5.4 crore.

3. This decision will have impact where closely held companies are resorting to avoid payment of tax in the garb of commission payment to its Directors.

Name of the Officer : Dr. B. Senthil Kumar, CIT(DR), Mumbai

NETTING OF INTEREST RECEIVED FROM AND PAID TO I.T. DEPTT. NOT ALLOWED

Interest paid by an Assessee to I.T. Department cannot be netted while assessing the Interest received from I.T. Department.

DCIT Vs Sandvik Asia Ltd.
AY 1992-93; Date of Order : 02-06-2011

During the year, assessee received interest on income tax refunds. Assessee claimed set off of interest paid to I.T. Department on un-paid taxes while offering such interest income for assessment. AO rejected such claim since interest paid par-takes the character of taxes which is not an allowable deduction whereas interest received on I.T. refunds is similar to interest on any other deposits. On appeal, CIT(A) allowed the claim of the assessee. On further appeal by Department, the members of ITAT differed in their opinion and finally the matter went before Third Member of ITAT.

2. During the course of hearing, D.R. argued that the principle of netting can be made only as per the statutory provisions and there is no provision in the I.T. Act to allow interest paid on un-paid income tax. Principle laid own by the Apex Court in the case of V. P. Gopinathan was also relied upon to counter the claim of netting on the principle of real income. Relying on the decision of Hon'ble Supreme Court in the case of Bharat Commerce and Industries Ltd., it was argued that interest paid on delay / default in payment of income tax was not an allowable deduction u/s 36(1)(iii) as well as u/s 37 of the I.T. Act. He distinguished various decisions of ITAT on the very same issue which were against the Department and drew parallel from various decisions of Apex Court and Bombay High Court to win this appeal. This being a third Member decision, has all India ramification and will have precedence over various other decisions of Tribunals.

Name of the Officer : Hareshwar Sharma, CIT(DR), Pune

LTCG NOT EXCLUDIBLE FROM THE BOOK PROFIT U/s 115JB

Long Term Capital Gains on sale of shares to 100% subsidiary - Though exempt under the regular provisions of I.T. Act, not excludible from the book profit u/s 115JB unless P & L A/c having not been drawn in accordance with Companies Act or incorrect Accounting Policies having been adopted.

Rain Commodities Ltd. Vs DCIT
AY 2004-05; Date of Order : 2.7.2010

The assessee had sold its assets to its subsidiary company and credited the profit of ₹ 149,77,46,577 to its P&L account. Such profit was claimed to be exempt u/s 47(iv). The assessee claimed that it should be excluded from book profit for the purpose of sec. 115JB also. In support, assessee placed reliance on various Tribunal decisions. Assessing officer as well as CIT(A) rejected the contention of assessee. On appeal before Tribunal, a Special bench was constituted.

2. The DR argued that section 115JB is a self-contained code that works in a sphere independent of the regular provisions of the IT Act and that it seeks to tax 'book profit' and not 'total income' so that the concept of 'income' is not relevant for it. Placing reliance on the propositions laid down by Hon'ble supreme Court in the cases of Apollo Tyres and HCL Comnet, it was contended that the AO had to accept the authenticity of the accounts maintained by the company in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, which were certified by the auditors and laid before the company at the annual general meeting and he could not go beyond the net profit shown in the profit and loss account prepared as such , except for the adjustments permissible under the Explanation. It was submitted that such transactions are necessarilly required to be disclosed in the profit and loss account by clause 2(b) of Part II and clause 3(xii) of Part III of Schedule VI to the Companies Act and there being no reference to section 47(iv) in the Explanation, the assessee was not entitled to any such deduction from net profit. Reliance was also placed on the decisions of various High Courts.

3. After considering the argument of both parties, Tribunal held

that the AO could alter the "book profit" only in two circumstances ie. (a) if the P&L A/c is not drawn up in accordance with Parts II & III of Sch. VI to the Companies Act or (b) if accounting policies etc. have been incorrectly adopted for preparation of the P & L A/c. It was also held that Parts II & III of Schedule VI to the Companies Act do not permit exclusion of capital gain from the P & L A/c and that the capital gains was exempt u/s 47(iv) did not mean it could be excluded from the "book profit" because no such exclusion was permitted under the Explanation to s. 115JB and even exempt income could be taxable under MAT .

4. This being a decision of Special Bench will have all India ramification.

Name of the Officer : Vasundhara Sinha, CIT(DR), Hyderabad

NON AVAILABILITY OF DEDUCTION U/s 80 IB AND OBJECTION TO SERVICE OF NOTICE U/s 143(2)

Deduction U/S 80IB(10) can't be allowed on adjoining flats sold to the same family, even though each admeasuring less than 1500 Sq. Ft.- Plea of non-service of notice U/S 143(2) can't be raised after a gap of five years -

Thistle Properties Pvt. Ltd. Vs ACIT
AY 2003-04; Order dated 01-04-2011

Thistle Properties Pvt. Ltd, Mumbai was engaged in the business of development of residential units. In its return of income for AY2003-04, the assessee claimed deduction of ₹ 80,16,478/- u/s 80IB(10) .In course of assessment, the AO found that though each individual unit was less than 1500 sq. ft, it was only together with the adjoining unit it constituted a full-fledged flat. He also found that each adjoining unit was sold to the same buyer and that in no case was one individual unit sold separately as such. The interiors of the two units were also such that one unit individually was not a viable proposition for a flat. Accordingly, the AO disallowed the deduction claimed u/s 80IB(10). When the matter went to CIT(A), certain further enquiries were made by the CIT(A) and by the AO in course of remand proceedings. Based on the findings of the enquiries and the remand reports, the CIT(A) strengthened and upheld the action of the AO on the ground that the assessee had not fulfilled the condition laid down in Section 80IB(10)(c) in so far as the residential flats constructed and sold by the assessee had a built up area of more than 1500 sq.ft.

2. On appeal before ITAT, assessee firstly challenged the validity of assessment on the ground of non-service of notice u/s 143(2). Relying on various decisions, it was contended that service of notice was a mandatory requirement, there could not be any waiver of the notice and that Section 292BB inserted by the Finance Act, 2008 was only prospective in nature. Therefore, it was prayed that since Revenue had failed to prove the factum of service of notice u/s 143(2),

the impugned assessment was liable to be quashed. In reply, DR filed a copy of the order sheet of assessment proceedings as well as various correspondence with the assessee to prove that the assessee had participated in the assessment proceedings. In such circumstances, it was submitted that the service of notice was valid, placing reliance on various decisions. Relying on the decision in the case of CIT v. Abdul Khader Ahamed 285 ITR 57 (Ker), the DR urged that the assessee should not be permitted to raise this issue at this belated stage. Finding merit in the arguments of the DR, the Bench held that having chosen neither to raise any objection before the AO nor to agitate the issue before the CIT(A), the assessee could not press this issue before the Tribunal after a gap of 5 years because at that point of time, it might not be always possible for Revenue Authorities to show the proof of service of notice.

3. Regarding disallowance of claim of deduction under Section 80IB(10), AR of the assessee argued that as per the approved plan and completion certificate, each flat was less than 1500 sq. ft. and he tried to explain that the flats were not complimentary but independent. He claimed that each flat had independent entrance, kitchen and bathroom and that the adjoining flats had been sold to different persons although from the same family. In reply, DR invited attention to the facts that the assessee had constructed about 100 flats but in all the cases, two adjacent flats had been sold to the same buyer and/or family; that there was only one entry to every two adjoining residential units and that spot verification of the lay-out of the two adjacent residential units showed that these had been constructed to complement each other. It was contended that there was no evidence to establish that necessary structural changes in converting the two residential units into one residential unit had been undertaken by the respective flat owners. The DR further pointed out that there was only one electricity meter per set of two adjoining flats. Spot enquiries conducted by the Department further revealed that in one of the flats, kitchen was shown only on paper as no drainage pipe was there. This further showed that the assessee had manipulated the sanctioned plan for the purpose of claiming deduction u/s 80IB(10) of the Act. Since all these crucial facts were brought on record, the Bench agreed

with the arguments of the DR and held that all the 104 flats had been sold in adjoining pairs to 52 families and such pair of adjoining flats were meant to serve as only one unit and that these were originally planned, designed and constructed as a single unit.

Name of the Officer : Sunil Kumar Singh, Sr. A.R., ITAT, Mumbai

ESSENCE OF THE BUSINESS RELEVANT TO DETERMINE ELIGIBILITY U/s 80 HHE

Processing of data of Clinical Research and Environmental Assessment studies - Not activities of data processing, and cannot be seen as an instance of IT enabled Services -Does Not Qualify as 'Customised Electronic Data' within the extended meaning notified by the CBDT Circular dt 26-09-2000 - Income from the export of such data/product is not eligible for deduction u/s 80HHE.

Vimta Labs Ltd. Vs ACIT
AY 2002-03 to 2004-05; Date of Order : 12-11-2010

The assessee, a company engaged in Clinical Research and Environmental Assessment, claimed deduction u/s 80HHE. The Company claimed that field data collected was processed on computers using complex software, as a result of which the output supplied to its clients fell within the description of Data Processing. Since Data Processing was one of the specified activities in the field of IT Enabled Services notified by the CBDT Circular No. 890(E) dt. 26-09-2000 to be 'Customised Electronic Data', it was contended by the company that it was eligible for the deduction. Assessing Officer in turn denied the deduction holding that the data processing was incidental to the primary business of clinical research and drug bio-equivalence testing on population samples. The CIT(A) upheld the addition noticing that data processing was not the primary business activity of the company.

2. Before the ITAT it was argued by the assessee that if the huge volumes of data generated were to be meaningful, they had to be processed with more sophistication than traditional clinical data processing and that clinical trial information had to be correlated across various parameters. Distinguishing the various cases relied upon by the assessee, it was argued for the Dept that the company was basically in the business of clinical research and that use of specific tools could not determine the basic nature of the business activity. Data was locally generated in the core business activity. Unlike

traditional ITeS, data was neither received nor procured from abroad. The core personnel of the assessee were trained in Medicine and Engineering, and not in Software engineering or data processing. By way of an analogy, it was argued that a doctor using a computer or computer aided diagnostics did not cease to be primarily a doctor. Reliance was also placed on several decisions on the need for strict construction in matters of granting exemptions. Considering the same, Tribunal dismissed the appeal by the assessee by holding that what was relevant was the essence of the business, and not the presence of computers in the business.

Names of the Officers : V. Srinivas, CIT DR.
K.V.N. Charya, Sr. AR., Hyderabad

STATUS OF CASES PUBLISHED IN 'LET US SHARE'-IV

"Get the facts or the facts will get you. And when you get them, get them right or they will get you wrong "

- Thomas Fuller

STATUS OF CASES PUBLISHED IN 'LET US SHARE'-IV

Sr. No.	Name of the case	Category	Volume-Page	Particulars of the action confirmed	Name of the Officers
1	M/s. Haldyn Glass Ltd.	Assessment Order	Vol-IV/P 81-83	Appeal is pending before CIT(A)-17, Mumbai. Out of the total demand of ₹ 10,54,70,725/-, ₹ 9,34,86,455/- has been collected.	Dilip Prasad, ITO 8(2)-1, Mumbai
2	Shri Mohammed Rafi Syed	Appeal Order	Vol-IV/P 95-97	The CIT(A)-III, Kochi has confirmed the addition of ₹ 2,25,26,235/- and tax of ₹ 1.20 crore has been collected till date.	S. Mohd. Mustafa, ADIT(Inv.), Trivandrum

Sr. No.	Name of the case	Category	Volume-Page	Particulars of the action confirmed	Name of the Officers
3	Smt. Harjinder Dhiman		Vol-IV/P 77-78	The appeal is pending before CIT(A), Chandigarh and recovery of ₹ 43,55,166/- was made by way of attachment of bank account.	Subir Chaterjee, Jt.CIT, Range-III, Chandigarh
4	M/s. Murti Realtors P. Ltd.	Appeal Order	Vol-IV/P 87-88	On major issue the CIT(A) has decided in the favour of department. Tax to the tune of ₹ 4.87 crore has been collected till date.	B.G. Reddy, CIT(A)-I, Pune

THE ROAD AHEAD

" You must be the change you wish to see in the world"

- Mahatma Gandhi

THE ROAD AHEAD

The mechanism for compiling the Best practices / orders of the Department, in the form of "Let Us Share", is already in place. However, some suggestions have been received from the various evaluation committees, senior officers of the Department and the Editorial Board. On the basis of these suggestions following parameters have been determined for the future volumes :-

- Time period for consideration of practices / orders would be two calendar years on a rolling basis e.g. for the volume to be released in the year 2013, practices / orders passed in the calendar year 2011 and 2012 would be considered and for the volume to be released in 2014, practices / orders passed in 2012 and 2013 would be considered.
- The Regional Evaluation Committee (REC) will be a standing committee with the Cadre Controlling CCIT as the convener and the Addl. CIT (Hq.)(Tech. / Coord.) being the Member Secretary of the REC. The constitution of the REC for the year should be notified by the Cadre Controlling CCIT in the first month of the calendar year. It is expected that all assessing / appellate officers will send their good orders immediately to the Member Secretary who will be entrusted with the duty to put all these orders received by him in each quarter before the REC after it is formed by the convener. The convener will form the REC which should include DIT(Inv.), CIT(DR), CIT(TDS) under his charge as ex-officio members. He can co-opt more officers as members of the Committee.
- The Addl. CIT(Hq.)(Tech/Coord.) in the Cadre Controlling CCIT office will act as the member-secretary of the REC co-ordinating with DIT (PR, PP&OL), the nodal agency for the compilation. Member Secretary should issue regular reminders to ensure that quality cases are duly reported. The REC should meet on quarterly basis and submit its report to the convener.
- REC for evaluating International Taxation & Transfer Pricing cases will be formed by DGIT (Intl. Taxation) in the first month of the calendar year. This REC will consider assessment

orders, appellate orders, DRP orders & representation before AAR and shall follow the same procedure as that of other RECs.

- REC, while forwarding the list of selected practices / orders , would ensure (a) that synopsis of not more than 1000 words for each entry; (b) copies of relevant orders and supporting orders (CIT Appeals' orders / ITAT orders); (c) a note on the evaluation process and the evaluation sheet of all the practices / orders received by the committee; (d) complete names with designations of all the officers associated with the orders; (e) the status of the appeals, if any, against that order, are enclosed.
- While selecting the assessment orders, the REC should give due weightage to the status of the orders in the first appeal. The revenue effect of the assessment orders must also be mentioned in the synopsis.
- In all search & seizure and survey cases, apart from the pre-search enquiries, modus operandi and the search procedure, the result of post-search investigation must also be mentioned. It will not be enough to mention the amount surrendered, actual tax paid must also be mentioned.
- Incomplete submissions will not be forwarded to the National Evaluation Committees.
- National Evaluation Committees would ensure lucidity of write-ups, Clarification, if any, required on fact or legal issues would have to be sorted out at this stage by contacting the original authors.
- The evaluation sheet would be enclosed by the NECs while forwarding the short listed practices / orders to the DIT (PR, PP&OL).
- The Editorial Board would look at the overall compilation for ensuring cohesiveness, clarity and quality of the practices / orders. The editorial board may give suggestions for fine-tuning of the process.

The time lines to ensure the release of the compilation during the annual CCIT / DGIT conference would be as follows :

S. No.	Action Points	End Date
1	Initiation of Process through an OM by DIT (PR,PP&OL)	30th Nov.
2	Formation of RECs	31st Jan
3	Intimation to DIT (PR,PP&OL) regarding the formation of RECs mentioning the names & designations of all the members and contact details (phone numbers - mobile & land line and email id) of the Member Secretary. (also within 15 days in case of change in constitution)	15th Feb
4	Submission of orders / practices by officers/ officials to the REC	By 15th of every month
5	Quarterly Evaluation by RECs	30th April, 31st July, 31st Oct & 31st Jan
6	Formation of NECs / Editorial Board	15th Jan
7	Finalization of cover design, technical specification	31st Jan
8	Forwarding of the selected entries by RECs to DIT (PR,PP&OL)	15th Feb
9	Issue of Tender	15th Feb
10	Checking by DIT (PR,PP&OL) to ensure availability of all the relevant information/ documents regarding entries forwarded by RECs	25th Feb
11	Forwarding to NECs	28th Feb
12	Finalization of award of tender	15th March
13	Evaluation by NECs and submission of selected cases/practices to DIT (PR,PP&OL)	25th March
14	Forwarding of the selected cases by DIT (PR,PP&OL) to the Editorial Board	31st March
15	Finalization of the content by the Editorial Board	10th April
16	Finalization of design / layout by Editorial Board	10th April
17	Approval of compilation ready for printing and handing over to DIT (PR,PP&OL)	20th April
18	Handing over to approved printer for book & certificates of merit.	25th April
19	Book ready for release	10th May
20	Release of public version of Let Us Share and Distribution of Certificates of Merit	25th May or 1st week of June

CREDITS

" I can spot empty flattery and know exactly where I stand. In the end it's really only my own approval or disapproval that means anything "

-Agnetha Faltskog

CREDITS

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