For Departmental Use Only

Let us Share

A Compilation of Best Practices & Orders

INCOME TAX DEPARTMENT

"Thousands of candles can be lighted from a single candle, and the life of the candle will not be shortened."

- The Buddha

For Departmental Use Only

LET US SHARE

A Compilation of Best Practices & Orders
of the Income Tax Department

Vol. VI 2013

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

पी. चिदाम्बरम
P. Chidambaram

वित्त मंत्री, भारत
नई दिल्ली-110001
FINANCE MINISTER
INDIA
NEW DELHI-110001

MESSAGE

I am pleased to know that the Income Tax Department is bringing out the sixth volume of its publication 'Let us Share' showcasing the best efforts of its personnel.

The world is globalizing rapidly, backed by a continuing information and communications revolution. The taxman's job is an unenviable one. He has to re-equip himself with new skills constantly in order to remain at the cutting edge. Direct tax laws of the country are complex and technical. Besides, they are also evolving constantly through legislative amendment as well as through judicial interpretation. In this context, sharing and dissemination of knowledge and expertise which exist within the department are absolute imperatives.

India has remained one of the fastest growing economies of the world, even in the face of an extremely challenging external environment. However, we cannot afford to rest on past laurels. The Government has launched a series of anti-poverty and empowerment programmes. Revenue collection has to keep pace with the social objectives of the Government.

The Government is committed to the objectives of bringing clarity in tax laws, a stable tax regime and a non-adversarial tax administration which ensures taxpayer services of the highest quality. However, policy can only be as good as its ground level implementation. I am confident that this latest volume of 'Let us Share' will go a long way in equipping the personnel of the Income Tax Department with the skills necessary to translate the policy objectives of the Government into reality on the ground.

(P. Chidambaram)

जे. डी. सीलम
J. D. Seelam

सत्यमेव जयते

वित्त राज्य मंत्री
(राजस्व)
भारत सरकार
नई दिल्ली-110001
MINISTER OF STATE FOR FINANCE
(REVENUE)
GOVERNMENT OF INDIA
NEW DELHI-110001

MESSAGE

I am pleased to learn that Income Tax Department is publishing the sixth volume of "Let Us Share" which is a compendium of the orders and information relating to the Department.

Kosha moolo dandah ("Treasury is the backbone of administration")-is the motto of the Income Tax Department. The Job of the taxman first and foremost is to collect revenue which sustains the state and enables it to undertake activities for the welfare of its citizens. This job, however, has to be accomplished with efficiency, professionalism and responsiveness. Setting up of Centralised Processing Centres for electronic processing of tax returns, establishment of call centres to for taxpayers' queries, and setting up of *Aayakar Seva Kendras* ('ASK' centres) under the aegis of *'Sevottam'* make the Department citizen friendly.

Sharing of information and best practices is all the more necessary for tax Administrators especially in view of challenges of taxation in a global economy. I am confident that the knowledge and expertise shared and gained through this latest volume of *'Let us Share'* will go a long way in enhancing efficiency in tax collection and in improved delivery of taxpayer services, leading to greater efficiency in revenue collections with minimum intrusion. I extend my best wishes to the Department on the occasion of this publication.

New Delhi
Dt. 14.08.2013

(J. D. Seelam)

सुमित बोस
सचिव
SUMIT BOSE
SECRETARY

सूचना का अधिकार

सत्यमेव जयते

भारत सरकार
वित्त मंत्रालय
राजस्व विभाग
नार्थ ब्लाक, नई दिल्ली-११०००१
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MESSAGE

I am glad to know that CBDT is bringing out the next volume of its annual compendium of best practices, initiatives and orders. This publication is one of the key pillars of its knowledge management strategy.

2. Direct tax revenues have registered an impressive rate of growth in the recent years. This has been achieved in the face of a difficult global environment which, inevitably, has had an adverse impact on all domestic economies in a globalizing world. Revenues from direct taxes are now the largest source of revenue to the Union Government. Large revenues are required to keep pace with the ever-growing resource requirements of an emerging economy with an emphasis on equity and inclusiveness.

3. Technology has been a game-changer over the last two decades. It has been the prime-mover of global economic and commercial integration. Traditional "nuts and bolts" business methods are giving way to new and more intangible ones. Against this backdrop, the tax departments have to update and hone their skills on a regular basis.

4. It is said "The best way to have a good idea is to have a lot of ideas" I am sure this latest volume of *'Let us Share'* will bring many new ideas to the table, besides helping disseminate information about the good work done by the officers and personnel whose efforts have been recognized in the volume.

5. My best wishes for the success of Volume-VI of *'Let us Share'*.

(Sumit Bose)

Sudha Sharma
Chairperson, CBDT

सत्यमेव जयते

केन्द्रीय प्रत्यक्ष कर बोर्ड
राजस्व विभाग
वित्त मंत्रालय
नार्थ ब्लॉक, नई दिल्ली-११०००१
Central Board of Direct Taxes
Department of Revenue
Ministry of Finance
North Block, New Delhi-110001

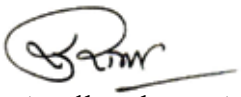
MESSAGE

'*Let us Share*' is now into its sixth volume. It has had quite a remarkable journey from the time the first volume was published in 2009. By now, the publication of this annual compendium of best practices, initiatives and orders has itself become a 'best practice'.

As we proceed on this journey in this financial year, the Department stands at a historical turning point. The proposals for restructuring the Department have met with the approval of the Union Cabinet. Officers and personnel of the Department can now look forward to better working conditions and improved career prospects. I have no doubt that this will inspire them to redouble their efforts to garner more revenue for the Government, even as they constantly strive to deliver better quality taxpayer services. The coming months will certainly see many changes in the way we work in the Department.

The taxman's job has never been more difficult than today. Technology is constantly altering the world as we know it. The business environment is ever-changing, as are the modes of transacting business. Money moves seamlessly across the world in intangible forms. In this scenario, we have to adapt constantly lest we get outdated. In this context, knowledge-sharing assumes great significance. We must learn from the experience of one another in order to avoid wasting time in re-inventing the wheel and to strengthen ourselves as a force.

I am confident the this latest volume of '*Let us Share*', like the earlier volumes, will help narrow the gap between what we know and what we need to know in order to fulfil our responsibilities efficiently, professionally, ethically and humanely in a highly dynamic operating environment.



(Sudha Sharma)

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डॉ. (श्रीमती) पी. एस. बेहुरिया
Dr. (Mrs.) Parvinder Sohi Behuria
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
Central Board of Direct Taxes
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FOREWORD

It gives me great pleasure to present to you the Sixth volume of '*Let us Share*'. This latest volume comes to you at the momentous juncture when the Department is about to embark on an ambitious exercise in administrative restructuring aimed at increasing functional efficiency, delivering better taxpayer services and, at the same time, ensuring better career prospects for its personnel.

The one lesson from the long history of evolution is that those who learned to collaborate and innovate most effectively have prevailed. '*Let us Share*', the Income Tax Department's annual compendium of best orders, initiatives and practices, archives work which epitomizes the qualities of collaboration and innovation. Besides, it also serves to recognize quality work, and thereby, to motivate the workforce to strive constantly to do better and to excel in various fields of endeavour.

I am well aware that the material included in this volume, like its predecessors, is not exhaustive but merely representative of the large volume of good work generated in the Department each year. I have no doubt that in the years to come, this endeavour in knowledge sharing and collaboration will gain further momentum, thus making the task of selection even harder for the evaluation committees functioning at various levels.

On the occasion of the publication of the Sixth volume of '*Let us Share*', let me congratulate not just those whose work has found a place in this volume, but also all those who referred their orders and initiatives to the evaluation process. I have no doubt that the

enthusiasm and motivation they have displayed will see their future endeavours duly recognized in later volumes of the publication.

I also take this opportunity to commend the work of the regional and national evaluation committees which have painstakingly guided the multi-level evaluation process through its various stages. Congratulations are also due to the Editorial Board which has strived hard to ensure accuracy, attractiveness and crispness of the volume and its contents.

I have no doubt that this volume of '*Let us Share*' will be received by its readers with even greater enthusiasm than its predecessors.

Dr. (Mrs.) Parvinder Sohi Behuria
Member (R), CBDT

यू. के. शुक्ला
U. K. Shukla

सत्यमेव जयते

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

ACKNOWLEDGEMENTS

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

2. Income Tax Department has taken many initiatives to keep abreast of the changing economic scenario and aspirations of the people of the country. On the one hand it has emerged as top contributor to exchequer and on the other hand it has also been successful in providing better services to the taxpayers. In that way, it has been successful in fulfilling its obligations as tax collector as well as service provider.

3. In today's world, innovation is the key to success and there is no doubt that the achievements of our officers in this respect are unmatched. Despite many constraints, their innovative investigation skills have resulted in framing so many notable assessment orders which have been included in this volume. It is hoped that such good work will continue and new milestones will be achieved in future.

4. 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.

5. The Editorial Board headed by Shri P. R. Sethi, CCIT-III, Chennai has done an excellent job of editing and compiling the entire volume, 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. I convey my sincere thanks to the Editorial Board for an assignment professionally executed.

6. Shri R. M. Garg, DIT (PR, PP&OL) and his team deserve credit for piloting and bringing out this volume in time.

7. I would like to place on record a special note of gratitude to Dr. Sudha Sharma, Chairperson and Dr. Parivinder Sohi Behuri, a Member (R), CBDT who were constant source of inspiration for the entire team.

U. K. Shukla
Director General of Income-Tax (Admn.)
Date: 12th September, 2013 New Delhi

प्रदीप आर. सेठी
Pradeep R. Sethi

सत्यमेव जयते

मुख्य आयकर आयुक्त-३, चैन्नई
Chief Commissioner of Income Tax-3
Chennai

From The Editorial Board

It is with great pride that the Editorial Board brings to you this latest volume of 'Let us Share'. As in the past, the items included in this volume have been selected from amongst dozens which were referred to the Regional and National Evaluation Committees.

As readers of *'Let us Share'* are well aware, two different versions of the compilation are released each year: a full version (like the present one) which is meant only for Departmental use, and a sanitized version for the general public, from which any details which could identify the individuals and entities involved are carefully excluded.

The publication of *'Let us Share'* serves many objectives at the same time: sharing of knowledge and experience, sharpening of skills, recognizing good performance, archiving original initiatives, enhancing transparency, and bringing about greater standardization in practices and processes, among others. No doubt, a contrarian view also exists. It may so happen that an order included in *'Let us Share'* may subsequently get reversed in appeal. Should we then wait for legal remedies to run their full course before an item is included in *'Let us Share'*? It may take well over a decade for an order passed by an assessing officer to attain finality after all the legal remedies available to the taxpayer have been exhausted. By then, the underlying issue, which was a subject of active debate when the order was first passed,

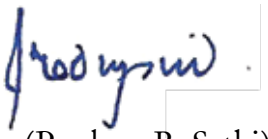
may itself have been rendered obsolete by subsequent changes in law, accounting practices, business environment or business practices. Sharing information on such outdated issues surely could not serve much useful purpose. One of the illustrative criteria for evaluation by the Committees is consideration of only assessment orders where relevant issues have been confirmed in first appeal or the taxpayer has not appealed against the issues. This may be a good alternative, especially since the evaluation process consists of competent panels and is multi-layered.

It has been a pleasure for the editorial team to work on this volume. Apart from gaining new perspectives on existing issues, it was particularly heartening to take note of original initiatives such as the painstaking efforts undertaken by one CCA region to bring out a voluminous book on issues frequently encountered by assessing officers, efforts made by the officers of the investigation wing in one city to access nation-wide vehicle registration data to assist in its intelligence and investigation work, the extraordinary efforts made in a mofussil Range to safeguard immovable properties acquired by the Department over the years in recovery proceedings, the initiatives launched by a DTRTI to give brand-identity to its training programs, and practical, low-cost HR and knowledge management mini-initiatives undertaken at NADT with the assistance of Officer Trainees.

The members of the Editorial Board wish to place on record their gratitude towards CBDT for giving them the opportunity to be associated with this project and for their constant inspiration and guidance. Our thanks are also due to the officers and staff of the Directorate General (PR, PP & OL) for their unstinting support in bringing the project to fruition. The publishers of the book have worked overtime against a tight schedule to ensure timely publication of this volume. For this, we owe them a debt of gratitude. The Editorial Board is especially thankful to the young artists whose artwork appears on the chapter separators in this volume. Above all, it is the

officers and personnel of the Department who have done meritorious work, whether or not they could finally find a place in the volume, who have contributed to the success of the project. Our thanks are due to each one of them.

Finally, the Editorial Board of *'Let us Share', Vol-VI* expresses the confidence that the readers of this volume will find its contents interesting, educative, and of practical value and imbibe a competitive spirit to perform even better qualitatively in all spheres of work.



(Pradeep R. Sethi)
Chairman, Editorial Board

Date: 22 July 2013

Painting by: Mohit Manal, Age-12, School-R.P.V.V., Surajmal Vihar, Delhi

CITIZEN'S CHARTER

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 Income Tax Department 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 (b) other returns	 6 months 9 months
2.	Issue of refund including interest from proceedings other than section 143(1) of the I.T. Act	1 month
3.	Decision on 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

Sl. No.	Key Services	Timelines (From the end of the month in which return/ application is received/ cause of action arises)
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
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.

Painting by: Dinesh Singh, Age-14, School-P.C.R. Sarvodaya Bal Vidyalaya, Pkt-II, Mayur Vihar, Ph-I, Delhi

BEST PRACTICES/INITIATIVES

BEST PRACTICES / INITIATIVES

PAGE NO.

NADT: KNOWLEDGE MANAGEMENT PORTAL

The NADT has developed a Knowledge Management portal entirely with in-house expertise of Officer Trainees.

For the NADT, knowledge is a tool of the trade. The Academy conducts a large number of training programs, including in-service and outreach programs, apart from the flagship induction training programs for IRS probationers. Some of the very best minds within and outside the service deliver lectures at the academy. Huge amount of knowledge and information is generated on a range of subjects in these training programs, thus contributing to a large reservoir of knowledge. To confine the benefits of this large body of knowledge only to the direct participants of the programs would amount to underutilizing its immense potential as this huge cache of knowledge and information would remain outside the reach of field officers and personnel who could make effective use of it.

2. With the above objective in mind, a unique initiative named "NADT-KMS" (i.e., NADT-Knowledge Management System) was launched at NADT with in-house expertise. Under NADT-KMS, the training resources of induction training, in-house training and outreach training programs of NADT and the Direct Taxes Regional Training Institutes (DTRTIs) were compiled, classified and hosted on a web platform. Information is collated in different formats varying from Power Point Presentations, PDF documents, MS Excel files, MS Word documents etc. The learning resources are uploaded according to the name of the course conducted by the NADT/ DTRTI. Induction-training material relating to different batches from the 62nd to the 65th was organized subject-wise and section-wise for each batch. The subject covered varied from Income-tax, Accounts, Business Laws, and Information Technology to Investigation Techniques etc. The classification can be changed as per requirement.

3. Access to the portal is restricted only to Departmental personnel. The portal also provides access to faculty members (including visiting faculty) to add and update the material.

4. The project was conceived, planned and executed in-house by the faculty of NADT with the help of tech-savvy Officer Trainees (OTs) of 65th Batch of the IRS. As the portal was developed in-house, costs incurred were minimal, largely confined to the portal registration charges apart from intangibles such as man-hours spent by the members of faculty and the OTs.

5. The portal was launched on 4th January, 2013 by Dr. Poonam Kishore Saxena, Chairperson, CBDT.

Names of the Officers: Amar Gahlot, OT (65th Batch)
A. Mukherjee, AD (Systems)
Rajkumar Ghosh, Jt. Director
R. Ravichandran, Addl. DG (Trg.)
Ujjwal Choudhary, DG (Trg.)

NADT: IRS 66 PORTAL

The NADT has set up a web portal for gathering information on Officer Trainees (OTs) joining the Academy for induction training. Gathering information regarding academic background, hobbies and interests, areas of strength etc. of the target population, which is a critical input in training has so far been a challenge for the Academy. Such information, running into over 100 fields, was being collected after the OTs arrived at the Academy, thus leaving limited time to analyze the information and put it to good use. To overcome this problem, the Academy, with in-house efforts, developed a portal called "IRS 66". Prospective IRS Officers were given basic information about the NADT, joining instructions etc., and were asked to provide their profile information as well as details of their arrival etc. on-line in the first week of December, well before they were due to join the Academy. This effort, which was conceived, designed and developed in-house, ensured not only smooth and error-free reception of OTs at the Academy, but also greatly facilitated analysis of profile information in order to determine training needs.

Names of the Officers: Amar Gahlot, OT (65th Batch)
A. Mukherjee, AD (Systems)
R. Ravichandran, Addl.DG-II
Ujjwal Choudhary, DGIT(Trg),
NADT

DTRTI AHMEDABAD: INCREASING THE EFFICACY OF TRAINING

The DTRTI, Ahmedabad has taken a series of innovative measures to bring greater professionalism into training and for building and enhancing brand value.

The Direct Taxes Regional Training Institute (DTRTI), Ahmedabad has come up with a series of innovative methods to make its training programs more efficient, effective and interesting. The following are the key highlights of the innovations introduced by the RTI:

Branding :

2. With the objective of enhancing awareness, easy recall, standardization and loyalty in the minds of the trainers and the trainees, all induction and orientation programs have been given brand names and logos which convey the spirit behind the particular program. Some of the brand-names and logos are mentioned below:

Zero-based Course Design:

3. Success of training programs depends in a large measure on the design of the course. Faculty members are asked to rethink the contents of training programs afresh beginning with a clean slate each time instead of merely replicating the contents of last year's program. Informal discussions are held with the target population to ascertain their requirements and suggestions.

Entry and Exit Tests :

4. Entry and exit level tests are conducted for all induction and orientation programs to gauge the efficacy of the inputs and ensure commitment and interest of the participants.

Innovative Training Methods:

5. Book keeping and accounting basics are taught through a step by step process called 'Program Learning to Book-keeping' which has proved to be highly effective and popular. Techniques such as 'Role-play', 'Gallery walk' etc. are used where high degree of trainee involvement is required. Recap through daily diary, crossword puzzles based on the I-T Act and 'Broken Square Technique' are some of the other engaging techniques used.

Just-in-time Training :

6. Training is most effective when it is timely. The DTRTI ensures that training programs are mounted for newly promoted personnel with minimum time lag between promotion and training. Two back-to-back programs mounted for newly promoted ITOs and the program for JCsIT of Gujarat, Rajasthan and Maharashtra organized within a month of their promotion was greatly appreciated by the trainees.

Need-based training programs :

7. The DTRTI mounted training programs based on the felt need of the field formations, including ITD workshops for officers of

Gujarat and Rajasthan, special workshop for TDS wing. The course contents of these programs were finalized in extensive consultations with the trainee population.

Responsiveness :

8. The DTRTI has taken the initiative of taking into account the requirements and expectations of the participants into account through a mid-program feedback regarding the contents of the session in order to make suitable changes and adjustments to the same. Great emphasis is laid on flexibility and responsiveness.

Bonding amongst participants :

9. The DTRTI lays great emphasis on bonding between trainees through group and outdoor activities such as sports, cultural events and picnics. A welcome SMS is sent from the Course Director even before the participants have reported for training. Face-book pages are created for the trainee batch for live interaction, sharing of photographs, comments etc.

Names of the Officers: Varadharajan K, Faculty, DTRTI, Ahmedabad
A. V. Nair, Faculty, DTRTI, Ahmedabad
Bodhiraj Vishwas, AAD, DTRTI, Ahmedabad
A. B. Acharya, AAD, DTRTI, Ahmedabad
Nimesh Bhatt, AAD, DTRTI, Ahmedabad
K. K. Budhiraja, AAD, DTRTI, Ahmedabad
Ritu Singh Sharma, Dy. Director, DTRTI, Ahmedabad
S. K. Dev, Dy. Director, DTRTI, Ahmedabad
Smiti Samant, Addl. Director, DTRTI Ahmedabad
Abhay Damle, Director DTRI, Ahmedabad

'TESTING THE WATERS': AN HR INITIATIVE

The Ahmedabad CCIT Region undertook a comprehensive survey touching upon various aspects of professional and personal lives of Assessing Officers to ascertain and address their problems and to foster a sense of greater belongingness and self-worth among the officers at the cutting-edge level.

CCA Ahmedabad region launched an unorthodox HR initiative in the form of a far-reaching survey designed to cover an array of issues relating to the professional and personal lives of assessing officers (AOs) of the region. A detailed questionnaire was carefully prepared with a view to gathering and analyzing the relevant information regarding these officers who constitute the cutting edge of the Department. To avoid probability of influence of supervisory officers creeping into the survey results, the AOs were asked to submit the feedback directly to the HQ at Ahmedabad in complete anonymity. As many as 165 out of a total of 385 AOs of the rank of ITO to Additional commissioners of income tax responded to the questionnaire.

2. Collation and analysis of the data so gathered was also conducted in a scientific manner so as to yield objective and meaningful results. A study based on the same was presented at the regional conference of CCsIT and DGsIT of the CCA Region in January 2013 where it was widely feted as a novel and innovative step.

3. Careful analysis of the data gathered threw light on significant issues concerning better taxpayer services, voluntary compliance, areas vulnerable to tax evasion, communication, infrastructure, career progression, record management, office management, vigilance, ethics, organizational change, employee motivation etc. Better record management and less reporting were two of the most frequent suggestions. It also threw up many workable ideas and

suggestions. Improved communication and personal touch between the administration and field personnel was another major gain from the exercise. It also fostered the sense of belongingness and self-worth among AOs who constitute the cutting edge of the Department, and provided them with an opportunity to contribute to the betterment of the Department.

Names of the Officers: Rajdeep Singh, DCIT(HQ), Ahmedabad
Anand Mohan, Addl. CIT (HQ) (P&A), Ahmedabad
Dileep Shivpuri, CCIT(CCA), Ahmedabad

A CAMPAIGN FOR CONSERVATION OF ENERGY

The Surat CCIT Region launched an environment-friendly initiative to conserve energy and save public resources.

CCIT Surat region launched an environment-friendly and expenditure-saving initiative in the form of a multi-pronged energy conservation campaign through positive change in habits. The campaign focused primarily on sensitizing the personnel regarding wastage of energy and the benefits of energy conservation to society and to the nation, and motivating them to change their energy-use habits. Simultaneously, electrical installations in office were also systematically modified through measures such as providing separate switches for each tube light in corridors and common spaces.

2. The charge observed an 'Energy Conservation Week' from 6-11 August, 2012 whose motto was "Save Energy…Save Earth". Various activities were undertaken during the week to sensitize and motivate people to save energy. Experts from the field of energy conservation were invited and seminars and lectures were organized for all the officers and officials, energy auditors were invited for interactive sessions so as to understand the power consumption pattern and to devise building specific strategies for effective power savings, a documentary and a short film on energy conservation were screened, flyers and stickers with appeals for energy saving were also placed in rooms, halls and public spaces and especially designed laminated posters highlighting easy ways of saving power in daily life, were displayed in the buildings. With a view to makeing the campaign more participative and innovative, a suggestion box was placed inviting ideas/suggestions for energy conservation in daily life and the best ideas/suggestions were awarded and the inputs received were made a part of the campaign. Overwhelming response was received from departmental officers and officials as also from visitors. In order to

rope in the next generation, a drawing and painting competition was organized for the children of the departmental employees and the best drawings/paintings were awarded.

3. Going further, an exercise was carried out to identify the staff positions that can play a crucial role in preventing wastage of energy. Interactive sessions were held with Administrative Officers, Office Superintendents, Multi-Tasking Staff and caretaking staff on a continuous basis. Information was gathered from the caretaking staff and from other sources about the offices where wastage of electricity was high. The officers and staff of such offices were persuaded about the need to save energy and importance of their role in the same. Depending upon his/her contribution, one employee was selected each quarter as the 'Star Energy Saver' and his/her contribution was recognized publicly.

4. In the second phase, the campaign also contemplates modifications to the electrical cabling network in the office, replacing tube-lights with energy-efficient CFL/LED lights, replacing parking and common area lights with solar lamps, installing false ceiling in all the rooms in order to reduce the load for air conditioners etc. These measures remained incomplete for want of funds.

5. As a consequence of concerted efforts and broad-based participation, significant results could be achieved, as demonstrated by an analysis of power consumption during the period August-December 2012 vis-à-vis the same period in FY 2011-12. Over the said a period of five months CCIT, Surat charge was able to save as many as 66510 units of electricity, which roughly translates to a saving of about ₹ 4,00,000/-, or in percentage terms, a saving of about 22 per cent despite increase in electric load over the earlier year. The expected saving during 12 month period is thus expected to be in the range of ₹ 10 lakh.

6. Notably, the above results were achieved with minimal expenditure, confined to expenses on stationery and installing

separate switches for each light. This campaign has gone a long way in motivating and encouraging departmental personnel to conserve energy.

Names of the Officers: S. S. Shukla, DCIT(HQ-TECH), Surat
D. V. Singh, JT.CIT(HQ), Surat
Gunjan Misra, CCIT, Ahmedabad

'A STEP AHEAD': AN INVALUABLE AID TO FIELD OFFICERS

CCIT Region Ahmedabad launched a knowledge-management initiative of far reaching consequences which resulted in the publication of a comprehensive and handy reference book on issues frequently encountered by Assessing Officers

Making of assessment orders is a fundamental function of the Department. Most other functions performed by the Department, including appellate, revisionary, audit and recovery-related functions, spring from this basic function. In accordance with the Board's directions, the Ahmedabad CCA region undertook an exercise to compile 100 quality assessments completed during financial year 2011-12 in the 7 CCIT regions of the CCA region, and the Investigation Wing under DGIT (Inv.), Ahmedabad. The purpose of this exercise was to motivate assessing officers (AOs) by recognizing quality work, and to generate a sense of participation.

2. Taking a cue from this painstaking effort, and with the intention of taking it forward, CCIT(CCA), Ahmedabad initiated an exercise for detailed analysis of the issues involved in these cases and the legal provisions around which the same were focused. Two ACIT-level officers of the region were tasked with the responsibility to pore over 800 assessment orders gathered during the exercise and identify all the contentious issues and the quantum of income involved. It emerged that a majority of the additions related to 19 topics.

3. Following up on the findings from the exercise, an expert committee of officers of the rank of CsIT, Additional CsIT, and Jt. CsIT was constituted to give suggestions and draw up guidelines on the legal issues involved, which will enable AOs of the region to frame better quality assessment orders. These suggestions that emerged from the expert committee were finally printed in the form of a

book. For this purpose an editorial board headed by the CCIT-IV, Ahmedabad was constituted and entrusted with the job of ensuring that the compilation was precise, error-free, practical, and easy to refer to. 'The end product was a book entitled "A Step Ahead" which was accompanied by a CD containing the book in electronic (PDF) format. The book has an attractive cover design and the articles are laid out therein in clearly legible format.

4. The book constitutes a classic example of best practice in building expertise through experience-sharing.

Names of the Officers: Ramanand Nair, ITO (ACTION PLAN)
Ms Priyanka Devi, ACIT, Ahmedabad
Prakash Dubey, JT. DIT (HC & PROS), Ahmedabad
Sushil Chandra, CCIT AHM – IV, Ahmedabad
M D Kabra, DGIT (INV), Ahmedabad
Dileep Shivpuri, CCIT (CCA), Ahmedabad

THE BANGALORE JDA VERIFICATION EXPERIMENT

Directorate of Income Tax (Inv.), Bangalore, in close collaboration with CCIT(CCA), Bangalore, undertook a major enquiry to unearth evasion of capital gains tax on transfer of land by means of Joint Development Agreements –Income to the tune of approximately ₹ 354 crore disclosed as a consequence - also led to large-scale awareness generation among taxpayers.

The Directorate of Income Tax (Investigation), Bangalore had obtained about 3500 Joint Development Agreements (JDAs) from jurisdictional Sub-Registrar's Offices (SROs) in Bangalore and its suburbs. Initial inquiries indicated that the landowners were either ignorant of the capital gains liability arising in their hands at the time of transfer of the property by the landowners to the builders, or were wilfully evading disclosure of the same. While investigating only about 11 cases till June 2012, the Directorate had detected undisclosed income of ₹ 33.38 crore. Similar detection was also reported by field officers.

2. In the above background, in a first of its kind, and as contemplated by the Director General of Income Tax (Investigation), Bangalore and the Chief Commissioners of Income Tax at Bangalore, in November 2012, the Directorate of Income Tax (Investigation), Bangalore carried out an innovative experiment in conducting large scale enquiries, by involving officers, i.e., ITOs and Inspectors from the field formation.

3. This massive operation was mounted for three consecutive days, covering some 180 land owners who had entered into such JDAs. 12 teams, under the supervision of Deputy Directors of Income Tax (Inv.) and ITOs (Inv.), and each comprising of an ITO and ITI from the field formation, and an ITI from the Investigation Directorate conducted enquiries regarding the landholding transferred; the

cost of acquisition and year of transfer; consideration agreed upon, refundable/non-refundable deposit received or receivable; sharing ratio with the builder; the details of the builder; and the tax liability towards capital gains arising from such transfer etc. Each team covered about 15 land owners in 3 days. The cases were chosen so as to cover all CIT jurisdictions. Summons along with a detailed questionnaire prepared by the Directorate, seeking the above details were served upon them and these were followed up in the next one month. The enquiries were closely monitored by the DIT (Inv.) and Addl. DIT (Inv.), Bangalore. The DGIT (Investigation) also addressed a press conference in which the public was apprised of the legal provisions and the exercise undertaken by the Directorate, which was widely covered.

4. As a result of the above effort, many land owners started coming forward with disclosure of their income from Capital Gains, or even to enquire into the provisions of law in this regard. The Directorate followed up about 25 cases with high transaction value, in which up to March 2013, a disclosure of undisclosed income of ₹ 354.38 crore had been made by defaulting land owners. The effort was appreciated by the Board, through written communication.

5. Results of some of the cases investigated by the Investigation Directorate, Bangalore, were as under:

(i) In the JDA entered between Kirloskar Systems Limited and Embassy Property Development Pvt Ltd on 5/3/2011 at Bangalore, a disclosure of ₹ 240.43 crore was made as a result of enquiries made u/s 131. Tax liability was worked out at ₹ 55 crore and the same was fully paid by March 2013.

(ii) In the JDA between UB Holdings Pvt. Ltd. and Prestige Estates Projects Pvt Ltd, a disclosure of capital gains of ₹ 52 crore was made as a result of a survey conducted u/s 133A.

(iii) In the case of Chaithanya Properties, as a result of enquiries, the AO to whom the information was passed on made an addition of ₹ 578 crore on account of Capital gains derived from their JDA with Prestige group.

(iv) Another case where substantial disclosure was made was Kare Electronics and Pranav Electronics with a disclosure of ₹ 30 crore as capital gains from the JDA.

(v) Some of the other cases were: Hara Global Estates (₹ 15.19 crore); Dr. Vijay Chandru (₹ 7.19 crore); Siraj Ahmed (₹ 5.44 crore); T. Vilas Reddy (₹ 3.98 crore); and Mathew Kuruvilla (₹ 2.68 crore)

While several cases are still under investigation in the Directorate, in many others the case folders have been sent to the concerned CIT Charges for follow up action. The Directorate shall be carrying out similar exercises in other major towns of Karnataka, such as in Belgaum, Mangalore and Mysore during the FY 2013-14. Several field officers have also reported good results.

Names of the Officers: Several ITOs and ITIs from the field formation
All Inspectors of the Investigation Directorate, Bangalore
ITOs(Inv.): P. K. Somasundaram, Amarnath Yadav, Asha Kiran Pankaj Kumar, Sambit Mishra, Pradeep Arya, and Nethrapal,
DDsIT (Inv.), Bangalore
Kumar Ajeet, Addl. DIT (Inv.), Bangalore
Ashutosh Chandra, DIT (Inv.), Bangalore
S Ravi, DGIT (Inv.), Bangalore

IDENTIFICATION OF CASES FOR TDS SURVEYS / VERIFICATION

The Pune CCA Region has devised a set of criteria for identification of cases for TDS surveys and spot verification where the probability of detecting default in payment is high. A comparative chart of TDS payments during the current and the previous financial years in respect of top 100 deductors was prepared. A list of top advance-tax payers was also obtained in order to analyze the trend in advance-tax payment. Cases of extreme deviation were identified for carrying out spot verification. System data on cases of late payments or non-payment of TDS and late filing or non-filing of TDS returns was accessed and current payments of TDS were then analyzed in these cases in order to identify non-payment after deduction. Thirdly, grievances and tax evasion petitions filed by deductees were compared with system data to identify cases of non-payment. Similarly, cases of high self assessment tax payments or unpaid self assessment tax which would point towards liquidity crunch being faced by the assessees, leading to default in payment of deducted tax were also targeted by the TDS Wing of the Region. As a result of these efforts, default in excess of ₹ 10 lakhs was detected in 46 out of 174 cases in which verifications was carried out during FY 2012-13. The total unpaid amount detected was ₹ 5278 lakh out of which ₹ 3513 lakh was collected.

Names of the Officers: Rajendra B. Dond, ITO(TDS)-1, Pune
Jagmohan Hooda, ITO(TDS)-2, Pune
Jaywant Y. Chavan, ITO(TDS)-3, Pune
Prashant P. Gadekar, DCIT(TDS), Circle-1, Pune
Garima Choudhary, DCIT(TDS) Circle-2, Pune
Yashwant K. Bhaskar, Addl.CIT(TDS), Pune
A. K. Modi, CIT(TDS), Pune

USE OF VEHICLE REGISTRATION DATA FOR I-T INVESTIGATION

Officers of the Investigation wing in Jaipur have found a way to access nationwide vehicle registration data which is proving to be of invaluable help

Vehicle registration database, which can prove to be an invaluable aid in Income-tax investigation, is often hard to come by. Even where accessible, it has to be gathered at the cost of compromising secrecy, especially, at pre-search stage. The officers of the Investigation Wing in Jaipur have found a way to gain, access to this data without posing any threat to confidentiality of the exercise. It was gathered that the National Informatics Centre (NIC) maintains a nationwide data-base of vehicles and licences on its website, access to which is provided only to selected law enforcement agencies such as the Police. The data base titled "Vahan" and "Sarathi" respectively enables a nationwide search of digitized data based on registration number, chassis number, engine number, body type, fuel- type, colour, name of the manufacturer, make/model etc. Through the efforts of the Wing, full access to the database could be gained. The usefulness of this data was amply demonstrated by a search and seizure case leading to admission of undisclosed income to the tune of ₹ 29.83 crore which started with a BMW car owned by the main assessee. In another case, allegations contained in a tax evasion petition could be disproved through the use of the database, thus saving much time and effort for the wing. Of the 260 vehicles stated to have been owned by the transport concern against which a TEP had been filed, many were found to be a different type of vehicle, registered in a different state or registered in the name of persons altogether unrelated to the assessee.

Names of the Officers: Anil Jain, Inspector
Chanchal Meena, DDIT(Inv.)-1, Jaipur
Sanjeev, Addl.DIT(Inv.), Jaipur
Sunil Mathur, DIT(Inv.), Jaipur

SAFEGUARDING PROPERTIES ACQUIRED IN RECOVERY PROCEEDINGS

The Vapi Range has made creditable efforts to safeguard properties acquired by the Department in lieu of tax dues. Several such properties / assets scattered across Vapi and Daman acquired by the Department over the years were not even entered in the state government's land revenue records and were lying in a neglected and unattended state. In several cases, the formalities for converting the titles in the Department's favour had also not been completed. In a series of determined actions, the Vapi Range managed to secure the properties, get the titles transferred, got the boundaries earmarked and site plans prepared, thus safeguarding the interest of the Department and the Govt. of India.

Names of the Officers: P. N. Bokade, ITO-4 (Daman)
Krishna Kumar, TRO, Vapi
Dr. K. Shyam Prasad, Jt.CIT, Vapi

Painting by: Suresh Kumar, Age-11, School-New Vishal Public School

ASSESSMENT ORDERS

ASSESSMENT ORDERS

PAGE NO.

WRONG CLAIM OF DEDUCTION U/S 80IB (11 A)

Nature of business activity did not satisfy the conditions - Eligibility of deduction u/s 80IB - Industrial undertaking formed by splitting up, or re-construction of business already in existence - Return claiming deduction not timely filed

The assessee company Lakshmi Energy & Food Ltd. engaged in the business of manufacturing of Rice, Cattle Feed, Crushing of Oil seed, Solvent, Extraction and Refinery, Generation of power, claimed deduction of ₹ 17,83,48,667/- u/s 80IB(11A) for business of handling, transportation and storage of food grains.

2. As per column No. 8(a) of Form No. 3CD, the nature of business of the assessee was seen to be "Manufacturing of Rice, Cattle Feed, Crushing of Oil seed, Solvent, Extraction and Refinery, Generation of power". It was clear from the Audit Report that the main activity of the assessee was manufacturing of rice, cattle feed, crushing of oil seed, solvent, extraction and refinery and that the assessee was not in the integrated business of handling, storage and transportation of food grains.

3. During the course of assessment proceedings, the assessee was asked to establish how its business was covered under the provisions of Section 80 IB(11A) of the Act. The assessee in his written submissions stated "that the assessee buys paddy from different places which is transported to the factory premises by trucks, meeting the requirement of transportation and then the same is stored as such before putting into manufacturing process and thus is engaged in the integrated process of handling, storage and transportation."

4. It was seen that as per the assessee's own admission, the primary business of the assessee related to manufacturing/milling of rice. Buying paddy and transporting the same to business premises of the assessee and storing it before putting them into manufacturing

process were but the integral and primary steps for manufacture of rice so that there was no separate business of "handling, storage and transportation of food grains".

5. It was clear that the assessee derived income from production of rice and selling the same in the market. The assessee was therefore, not eligible for deduction u/s 80IB of the Income Tax Act 1961 as it was not in the integrated business of handling, storage, transportation of food granis.

6. In addition to this, the assessee did not fulfill the basic requirement for claiming deduction u/s 80IB (11A) as required u/s 80AB, 80A (6), 80IA (7) read with section 80IB (13) by filing the return before due date, claiming deduction under chapter VIA in the return of the income and filing of report from an accountant (form 10CCB).

7. The statutory requirement of section 80IB(2)(i) stipulates that the concerned industrial undertaking should not have been formed by splitting up, or the reconstruction of a business already in existence.

8. The assessee claimed deduction u/s 80IB for first time in the A.Y. 2008-09 at ₹ 17,83,48,667/-. The assessee in its reply stated that Mega Project for installation of new machinery for manufacturing of rice, rice bran, solvent oil and generation of power was sanctioned by the State Government in the period relevant to the assessment year 2007-08. Further in its reply it was contended that the position of total assets in the F.Y. 2005-06 was ₹ 83.22 crore and in the F.Y. 2006-07 this was 358.5 crore. It was also claimed that the earlier machinery was discarded. In order to verify the same, depreciation chart filed by the assessee was thoroughly examined. The assessee was confronted with its own schedule of depreciation. The depreciation chart revealed that there had been absolutely no addition in plant & machinery during the year. Also no plant or machinery had been sold or discarded by the assessee during the year. It was thus apparent that no new unit was set up by the assessee during the year. The machinery or plant and

other assets previously used had been transferred to the new business; hence the integrity of business earlier in existence had not broken up.

Thus, it was concluded that in the case of the assessee no separate independent unit had been set up and no new machinery has been purchased during the year.

9. It was held that the assessee company did not qualify for deductions u/s 80IB(11A) and ₹ 17,83,48,667/- claimed as deduction was added back to its income. The disallowance of the claim was confirmed by the CIT(A).

Names of the Officers: P. K. Sharma, DCIT, CC-1, Chandigarh
Rajeev Kumar, ADDL. CIT(Central), Chandigarh
Kiran Vasudev Oberoi, CIT(C), Ludhiana

WRONG CLAIM OF EXEMPTION OF CAPITAL GAINS U/S 54F

The assessee earned LTCG which was claimed exempt u/s 54F- Capital gains deposit a/c not opened - Actually savings a/c opened in HDFC Bank - Assessee made alternate claim on account of construction of residential house - On spot inquiries conducted and approved valuer examined - Construction found to be commercial – Exemption u/s 54F of ₹ 3,47,29,250 denied

The assessee Mr. Goverdhan Singh Shekhawat filed his return of income in ITR-2 on 30-07-2009 declaring income at ₹ 5,16,600/- and claiming exemption u/s 54F at ₹ 3,47,29,250 on account of Long term capital gains deposited in capital gains account. During the course of assessment proceedings, enquiries were made with the bank and it was gathered that the account claimed by the assessee as capital gains account was actually a savings account. The assessee was asked to show cause as to why the exemption claimed by him should not be disallowed as the amount was not deposited in capital gains account. In response to this, the assessee submitted that he had deposited the amount in that bank account on advice of banking authorities that they are opening capital gains account. It was informed to assessee that the private banks are not authorised to open capital gains account and also that he had signed account opening form for savings bank account.

2. Thereafter, the assessee stated that he had invested ₹ 79,08,495/- for construction of new residential house and therefore, this amount should be allowed as exemption u/s 54F. The assessee was asked to submit valuation report as evidence to this fact. In

response, the assessee submitted a valuation report from Mr. Vivek Kulshreshtha, Approved Valuer. On going through this report it was noticed that the premises claimed by assessee was not a residential building but an "Incomplete Commercial Building". Thereafter the Inspector was deputed to verify whether it was a residential or a commercial building. The Inspector after verification reported that it was a commercial building and let out to Silver Smart Marketing Ltd. The Inspector was asked to take pictures of the premises. A copy of these pictures was sent to the assessee alongwith show cause as to why the exemption claimed by him during assessment proceedings amounting to ₹ 79,08,495/- on account of alleged construction of residential building should not be disallowed. In response, the assessee submitted that he intended to construct residential house but the department attached the amount lying in his bank account and therefore, he had no alternative but to convert it in to a commercial premise to earn some money from the incomplete residence.

3. After receiving reply of assessee, the valuer was summoned u/s 131 and his statements were recorded on oath. The valuer admitted that the building was commercial as there was no provision for kitchen in that building and number of toilets were not in accordance with the constructed area. A copy of statement of valuer was provided to the assessee to offer his comments. But instead of offering any comment on this the assessee submitted that he is eligible for exemption u/s 54F.

4. After discussing all aspects of case and as a result of enquiries made during assessment, an addition of ₹ 3,55,40,752.00 was made to the total income of assessee. A demand of ₹ 1,01,18,039/- was created. This demand was recovered from the amount provisionally attached u/s 281B of the Income-Tax Act, 1961.

On appeal, the CIT(A) sustained addition of ₹ 3,42,31,397/-.

Names of the Officers: Sitesh Verma, ITO, Ward 6(1), Jaipur
Purushottam Kashyap, Addl. CIT, Range-6, Jaipur
S. K. Sahai, CIT-II, Jaipur

BOGUS PURCHASES FOR EXPORT SALES

Assessee exported readymade garments for the first time in assessment year 2009-10 - Payments for purchases were made in succeeding years as and when export sales were realized- Addresses given in the confirmations of suppliers were incomplete- Bank accounts of suppliers were traced which contained different but incomplete addresses - In the bank accounts of suppliers, most of the withdrawals in cash were made within 2-3 days of the deposit - Field inquiries conducted and summons served through Inspector were not complied with - Returns of income filed by the alleged suppliers reflected income from salary, income from stitching and hobby classes etc. - No sales were disclosed in the returns of suppliers - Purchases were held as bogus - addition of ₹ 79,16,638/- was confirmed by CIT(A)

The assessee Mr. Raj Kumar Aggarwal was engaged in trading of readymade garments in his proprietary concern Raj Fabrics. In A.Y. 2009-10, total sales were shown at ₹ 3,48,39,530/- which included export sales of ₹ 3,17,74,186.09. Gross profit at 2.23 per cent on sales was declared as against the GP rate of 13.6 per cent in just preceding year. After excluding the duty draw back i.e. ₹ 26,25,922/-, there was actually gross loss of ₹ 18,45,523/-. In the Balance Sheet, sundry creditors of ₹ 3,17,11,968/- and sundry debtors of ₹ 3,22,29,068/- had been shown. The debtors included a sum of ₹ 3,17,74,186/- in the name of four parties on account of export sales and the creditors included a sum of ₹ 3,16,66,550/- in the name of six parties on account of purchases of goods exported . It was amazing to note that the exports were made without making any additional investment in business. Payments against purchases were made in succeeding years as and when the export sales were realized. Neither the purchase bills nor any evidence of delivery of the goods was filed. The suppliers appeared doubtful and hence enquiries u/s 131 were conducted

regarding their genuineness.

2. Summons u/s 131 sent through registered post on the addresses mentioned on confirmation were returned back with remarks "Incomplete address". The PANs mentioned on some of the confirmations of the alleged suppliers belonged to other persons.

3. Payments made to such creditors in succeeding years were traced and their bank accounts were detected . These bank accounts revealed voluminous high value transactions. The addresses given in bank accounts were different from those given on confirmations of the suppliers. Most of the amount in these bank accounts was withdrawn in cash within 2-3 days of the deposit. Summons u/s 131 were again issued on the addresses as per bank accounts which were returned back unserved by postal deptt. for want of complete address. The summons could be served after many efforts by the Inspector of the Department However, none of the so called suppliers attended in compliance of the summons so issued.

4. With the help of the PANs mentioned on confirmations, ITRs of the suppliers for A.Y. 2009-10 were traced in respective Wards. It was found that Proprietor of Aditya Exports who issued sale bills of ₹ 77,81,170/-, had filed return showing salary income. Proprietor of Bharat Impex who had issued sale bills of ₹ 31,74,150/- to the assessee, had filed return as a no accounts case wherein no sales were disclosed. Proprietor of S. M. Exports issued sale bills of ₹ 34,95,372/-. However, in the ITR, income from stitching and hobby classes was disclosed. Similar discrepancies were noticed in other entities also.

5. The AO therefore held that the so called suppliers were not genuine businessmen. In fact they all were just bill providers who issued bills in lieu of certain commission. The purchases in question were held to be bogus and provisions of section 145(3) were applied. The AO relied upon the decision of the ITAT, Jaipur Bench in the case of ITO Vs Deepak Dalela (50 DTR 502) and held that where the

purchases are not verifiable, the liability at the end of the year in the name of such suppliers is not genuine and hence addition made at the rate of 25 per cent of such purchases is justified. Accordingly, addition of ₹ 79,16,638/- being 25 per cent of the bogus purchases of ₹ 3,16,66,550/- was made to the income of assessee.

6. The CIT(A)-II, Jaipur in appellate order dated 13.03.2013 confirmed the additions made in the assessment order. The CIT (A) noted that the AO had made serious efforts to locate the persons by calling for their bank accounts and making inquiries on the addresses given in the bank a/c, but because they were just entry providers, they did not appear. From the returns filed by the so called suppliers, it is clear that they had not actually sold anything to the assessee.

Names of the Officers: C. P. Sharma , ITO , Ward -5(1), Jaipur
Dilip Sharma, Addl. CIT, Range-5, Jaipur
S. K. Sahai, CIT-II, Jaipur

SALE OF ENTIRE LOAN PORTFOLIO RECOGNISED AS INCOME IN THE YEAR OF SALE ITSELF AND TAXED

Assessee, a leading micro finance institution, sold part of its loan portfolio to HDFC, ICICI Bank - As per agreement transfer and sale was unconditional - Entire sale amount brought to tax in year of sale

The assessee Asmita Micro Finance Ltd is one of the leading micro finance institutions of the country. As part of its business, the assessee advanced loans and also maintained a substantial loan portfolio. To enhance its liquidity position, the assessee sold its loan portfolio to banks/financial institutions to obtain further funds for its operations. During the year under consideration, the assessee sold part of its loan portfolio to HDFC Bank and ICICI Bank. As per the terms and conditions of the sale, the entire portfolio was transferred to the banks but the assessee was retained as collection agent by the banks on payment of nominal charges to collect the loans with interest from the customers over the period for which loan was granted by the assessee.

2. Enquiries were made during the assessment proceedings to ascertain the quantum of gain made on the sale of loan portfolio. It was noticed that the assessee recognised only ₹ 5,77,55,950/- out of the total gain of ₹ 18,87,00,265/- on transfer of loan portfolio as income for the year. It was argued by the assessee that the remaining portion would be recognised as income during the balance period of loan contract with the customers.

3. The matter was examined in detail and it was noticed that the manner in which assessee recognized expenditure was in contradiction to the principles of accrual of revenue as laid down in Accounting Standard: AS-9 and also the guidance note of ICAI on "Accounting

for securitization". The contracts between the assessee and the banks were obtained and examined in detail. In the present, the sale of loan portfolio was complete and the gains accrued to the assessee at the time of sale. It was also noticed that the assessee had derecognised the asset fully from its books. The obligation for collection of the loan with interest from the customers was a distinct and separate activity which had no bearing on the sale of the portfolio, and was complete by itself. The sale was unconditional. As per clause (a) of para 6 of the guidance note cited above, servicing of the asset (collection in the present case) by itself would not lead to a conclusion that the originator has not lost control over the securitized asset. As per para 7 of the guidance note on de-recognition of the asset, the difference between the book value of securitized asset and consideration received should be treated as gain or loss arising on securitization and disclosed separately in the statement of profit and loss.

4. Accordingly, the entire gain of ₹ 18,87,00,265/- was brought to tax. The addition was sustained by the CIT(A). Till now, ₹ 2.8 crore demand has been collected in this case.

Names of the Officers: Y.V.S.T. Sai, Addl.CIT, Range-1,
Hyderabad (A.O.)
T. Jayasankar, CIT-I, Hyderabad

DISALLOWANCE U/S 40 (a) (ia) FOR NON DEDUCTION OF TAX U/S 194C

Assessee a contractor and real estate developer – detailed enquiry by AO revealed non-deduction of tax u/s 194C on labour payments – Payment to the extent of ₹ 2,08,42,101/- disallowed u/s 40(a)(ia)

The assessee, Umatech, a contractor and real estate developer, e-filed its return for A.Y. 2009-10 on 30.09.2009 declaring total income of ₹ 86,93,860/-. The case was selected for scrutiny and assessment was completed u/s 143(3) on 30.12.2011 on total income of ₹ 2,95,44,680/- The penalty proceedings were also initiated u/s 271(1)(c) of the IT Act.

2. The main addition made by the AO was disallowance of claim for expenditure amounting to ₹ 2,08,42,101/- under the head labour payment. This disallowance was made by invoking the provisions of section 40 (a) (ia) on account of non deduction of tax at source u/s 194C in relation to the said labour payment. During the year the assessee had shown gross receipts of ₹ 12,95,56,800/- and contract receipts of ₹ 1,73,20,000/- and after debiting various expenses and remuneration to partners, the net profit had been disclosed at ₹ 87,45,124/-. Tax audit report in Form No. 3CB/3CD with balance sheet and profit and loss account and other schedules were filed in this connection. The books of account were also produced which were examined.

3. While examining the books of account, it was noticed that the assessee had debited ₹ 7,80,58,114/- under the head work in progress. The details of work in progress were obtained. Apart from other expenses, the work in progress included an expenditure of ₹ 2,08,70,974/- incurred under the head labour charges. It was gathered

from the labour charges account that almost entire payment of labour charges amounting to ₹ 2,08,42,101/- was debited on 31.03.2009 on account of payment to seventeen labour contractors and on these payments TDS of ₹ 4,29,646/- was claimed to have been deducted and it was informed by the assessee that this TDS was deposited through challan on 29.09.2009 and copy of alleged challan showing deposit of tax of ₹ 5,99,548/- was also filed.

4. In order to examine the correctness of assessee's claim that the tax of ₹ 4,29,646/- was deducted u/s 194C from the payments in question and it was subsequently deposited on 29.09.2009, the assessee was asked to furnish the break up of tax of ₹ 5,99,548/- and names of the persons- deductees on whose payments the tax was claimed to have been deducted along with their PANs to substantiate the claim. He was also required to file copy of its quarterly TDS return 26Q for last quarter of FY 2008-09.

The assessee reiterated that the tax of ₹ 4,29,646/- deducted on labour payment on 31.03.2009 was deposited on 29.09.2009 and claimed that the said amount of ₹ 4,29,646/- was included in total tax deposited i.e. 5,99,548/-. But, he failed to furnish any corroborative and independent evidence to show that the tax of ₹ 4,29,646/- was included in the challan of ₹ 5,99,548/- deposited on 29.09.2009. Even break-up of tax of ₹ 5,99,548/- could not be filed by the assessee.

It was gathered from quarterly return that during last quarter, tax of only ₹ 1,87,793/- was deducted and the remaining amount of ₹ 4,26,242/- pertained to earlier quarters. Further, the number of deductees with PAN was also not reflected in the documents furnished by the assessee relating to TDS return.

5. Though the assessee claimed that he had deducted tax of ₹ 4,29,646/- on 31.03.2009 on total labour payment of ₹ 2,08,42,101/-, but this amount of ₹ 4,29,446/- was not reflected in the 26Q return

filed by the assessee for last quarter. Thus, the assessee's claim that he had deposited amount of ₹ 4,29,646/- on 29.09.2009 was not found correct as according to TDS return for quarter four, only tax of ₹ 1,87,793/- was deducted in the last quarter and he had also failed to substantiate that the TDS of ₹ 1,87,793/- was deducted from labour payment of ₹ 2,08,42,101/-, as he could not furnish details of deductees etc. mentioned in the 26Q return for last quarter.

6. In view of above the AO concluded that though the assessee claimed to have deducted tax of ₹ 4,29,646/- at source in respect of these labour payments but this claim could not be substantiated by it with supporting evidence. The AO, after examining the quarterly return in form no. 26Q and other material available on record, established that the assessee had not deducted any tax in respect of labour payment of ₹ 2,08,42,101/- as he failed to furnish and substantiate the names and other details of the deductees on whose payments the tax was claimed to have been deducted. This made the expenses liable for disallowance, since these payments were clearly in the nature of payments to contractors. As such, in view of the provisions of section 40 (a)(ia), the entire payment of ₹ 2,08,42,101/- made by the tax payer to the above referred seventeen contractors was disallowed by the Assessing Officer as the assessee had not only failed to deduct tax in respect of aforesaid labour payments but it had also failed to deposit the tax in Government account within the stipulated period.

7. Being aggrieved the assessee went in appeal before the CIT (A)-I, Lucknow. The CIT (A) vide his order dated 16.10.2012 confirmed the AO's order on the following grounds:

- The AO has brought out the facts and details which led him to conclude that no TDS was made in respect of labour charges and therefore the claim for expenditure was not allowable u/s 40(a) (ia).

- Further, the assessee has failed to substantiate its contentions that the tax had been deducted at source and that it had deposited such amount of tax within the stipulated period.

Names of the Officers: Harish Chandra, DCIT, Range-2, Lucknow
V. V. Singh, Jt.CIT, Range-2, Lucknow
R. C. Sharma, CIT-1, Lucknow

WRONG CLAIM OF EXEMPTION BY A CO-OPERATIVE BANK UNDER THE "PRINCIPLE OF MUTUALITY"

Assessee a cooperative bank claimed exemption u/s 80P(2) of the principle of mutuality reversing its earlier position regarding taxability of its income as business income.

The assessee, Tiruchirappalli District Central Co-operative Bank, headquartered in Tiruchirappalli with 58 branches e-filed its return of income for the A.Y. 2009-10 declaring "NIL" income. In the computation, the assessee showed income from business to the extent of ₹ 9,34,43,816/- and also claimed exemption of ₹ 9,34,43,816/- based on the "principle of mutuality".

2. Till A.Y. 2006-07, the assessee bank had claimed that it was a co-operative society involved in the business of banking and claimed deduction u/s 80P(2)(a)(i). However, for AY 2009-10, the income derived from the business of banking was shown as income by way of interest/dividend derived by the co-operative society. Prima facie, it appears that this was done by the assessee bank with a view to come out of the purview of sub-section (4) of section 80P. Earlier, the Finance Act, 2006 introduced sub-section (4) to section 80P w.e.f 01.04.2007, whereby the provisions of Section 80P were not applicable to any co-operative bank other than a primary agricultural credit society or primary co-operative agricultural and rural development bank. Hence, the assessee bank was not eligible to claim exemption u/s 80P(2) from A.Y. 2007-08. However, the assessee sought an exemption for the A.Y. 2009-10, based on the "principle of mutuality".

3. During the assessment proceedings, the A.O. found that there is no mutual dealing between the members inter-se. The assessee bank was operating only as an entity to carry on ordinary banking business with special reference to providing agricultural credit to farmers.

The essence of mutuality lies in return of what one contributes to a common fund. In the instant case, A.O concluded that there was no such common fund and there are only government funds and repaid loans with interest are being distributed to its members.

4. The Apex Court, in CIT Vs. Bankipur Club Ltd(1997) 226 ITR 97(SC) held that the doctrine of mutuality has application in three areas, namely first, it applies to mutual insurance companies; secondly, it applies to certain municipal undertakings and, thirdly, to members' clubs, and mutual associations generally, whether incorporated or unincorporated except registered industrial and provident societies. On a close examination of books of accounts of the assessee, the A.O observed that the assessee bank is neither a mutual insurance company nor a municipal undertaking/ members' club. In the light of aforesaid discussion, the A.O did not accept the exemption claimed based on the "principle of mutuality" and determined an income of ₹ 30,86,41,426/- (inclusive of disallowances claimed under Reserve for NPA, ₹ 13.57 Crore and provision for Standard Assets ₹ 15.37 crore) as against the returned income of 'Nil'.

5. The order of the AO was confirmed by the CIT(A) also. The amount of tax collected in this case is ₹ 8.50 crore.

Names of the Officers: T. Ramalingam, DCIT,
Company Circle-I, Trichy.
R. S. Naik, JCIT, Range-I, Trichy.
Ravindra Sai, CIT-I, Trichy

WRONG CLAIM OF REBATE U/S 88E OF THE ACT.

Assessee claimed rebate u/s 88E but did not show any income from business of trading in shares - Case reopened u/s 148 - Disallowance accepted

In the return of income the assessee Mr. Harish Goyal had shown income from Business/Profession ₹ 67,04,825/-, Short Term Capital Gain u/s 111A ₹ 1,00,39,085/- and Income from Other Sources ₹ 5,54,651/-, total income being ₹ 1,72,98,561/-.

2. The assessee, after claiming rebate of ₹ 1 lakh u/s 80C, computed tax on regular income at ₹ 2097843/- and tax on short term capital gains at the rate of 10 per cent of ₹ 10,03,909/- totaling ₹ 31,01,752/-.

3. Out of this tax, the assessee claimed rebate u/s 88E of ₹ 25,70,282/-. The A.O. noticed that through the assessee claimed rebate u/s 88E of ₹ 25,70,282/- he had not shown any income from business of trading in shares. The only income shown from shares was under the head 'Short Term Capital Gain' u/s 111A of the Act but no income under the head "Profits and gains of business or profession" arising from taxable securities transactions had been shown.

4. The A.O., therefore, issued notice u/s 148 on 04.08.2010 after recording the reasons to believe that income chargeable to tax had escaped assessment.

5. A detailed questionnaire was issued along with statutory notices dated 22.02.2011 and, in response, counsel for the assessee vide letter dated 01.11.2011 stated that he had no objection to the 'proposed disallowance' u/s 88E of the Act. Indeed, the assessee had no option but to admit that the claim was not permissible. Thus, the same was disallowed by the A.O. vide assessment order dated 15.11.2011. Penalty u/s 271(1)(c) was imposed vide order dated 29.05.2012, in view of the fact that the assessee did not withdraw the claim of rebate

u/s 88E despite having an opportunity to furnish true particulars of income in the return of income filed in response to notice u/s 148 of the Act.

Names of the Officers: Surender Meena, ACIT Circle 4(1)
Chandigarh
Rajinder Singh, Addl. CIT, Range-4,
Chandigarh
B. S. Sandhu, CIT-II, Chandigarh

LIABILITY TOWARDS CAPITAL GAINS TAX ON LUMPSUM PAYMENT TO RETIRING PARTNERS

Lumpsum payment by a firm to its retiring partner – Liability towards tax on capital gains was examined. It was concluded that partners share was capital asset as per sec./2(14) and so liable to tax

In this case, the assessee Ms. Girija Reddy was a partner in a firm and her capital account in the books of the firm was credited with an amount of ₹ 7,95,88,639 being her share in the goodwill of the firm. Subsequently, the assessee retired as a partner from the firm and received a total sum of ₹ 8,22,17,952 comprising of her share of goodwill and her capital account balance of ₹ 26,29,313. The assessee contended that section 45 of the Income Tax Act does not provide for the treatment of the amount received on retirement from a partnership as an amount taxable as 'capital gains'.

2. The Assessing Officer, however, held that the partner's share and rights in a firm was a capital asset within the meaning of section 2(14) of the Act and that the extinguishment of such a right would amount to transfer as per both clauses (i) and (ii) of section 2(47). For the above view, reliance was placed by the Assessing Officer on the Bombay High Court decision in the case of CIT vs. A. N. Naik Associates and Another (265 ITR 346). Reliance was also placed on the Delhi High Court decision in the case of Bishan Lal Kanodia vs. CIT (257 ITR 449) for the proposition that where the parties agreed to pay a lumpsum in consideration of the retiring partner assigning or relinquishing his share or right in the partnership and its assets in favour of the continuing partners, the transaction would amount to a 'transfer' in terms of section 2(47) of the Act. It was noted by the Assessing Officer that the Pune Tribunal in the case of Shevanti Bhai C. Mehta vs. ITO (83 TTJ 542) and the Special Bench of the Bangalore Tribunal in the case of Ms. Arthi Shenoy and Others vs. DCIT (75 ITD 100) had held that interest in a firm was an asset and

that the transfer thereof within the meaning assigned to that term by section 2(47) of the Act would give rise to capital gains exigible to tax.

3. The Assessing Officer noted that section 47(ii) had mentioned that any distribution of capital assets on the dissolution of a firm would not be considered as transfer for the purposes of section 45 of the Income-tax Act 1965 - The assessing officer further noted that this clause was omitted by the Finance Act 1987, with effect from 1.4.1988 and consequently such receipt of a part of the assets of the erstwhile firm would come within the definition of transfer. The Assessing Officer proceeded to assess the capital gains in the hands of the assessee.

4. The CIT(A) confirmed the assessment of this amount as capital gains. On further appeal by the assessee, the Hyderabad 'A' Bench of the Tribunal held that a clear distinction exists between retirement of a partner from a firm and a dissolution of the firm. In the case of retirement of a partner from a firm, it is only that partner who goes out of the firm and the remaining partners continue to carry on the business of the partnership as a firm, whereas in the case of a dissolution, the firm as such ceases to exist and the dissolution is between all partners of the firm. The Tribunal, after a detailed analysis of the case laws on the subject, noted that in the facts of the present case a lumpsum payment was made in consideration of the assessee, a retiring partner, assigning or relinquishing her share or right in the partnership and its assets in favour of the continuing partners. It was concluded that there was a transfer of interest of the retiring partner over the assets of the partnership firm on her retirement and, therefore, there was a liability to tax on account of capital gains.

Names of the Officers: B. Shanthi Kumar, ITO, Ward-6(2), Hyderabad
H. Phani Raju, Addl.CIT, Range-6, Hyderabad
A. Bhaskar Reddy, CIT-III, Hyderabad

TAXABILITY OF COMPENSATION RECEIVED

Assessee derived income from trading of securities and received compensation from company in which investment had been made - The compensation was claimed to be profits from business and eligible for set off against brought forward business loss - Claim was negatived and compensation assessed as 'short term capital gains'

The assessee, Mr. Ramesh Gelli an individual deriving income from trading in securities had received a compensation of ₹ 2.90 crore from a company, Golden Gate Properties Limited, in which he had invested an amount of ₹ 2.57 crore. This amount was claimed as an advance to participate in the company's business venture. The said compensation of ₹ 2.90 crore was received by him as a consideration for opting out of the said business venture. The compensation of ₹ 2.90 crore was declared by the assessee as profits from business and sought to be set off against the brought forward business loss of earlier assessment years.

2. The Assessing Officer examined the issue in detail in the light of the provisions of Sections 2(14), 2(47) and Section 45 to 55 and held that the receipt of compensation was to be assessed as 'Short term capital gains' and disallowed the claim of the assessee for set off of brought forward business loss of earlier years. The Assessing Officer arrived at this conclusion after making enquiries with the company as well as recording a sworn statement from the assessee. The absence of characteristics of business in the said transaction and the inconsistencies in the claim made were brought out in the assessment order. The ratio of decision of Madras High Court in the case of K. R Srinath vs ACIT reported in 268 ITR 436 was also utilized in the assessment order.

3. The stand taken by the Assessing Officer was confirmed by the CIT(A) who further strengthened it by placing reliance on other relevant judgements also. The decision of the Assessing Officer resulted in raising an additional demand of ₹ 1.30 crore, a major portion of which has already been collected.

Names of the Officers: T. Muralidhar, ITO, Ward-6(4), Hyderabad
P. V. Subba Raju, ACIT, Circle-6(1), Hyderabad
H. Phani Raju, Addl.CIT, Range-6, Hyderabad
A. Bhaskar Reddy, CIT-III, Hyderabad

INTRODUCTION OF UNACCOUNTED MONEY IN BANK ACCOUNTS CLAIMED AS GENUINE

The assessee in the business of land development introduced unsecured loans to the tune of ₹ 1,38,50,300/- in the names of various individuals as well as in the name of assessee's educational society - On the basis of the confirmation letters and the photocopies of the cheques filed by the assessee company, investigation was conducted into the genuineness, credit worthiness and identity of the creditors as well as the transactions by issue of summons and also with the bank authorities as there was layering for introduction of unaccounted money

The assessee, Harsha Estates Pvt Ltd, a closely held company, was engaged in business of land development and introduced substantial amounts of unsecured loans. Investigation revealed that in the cases of the daughters and son-in-law of the Managing Director, the cash deposits in their accounts prior to issue of cheques to the assessee company have flown from the bank account of assessee's educational society, which establishes the lack of credit worthiness of these alleged creditors for giving loans to the assessee company. Similar is the case with 5 other creditors. No address/details could be furnished in respect of one more creditor and correct cheque numbers was not provided in respect of another creditor.

2. Apart from the above, the additional income offered voluntarily by the assessee (independent of the issues involved in the show cause letter and in addition to the outcome of the assessment after considering reply to the show cause notice) on pointing out the issue of non-maintenance of vouchers / bills in respect of certain expenses, was also added to the returned income.

3. However, in respect of 4 alleged creditors, additions amounting to ₹ 20,00,000/- have been deleted by the CIT (A) on the ground that

source for the same has been explained as the source was, as stated above, from assessee's educational society. But the CIT (A) confirmed the balance additions of ₹ 1,35,38,430/-. The additional demand on the confirmed additions amounts to ₹ 55,41,956/-.

Names of the Officers: G. N. Raghavendra Rao, ACIT, Circle-2(2), Hyderabad
J. Krishna Kishore, Addl.CIT, Range-2, Hyderabad
H. Srinivasulu, CIT-II, Hyderabad

WRONG CLAIM OF DEDUCTION U/S 10B

Deduction u/s 10B - Year of commencement - Eligibility for assessee engaged only in manufacture or production of an article or thing - New unit should not be formed through reconstruction

The assessee Sesa Goa Ltd. is India's largest private sector producer and exporter of iron ore. It was found that for Assessment Year 2009-10 it had claimed deduction under section 10B amounting to ₹ 451.27 crore with reference to the profits of three of its hundred per cent export oriented units. To verify whether the assessee's claim was within the period of ten years from the commencement of production in the eligible units, the assessee was required to produce evidence in support of its claim. Despite adequate opportunities, the assessee failed to file sufficient documentary evidence to establish the initial year of commencement of production in the EOUs concerned.

2. Consequently, surveys were conducted at the factory premises of such EOUs. The findings of the survey based on materials impounded and the statements recorded from the key personnel at those units, in the course of survey, indicated that the Amona unit had commenced production as far back as 1985 whereas the assessee was claiming that the said unit had started in FY 2002-03. Similarly, the Chitradurga unit was found to have commenced production in 1994, while the assessee company had made the claim that the unit started production only in FY 2005-06.

3. Another ground for disallowance of section 10B claim of deduction was that these units were found not to be engaged in any manufacture or production of any article or thing. The Apex Court, in the assessee's own case in its decision reported in 271 ITR 331 had, in the context of the provisions of section 32A of the Act, held that either extraction by itself, or extraction and processing together, would constitute 'production'. On the facts of the assessee's case it

was found that all the three units concerned were engaged only in processing of iron ore without any actual extraction of iron ore being carried out by any of those units.

4. Further it was found that the both the Amona and the Chitradurga units had been set up by reconstruction of old units or by way of capacity enhancement of pre existing facilities. The disallowance of section 10B deduction made in the assessment order has since been upheld by the CIT(A). The assessee company has preferred an appeal before the Tribunal against the CIT(A) order, which is pending.

Names of the Officers: S. Sundar Rajan, ACIT Circle-1(1), Panaji
M. R. Bangari, Jt.CIT Range-1, Panaji
M. L. Karmakar, CIT Panaji

UNSECURED LOAN ADDED AS UNEXPLAINED CASH CREDIT U/S 68

Loans taken from hawala operators through a/c payee cheques and repaid by a/c payee cheques - hawala operators had meagre capital of partners but huge creditors and debtors – loans held as non - genuine

The assessee firm Swastik Realtors engaged in the business of development of real estate properties, had for AY 2009-10, claimed huge interest cost of ₹ 2,36,35,902/- in respect of the unsecured loans aggregating to ₹ 14,27,70,515/- shown as outstanding in the Balance Sheet as on 31/03/2009.

2. Survey u/s 133A conducted on 07.07.2008 by the Investigation Wing in Moxdiam, Basant Dia Jewels & Morewel Impex Pvt Ltd had revealed that these parties were hawala operators and the only income generated by them through this activity was by way of commission as admitted by them in the statement recorded u/s 131. The balance sheet of Moxdiam as at 31.03.2007 showed that its total capital was ₹ 1,00,000/-. However, the amount payable to creditors was shown at ₹ 16,29,83,032/- and amount receivable from debtors at ₹ 10,40,12,587/-. No bank loans or any other loans was taken by Moxdiam. The assessee Swastik Realtors claimed that it received loans of ₹ 1 crore from Moxdiam and it had repaid the loans of ₹ 1 crore in 3 instalments. Enquiries revealed that these repayments were made out of loans allegedly obtained by the assessee from entities like Moxidiam which were hawala operators of meagre means. Taking these facts into account, the loans of ₹ 1,00,00,000/- allegedly obtained from Moxdiam was added back in the assessment for A.Y. 2007-08. Detailed enquiries made by the AO during the remand proceedings for AY 2007-08 further established that loans were not genuine.

3. Continuing the investigation further during AY 2009-10, AO

noted that the list of unsecured loans allegedly taken during the relevant previous year, interalia, included loans of ₹ 63,00,000/- and ₹ 60,00,000/- from Rising Star and Seven Star Jewels respectively. It was revealed that the RTGS transfer of ₹ 38,00,000/- dated 18/9/2008 was made by Rising Star and transfer of ₹ 60,00,000/- dated 17/12/2008 was made by Seven Star Jewels, through their accounts held with ING Vysya Bank Ltd.

4. Accordingly, notice u/s. 133(6) was issued to ING Vysya Bank Ltd to furnish bank statements of Rising Star and Seven Star Jewels. Also, summons u/s 131 were issued to these parties, requesting them to furnish details such as nature of transactions and ledger account of Swastik Realtors in their books and copies of returns of income alongwith copies of P & L A/cs., Balance Sheets, Audit Reports, etc. for A. Yrs. 2007-2008, 2008-09 & 2009-2010.

5. It was observed that Rising Star was a proprietary concern situated at Surat, wherein proprietor's capital was only ₹ 2,33,405/- as at 31/03/2009. However, Sundry Creditors were shown at ₹ 17,36,42,925/- and Sundry Debtors at ₹ 6,95,55,789/-. No loans had been taken by it, but it had advanced loans amounting to ₹ 4,43,29,747/-, which, inter-alia, included loan of ₹ 1,35,00,000/- advanced to Swastik Realtors (out of which loans of ₹ 38,00,000/- was given on 18/9/2008). Seven Star Jewels was also a proprietary concern situated at Surat, wherein proprietor's capital was only ₹ 3,70,874/-, but sundry creditors were shown at ₹ 53,18,93,628 and sundry debtors at ₹ 38,06,99,297/- as at 31/03/2009. It had not taken any loans but had advanced loans of ₹ 8,90,32,200/-, which was inclusive of loans of ₹ 60,00,000/- advanced to Swastik Realtors on 17/12/2008. In both these cases, the loans advanced were out of the sundry creditors. The proprietor's capital was meagre. These facts indicated that these two concerns were also engaged in similar activity of providing accommodation entries and their bank accounts formed a part of the chain of movement of funds, which was indicative of the circular movement of hawala entries through bank accounts of

various entities.

6. The AO held that merely because the assessee could arrange for the paperwork, the loan cannot be held as genuine. The AO also relied on the decision of the Hon'ble ITAT Delhi Bench in the case of DCIT Vs. Ms. Phoolwati Devi (2009) 314 ITR AT 1(Delhi) and the case of Sumati Dayal Vs. CIT(1995) 214 ITR 801(SC) to drive home the point that even if the documentary evidence prima facie support the assessee's case but a closer look at the same in the light of surrounding circumstances and applying the test of human probabilities may reveal that the documentary evidence cannot be accepted. Merely because the funds have moved through banking channels and the entities concerned have arranged the paperwork, the transaction cannot be held as genuine. Accordingly, the loan of ₹ 63,00,000/- and ₹ 60,00,000/- allegedly obtained from Rising Star and Seven Star Jewels respectively was added back as unexplained cash credit u/s. 68. Consequently, the interest of ₹ 2,80,558/- and ₹ 1,54,286/- claimed in respect of these loans was also disallowed. The assessment order has been upheld in full by the CIT(A).

Names of the Officers: Beena Menon, ACIT-15(3), Mumbai
Dr. Sandeep Goel, Addl. CIT Rg. 15(3), Mumbai
Pradeep Sharma, CIT-15, Mumbai

WRONG CLAIM OF DEDUCTION U/S 80IB (4)

Assessee has two units at Haridwar and Dadra - Profits of Haridwar Unit entitled for 100 per cent deduction - Profits of Dadra Unit entitled for 25 per cent deduction - AO held lower GP rate shown in respect of Dadra Unit and higher GP rate in Haridwar Unit to reduce its incidence of taxation - Interest bearing funds diverted from Haridwar Unit to Dadra Unit with the purpose of reducing incidence of tax

The assessee firm Prince Industries is in the business of manufacture of SWR pipes and fittings. Return for AY 2009-10, showing total income of ₹ 1,37,04,611/-, was filed on 25.09.2009. Assessee's factory at Dadra & Nagar Haveli was qualified to claim benefit u/s 80IB(4). The year under scrutiny, AY 2009-10, was the sixth year for this unit and deduction u/s 80IB(4) was claimed at the rate of 25 per cent of the profit derived from this unit at ₹ 45,68,203/-. In AY 2009-10, assessee also set up a new unit at Haridwar in Uttarakhand. Profits of ₹ 1,92,73,008/- derived from Haridwar unit was claimed as deduction at the rate of 100 per cent u/s 80IC.

2. On analysis of the trading results, AO noticed that Gross Profit shown for Haridwar Unit was very high:

Plant	**Haridwar Unit (A.Y.2009-10)**	**Dadra Unit (A.Y.2009-10)**	**Dadra Unit (A.Y.2008-09)**	**Dadra Unit (A.Y.2007-08)**
Gross Profit Ratio	31.13 per cent	14.55 per cent	20.32 per cent	26.09 per cent
Deduction availed u/s 80IB/80IC	100 per cent	25 per cent	100 per cent	100 per cent

3. Asked to explain the variation in Gross Profit, the assessee ascribed the same to various factors, such as a) Increase in raw material cost in AY 2009-10 in Dadra Unit, b) Better yield at Haridwar plant,

c) Excise duty chargeable in Dadra plant, as against Haridwar plant which was exempt from excise duty, etc. After due analysis, the AO rejected assessee's contentions. As regards increase in raw materials cost, the AO brought out that price of raw material 'PVC K-6701' in the second half of the year was considerably low. So even if assessee had to pay a higher price for the raw materials in the first half of the year, it had the benefit of lower cost of raw materials in the later half. With regard to Excise Duty, the AO pointed out that even in earlier years when Dadra unit had shown higher GP, it was subject to excise duty. The submissions of the assessee for fall in G.P. rate in Dadra unit were thus found without any merit.

4. The AO brought on record that cost of sales in Haridwar unit was shown low as compared to Dadra unit, as illustrated below.

(Figures in crore)

	Haridwar Unit AY 2009-10	**Dadra Unit AY 2009-10**	**Dadra Unit AY 2008-09**
Sales	21.84	56.47	71.82
Cost of sales	13.82 (63.30 per cent)	44.69 (79.26 per cent)	52.79 (73.80 per cent)

5. In view of the above, the AO held that with a view to take maximum advantage of deductions under the Income-tax Act, the assessee had reduced expenses of Haridwar unit and diverted them to Dadra unit. The AO therefore rejected the books of account of the assessee. In order to compute the disallowance, the AO combined trading results of both the units at Dadra and Haridwar and worked out percentage of combined cost of sales, which came to 74.72 per cent. Applying the said ratio, the AO worked out the cost of sales of the two units as under:

Cost of sales of Haridwar Unit	Cost of sales of Dadra Unit
74.72 per cent of ₹ 21.84 crore = ₹ 16.32 crore	74.72 per cent of ₹ 56.47 crore = ₹ 42.19 crore

6. Applying the above cost of sales, GP rate of the two units was computed as under:

(Figures in crore)

	Haridwar Unit	**Dadra Unit**
Sales	21.84	56.47
Less: Cost of sales at the rate of 74.72 per cent	16.32	42.19
Other charges such as electricity, wages, excise duty, etc	1.22	3.56
GP	4.30	10.72
Rate of GP	19.68 per cent	18.98 per cent

7. Based on the above, gross profit of the Haridwar and Dadra units was recomputed as under:

Unit	**Gross Profit recomputed by AO**	**Gross profit declared by assessee**	**Difference**
Haridwar	₹ 4,29,81,120	₹ 6,79,86,603	(-) ₹ 2,50.05,483
Dadra	₹ 10,71,80,060	₹ 8,22,14,457	(+) ₹ 2,49,65,603

8. The AO held that by declaring a lower GP rate in respect of Dadra Unit, assessee has tried to show more profit from Haridwar Unit with a view to reduce its incidence of taxation. Accordingly, the AO reworked out the eligible deduction for both the units.

9. Lower interest was debited to Haridwar Unit: The AO, after considering the explanation of the assessee, held that the 'inter plant contra entry' in the books of account amounting to ₹ 21,68,34,677/- was diversion of interest-bearing funds to Dadra Unit of the Haridwar Unit, with the intention of inflating the expenses of the Dadra Unit where the assessee enjoyed a lower deduction u/s 80IB and reduction in the expenses of the Haridwar Unit which enjoyed 100 per cent deduction u/s 80-IC. The AO treated interest of ₹ 2,60,20,161/- at the rate of 12 per cent of ₹ 21,68,34,677/- as interest attributable

to the Haridwar Unit. Accordingly, interest cost of Haridwar Unit was increased and that of Dadra unit reduced to the extent of ₹ 2,60,20,161/-.

10. In the final analysis, deduction ₹ 1,73,19,630/- was allowed for Dadra unit as against claim of ₹ 45,68,203/- and Nil deduction was allowed for Haridwar unit as against claim of ₹ 1,92,73,008/-. The assessment order has been upheld by the CIT(A).

Names of the Officers: Beena Menon, ACIT-15(3), Mumbai
Dr. Sandeep Goel, Addl. CIT Range 15(3), Mumbai
Pradeep Sharma, CIT-15, Mumbai
R. K. Paliwal, CIT(A)-26, Mumbai

TREATMENT OF COMMISSION RECEIVED FROM EMPLOYER FOR NOT COMPETING WITH EMPLOYER AS SALARY U/S 16 & 17 OF THE ACT.

Treatment of commission received as salary – Assessee being employee of the company received commission for not competing with the employer – treated as salary under the inclusive definition u/s 17 of the Act. The Hon'ble Delhi High Court vide its order dated 30.11.2012 allowed the Revenue's appeal u/s 260A on the issue of charging non-compete fees paid to employee as salary u/s 16 & 17 of IT Act, 1961

Survey u/s 133A was conducted on 10.02.2006 in the case of Uzind Corporation in which the assessee Mr. Kanwaljit Singh was an employee. During the survey, it was noticed that the assessee was a General Sales Agent (GSA) of Ujbekistan Airways (UA)-Uzind Corporation (UC) and received a salary of ₹ 1,32,000/- per annum in that capacity. By a non-compete agreement (NCA), the assessee also received an amount of 7 per cent of the cargo freight and cost of tickets payable by UC to UA in addition to his regular salary. Under the agreement, commission payable to the assessee was separate from the remuneration given to him for other services provided by him to UC. It was further stipulated that the relationship was on principal-to-principal basis, not intended to be construed as either a partnership or agency.

2. The AO vide his order u/s 143(3)/148 dated 28.12.2006 for AY 2003-04 to AY 2005-06, had made addition of ₹ 2,75,94,701/-, ₹ 2,75,33,758/- and ₹ 2,21,85,671/- respectively holding that the commission received by the assessee as salary, in accordance with section 15(a) of the IT Act, 1961.

3. The CIT(A) while relying upon a decision of Madras High Court in the case of CIT vs Abdul Wahid (243 ITR 467) confirmed

the AO's order. The ITAT reversed the orders of CIT(A) and AO stating that the provisions of section 28(va) are applicable to assessee's case following the observation of Hon'ble Supreme Court order in the case of N L Mehta Cinema Enterprises, 208 ITR 975.

4. The Hon'ble Delhi High Court while placing reliance on a decision of Madras High Court in the case of CIT vs Abdul Wahid (243 ITR 467) reversed the decision of Hon'ble ITAT stating that the assessee was given salary and in addition he was also given commission for not competing with his employer, during his employment in regard to the same line of business, in which he worked as an employee of the firm. Therefore, the commission amount clearly was part of salary answering the description under the inclusive definition under section 17 of the IT Act 1961.

Names of the Officers: R. K. Kackar, ACIT Circle 37(1), Delhi
Sanjeev Shankar, Addl. CIT,
Range-37, Delhi
M. Sailo, CIT-XIII, Delhi

SHARE APPLICATION MONEY ADDED AS UNEXPLAINED CREDIT U/S 68 OF THE ACT.

The assessee engaged in the business of trading in fabric and iron ore received share application money amounting to ₹ 3.84 crore - Explanation offered by the assessee was thoroughly investigated - Enquiries were made in the case of share applicants - Amount was added back in the income of the assessee u/s 68 of the I.T. Act

The assessee company (BTM Exports Ltd.) is engaged in the business of trading in fabric and iron ores. During the year it received share application money amounting to ₹ 3,84,00,000/- from 16 persons. While going through the details submitted during assessment, the AO noted that all the 16 share applicants were residents of Patna but their accounts had been opened in State Bank of Patiala, Bhilwada (Rajasthan). The AO also noticed out of three directors of the assessee company, two were residing in Bhilwada.

2. In order to verify the facts, the AO issued notice u/s 133(6) to the Manager, State Bank of Patiala, Bhilwada for further details with regard to these accounts. The details revealed that there was no transaction except the amount introduced in the assessee company as share capital, through the bank account of each share applicant. On further investigation it was found that all the shareholders were from similar location, have opened their bank accounts in the same bank and that they also have almost same annual income and have filed their returns of income on same date. As this created doubt about the transactions, the assessee company was asked to produce the share applicants. However, the assessee failed to do so even after being given ample opportunities.

3. Further enquiry also revealed that amount credited in the accounts of share applicants was received from only two firms situated

at Bhilwada, having their proprietors from Patna. Enquiries were also conducted in respect of these two concerns but they preferred not to respond to the AO. It was also noticed that in their income tax returns for the relevant assessment year, proprietors of these firms did not show any business income or commission income etc. from the transactions entered into with the assessee company. In the return of income they have shown income either from salary or income from other sources.

4. The assessee company was confronted with the facts. However, even after availing ample opportunities, the assessee company could not dispel the suspicion over the genuineness and creditworthiness of the share applicants.

5. Accordingly, share capital amounting to ₹ 3,84,00,000/- was added back in the total income of the assessee as it failed to discharge the onus lying upon it u/s 68 of the I.T. Act.

6. The assessee company not satisfied with the addition went before the CIT(A). The CIT(A) went into the facts of the case and circumstantial evidence produced in the assessment order by the AO and confirmed the addition. On the basis of the findings in the assessment order and the appellate order, the assessment orders of the earlier years too have been reopened/set aside by the CIT u/s 263 of the I.T. Act.

Names of the Officers: P. K. Sharma ACIT Circle 3(1),
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INTERNATIONAL TAXATION AND TRANSFER PRICING

INTERNATIONAL TAXATION AND TRANSFER PRICING

PAGE NO.

ATTRIBUTION OF PROFITS FROM OFF-SHORE SUPPLY

Assessee contends closure of PE - investigations show it was implementing a composite, turnkey contract with some 'primary responsibility' – facts found establish that a portion of the sale was concluded in India within the meaning of Sale of Goods Act – profit computed under domestic law

Holland Institute of Traffic Technology BV(HITT), a subsidiary of a Netherlands-based company, had international operations in the field of safety, security and efficiency of nautical and air traffic, and also in port management. It had set up a Project Office (PO) in India in 2005, from where several contracts were executed in India. For the AY 2010-11, the taxpayer company claimed that since it had not performed any activity during the year from the PO in relation to any of its contracts in India, the business income of the Company from these contracts was not taxable in India. The taxpayer also contended that the income received from rendering of services (except training services) would not constitute fees for technical services within the meaning of Article 12 of the DTAA between India and the Netherlands, since it did not 'make available' technical knowledge to the recipient. Based on these premises, the taxpayer offered to tax only the income received from providing training services, as 'fees for technical services'.

2. Since the primary contention of the company was that the project office was inoperative, the taxpayer was asked to specifically state whether it had sought closure of its PO during the relevant AY. The taxpayer submitted that it had not made any such application for closure of the project office. Considering this fact, and in view of Articles 5(1) and 5(2)(c) of the India- Netherlands DTAA, the Assessing Officer (AO) held that the taxpayer continued to have a Permanent Establishment (PE) in India during the year.

3. The AO then proceeded to examine the various contracts being executed by the taxpayer. It was found that the assessee was engaged in a composite contract for the supply, installation, testing and commissioning of Advanced Surface Movement Guidance Control System (ASMGC) for Delhi, Chennai, Kolkata and Mumbai Airports. It was seen that for this year, though the taxpayer had receipts from off-shore supply of hardware and from training, the project office was in fact not involved in any of the activities relating to such supply and even the personnel travelling to India in respect of this contract had not utilized the PO.

3.1. The AO, however, was of the view that the assessee cannot have a PE for one part of the activity in India, and not have a PE for the other part. He held that since the ASMGC contract was a single contract, all the activities relating to the contract were to be considered with respect to the existing PE and business profits determined. In respect of the off-shore supply of hardware, 20 per cent of the invoice value was held to be attributable to the PE in India for the delivery of equipment at the project site, and 10 per cent of such value was deemed to be the profits taxable in India. The income from training was computed in accordance with section 44DA of the Act read with Rule 10(iii).

4. Another contract for the establishment of vessel traffic services (VTS) in the Gulf of Kutch involved the installation, testing and commissioning of various complex equipments. Perusal of the 'Purchase Orders' submitted by the assessee along with the Consortium Agreement revealed that in the consortium, the assessee had been assigned the 'primary responsibility' for the integration of the entire VTS system, performance trials, commissioning and handing over of the system. After due investigation and further analysis, the AO concluded that the VTS contract was in the nature of an "installation project", which had been continuing for more than six months, and hence constituted a PE.

4.1. During the year, the assessee had received some payments for off-shore supply of equipment & services. The AO thoroughly examined the terms of the contract in the light of the provisions of sections 4, 16, 19, 21 and 42 of the Sale of Goods Act, 1930 and concluded that the contract of sale was not complete with mere delivery of goods, as the contract clearly stated that acceptance of goods by the buyer was incumbent on integration, performance trials, and commissioning. The handing over of the off-shore supply was actually complete only after such integration, and commissioning. Information gathered under section 133(6) of the Act further revealed that the assessee's personnel had visited India in connection with the execution of the project during the year. Based on this analysis, 20 per cent of the entire value on account of delivery of goods and services was attributed to the PE. Such attribution was also justified on the basis of provisions of Section 44BBB of the Act as the contract was turnkey in nature.

5. Similar attribution of profits was made for other installation projects. Total income of the assessee was finally determined at ₹ 2.63 crore, as against the returned income of ₹ 1.19 crore.

Names of the Officers: Rintei Renthlei, DDIT (Intl. Tax) - 1(1), Kolkata
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Kolkata

INCOME OF FOREIGN RE-INSURANCE COMPANY TAXABLE IN INDIA

Indian subsidiary of foreign re-insurance company found to be rendering core re-insurance services – compensated on cost plus basis – subsidiary held to constitute service PE – also had authority to influence contracts – held to constitute agency PE too – re-insurance premium taxable in India

Swiss Re-insurance Company Limited ('Swiss Re') is one of the leading re-insurance companies globally, and is a tax resident of Switzerland. It filed an application under section 197 of the Income-tax Act for issue of certificate determining rate of tax to be deducted at source from the re-insurance premia receivable from Indian insurance companies. The applicant contended that it does not have a permanent establishment (PE) in India, it does not carry on any business in India and there is no concern in India that could be held to constitute a dependent-agent PE of Swiss Re. Hence it was claimed that the re-insurance premium, which is in the nature of business income, could not be charged to tax in India under the Indo-Swiss DTAA.

2. The Assessing Officer (AO) analysed the nature of business and held that the income of the applicant is arising from specific sources in India on a regular and continuous basis and hence there existed a clear business connection in India. Consequently, he held that the income of the applicant is taxable in India in terms of Sec. 9(1)(i) of the Act.

3. The AO further found that the applicant had a wholly-owned subsidiary in India, namely, Swiss Re Services India Pvt. Ltd. ('SRSIPL'). The applicant, through its Singapore branch, had entered into a Services Agreement with SRSIPL for obtaining risk assessment and other services, for which the Indian subsidiary was being remunerated on a cost plus 12 percent margin basis. The AO analysed the services agreement and noted that the services provided

included facilitation of communication between Swiss Re and its clients, assistance in risk assessment, providing written reports and information about the cases, and making recommendation regarding appropriate ratings. He concluded that SRSIPL had provided highly technical and core re-insurance services, and not merely incidental or auxiliary services. He also held that since Swiss Re had remunerated SRSIPL on a cost-plus basis, the employees of SRSIPL had rendered services to Swiss Re as de facto employees. Considering all these facts, the AO held that the applicant had a Service PE in India under Clause (l) of Article 5(2) of the DTAA with Switzerland, in the form of its subsidiary SRSIPL.

4. In addition, the AO went on to observe that SRSIPL had performed value-added services which were the core business processes crucial to the re-insurance business of the applicant. In fact, SRSIPL was a captive service provider to Swiss Re. Hence, it could be held that SRSIPL had the authority to significantly influence the decisions regarding entering into contracts in India. The final re-insurance contracts, though formally entered into by the applicant, were based on the vital inputs and reports of SRSIPL. The claim of the applicant that SRSIPL neither had the authority to secure contracts nor did it solicit business for Swiss Re, was therefore held to be erroneous.

5. Thus, the AO held that SRSIPL exercised indirect authority to negotiate and enter into contracts for or on behalf of the applicant, and it habitually secured orders for or on behalf of the assessee. In terms of para 4 of Article 5 of the Indo-Swiss DTAA, therefore, SRSIPL also constituted an agency PE of Swiss Re in India.

6. The AO also noted that though Swiss Re may have some independence with respect to day-to-day operations, its actions were restricted by gross acceptance limits and limits on net premium income. Such restrictions necessarily constitute control. The gross acceptance limit and net premium income both relate to the total exposure of insurers and only with agents like the Indian cedants, the applicant has

authority to perform duties. Such cedants, collectively and indirectly possess authority to negotiate and enter into contracts in respect of the enterprise. Therefore, the cedants can also be considered as the agents of the assessee in India.

7. In the light of the above arguments and after detailed discussion, it was held that the applicant had a PE in India and the re-insurance premia, being business income, was liable to tax in India on a net income basis. The application under section 197 was disposed of accordingly.

Names of the Officers: Mahesh Shah, Addl. DIT (Int.Tax)-R.2, Mumbai
L. N. Pant, DIT (Int.Tax)-1, Mumbai

DETECTION OF SERVICE PE AND ATTRIBUTION OF PROFIT

Records of personnel employed in project examined minutely to establish existence of service PE – taxpayer's computation of profits rejected and profits computed under section 44AD

Gifford LLP, the taxpayer, was a concern registered in the United Kingdom. It had entered into a contract for modernization of the Garden Reach Shipbuilders & Engineers Ltd (GRSE), Kolkata. As per the contract, GRSE was required to make available to the taxpayer an air-conditioned office space inside the Garden Reach Shipyard for the duration of the contract. The taxpayer had no other contract with any other party in India. For AY 2010-11, the taxpayer filed its return of income declaring business income in the hands of its permanent establishment (PE) and attributing profit at about 31 per cent of the gross receipts. However, it was claimed that there is in fact no PE in India, on the ground that the office space provided by GRSE was not used by it for its own business, but was used only for the limited purposes of executing the contract. The taxpayer further argued that as per Article 5(1) of the India-UK DTAA, a fixed place of business must be at the disposal of the enterprise for it to be considered as a PE of that enterprise. Thus it was contended that the 'fixed place of business' test was not satisfied in its case,and that the receipts of the taxpayer would fall under Article 13 of the India-UK DTAA read with Section 115A of the Act. Since the provisions of the DTAA were more beneficial, tax should be levied at the rate of 15 per cent on gross basis.

2. The Assessing Officer carried out a detailed inquiry under section 133(6) of the Act and sought specific information from different persons, including from GRSE. In reply, GRSE confirmed that as per its contractual obligations, an office space was provided to the assessee at the project site for execution of the contract. GRSE

also informed that the consultancy services as per the agreement were being provided by the assessee along with its associates - Appledore of the UK, IMC of Delhi and TK Roy of Kolkata, through their own personnel already employed by them. No fresh appointment of other personnel or concerns had been made by the assessee. Lists of the assessee's personnel (both international and resident) working on the GRSE project as well as the list of the assessee's resident-staff deputed at GRSE site, were also procured. To further verify the facts, an Income Tax Inspector was sent to the assessee's office at the GRSE project site.

3. Detailed examination of the list of assessee's personnel clearly showed that the resident staff deputed at the GRSE site had rendered services for a period of more than 90 days during the relevant year. Also, the assessee in its submissions had stated that six of its employees from the UK had rendered services at the GRSE site for a total of 822.50 hours, which was equivalent to 34.27 days. Thus the period of services rendered by the assessee, through both resident and international employees, clearly aggregated to more than 90 days during the relevant year. Accordingly, the Assessing Officer held that the assessee has a Service PE in India under Article 5(2)(k) of the DTAA and hence business income is required to be computed in accordance with Article 7 of the DTAA and the applicable domestic law.

4. For attribution of the profits arising in India, the contract was examined carefully and it was found that the nature and scope of work to be performed by the assessee for the project in India remained unchanged during the relevant year. Also, it appeared that no separate accounts for the operations in India and in UK had been maintained. In fact, the entire expenditure relating to the project work had been loaded onto the PE and considered in its Profit & Loss Account. Further, while determining the man-hours of work in India and in the UK, the assessee had considered only the man-hours put in by its international personnel and completely ignored those put in by its

resident employees at the GRSE site, majority of whom had rendered services aggregating to more than 90 days during the year. Therefore, the assessee's computation of profit was rejected and Section 44DA of the Act was invoked for the determination of the profits attributable to the PE.

5. Total income of the assessee was finally determined at ₹ 3.68 crore, as against the returned income of ₹ 1.97 crore.

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INCOME FROM COMPOSITE CONTRACT TAXABLE IN HANDS OF AOP

Turnkey contract split into three – offshore supplies claimed not taxable – careful examination of tender documents shows composite nature of contract – CIF basis of supplies indicated completion of sale in India – income held taxable in India - assignment of onshore part held to constitute AOP, resident and taxable in India on entire contract

Siemens AG, a company registered in Germany, was awarded certain turn-key contracts by Power Grid Corporation of India Ltd. (PGCIL) for the design, engineering, manufacture, testing, supply, erection, testing and commissioning of certain equipments and materials relating to electrical supply packages and transmission lines. Siemens AG applied for a certificate under section 197 for receiving payments from PGCIL in respect of off-shore supplies of electrical equipments pertaining to one of the transmission line projects. The turn-key contract in this case involved off-shore supplies, on-shore supplies, on-the-site installation, on-shore services, commissioning, etc.

2. The applicant contended that the project actually involved three separate and independent contracts, namely, contract for CIF supply of equipment from outside India and training of personnel outside India (referred to as Off-shore Contract), contract for ex-works supply of equipment and material from within India and testing in India (referred to as On-shore Supply Contract) and contract for all services to be performed in India (referred to as On-shore Services Contract). In respect of the off-shore supply contract, the transfer of title of the equipments and material supplied by Siemens AG passed to PGCIL at the port of shipment and accordingly, no income from such offshore supply accrued or arose in India, nor could it be deemed to have accrued or arisen in India.

3. The Assessing Officer (AO) examined the entire bid and contract documents in detail and found the following facts:-

(a) The three parts of the instant contract contained inter-linked cross-fall breach clauses specifying that breach of one contract would constitute breach of the other contracts;

(b) Siemens AG had been given overall responsibility and remained liable for the successful execution of all the three parts;

(c) As per the Instructions to Bidders, in case of award of contract to a foreign bidder, there would be three separate contracts, which implied that in the eventuality of award to a domestic bidder, the entire contract comprising of supplies and services would have comprised a single contract;

(d) The bidding fee had been paid at one time only by the applicant Siemens AG, and not separately for the three parts;

(e) The purpose for which bids were invited by PGCIL was the commissioning of a fixed supply compensation package, and not for supply of offshore equipments and training independently of the installation and commissioning project.

4. The AO concluded that a single, indivisible, composite contract for a transmission line project had been artificially segregated to make it appear as three independent contracts, solely with a purpose of avoiding taxes in India. He drew support in this regard from the three-Judge verdict in Vodafone International Holdings vs. UOI [345 ITR 1 (SC)] where it was held that a transaction has to be "looked at and not looked through" and seen as a whole and not by adopting a "dissecting approach". The AO further noted that the off-shore

supplies had been made by the applicant on CIF on Indian port of disembarkation basis. In such a case, the delivery of the goods had to be taken as having been made in India. Therefore, the profit on supplies made was liable to be taxed in India on the ground that the sale is completed in India.

5. The AO further noted that after successfully obtaining the contract, the applicant had appointed its Indian subsidiary Siemens Limited as an 'associate' and assigned the two on-shore contracts to it. The applicant claimed to have entered into an 'Association' agreement, but no 'agreement' in that regard or any details had been furnished. The AO held that in such a scenario, the applicant and its Indian subsidiary had formed an 'Association of Persons' (AOP) within the meaning of section 2(31) of the Act, whose members had decided to jointly execute the project. Hence the AOP, which was a resident of India, was liable to be assessed as such and the income from the project was chargeable to tax in India. Accordingly, no benefit of India-Germany DTAA could be afforded to the association.

6. Considering all these facts and inferences, it was held that the revenues emanating from the off-shore supply contract were liable to tax withholding in India in the hands of the applicant Siemens AG.

Names of the Officers: Mahesh Shah, Addl. DIT (Int.Tax)-R.2, Mumbai

L. N. Pant, DIT (Int.Tax.)-1, Mumbai

PROFIT ATTRIBUTION THROUGH FAR ANALYSIS

Taxpayer conducting sporting event in India through PE – compensation on cost plus basis claimed to be adequate remuneration for PE – detailed FAR analysis used to split profits between PE and head office

The taxpayer, International Management Group, UK (IMG) was a world renowned sports event management company. It entered into an arrangement with the Board for Cricket Control in India (BCCI) in respect of the organization and operation of the Indian Premier League (IPL) 2008. IMG deputed its expert personnel to India for this purpose. Since the duration of their stay exceeded the threshold specified in the Indo British DTAA, a permanent establishment (PE) was constituted in India.

2. The Transfer Pricing Officer (TPO) was required to examine whether the profit attribution to the PE was at arm's length. In its transfer pricing study report, the taxpayer contended that the main functions of IMG were conceptualized and performed in Britain and the Indian PE performed only low end functions of implementation at ground level. Further, the risks assumed by the India PE were dealt with in a very trifling manner by merely stating that the PE was performing low risk activity. Consequently, the assessee claimed that the compensation paid to the PE on cost plus basis was at arm's length.

3. The TPO observed that, contrary to the claim of the assessee, the entire management of the event happened in India. He carried out a detailed FAR (functions, assets and risk) analysis and concluded that while the conceptualization and strategy formulation was done

from the UK, there were vital inputs given by the Indian PE. The basic data was gathered and interpreted by sending expert employees to India, who worked in close coordination with freelancers who were experts in areas involving interface with the public. The entire team had to be present in India to oversee the timely delivery of the deliverables involved, while being ready for any eventuality. The TPO held that it was this close knit network of expert employees and freelancers, which constituted a crucial human intangible asset that was responsible for the entire coordination, planning, execution and final completion of the event.

3.1 With regard to the risks assumed, the TPO found that the risks of IMG in UK were confined to the plans it formulated. IMG UK also did not bear any market risk sitting in the UK. The major risk was undertaken by the Indian PE, the entity that executed the event. The credibility of the brand IMG depended mainly on the team working in India for the successful completion of the event. The brand reputation risk was thus assumed by the PE. The market risk was also in India, as any failure on the part of the experts working in India would prejudice the creation of a market in India for IMG. The delivery risk and the service liability risk were also with the Indian PE.

4. Thus the TPO concluded that IMG, through its PE, was carrying out business in India in a full-fledged manner, and that the event could not have materialized without the presence of the PE in India. He held that the UK office was essentially performing headquarter functions, and hence entitled to 5 per cent of the gross receipts for its expenses, on the lines of section 44C of the Act. Considering the overall supervisory functions of the UK office, the TPO allowed it a 100 per cent markup on these costs. The remaining portion of the receipts was held to be attributable to the activities of the PE, and after deducting all its expenses which were already reported, the balance

was held to be the arm's length profit of the PE. The amount taxable in India thus came to ₹ 22.97 crore as against ₹ 5.38 crore declared by the taxpayer.

Names of the Officers: Jasdeep Singh, Addl CIT,
TPO 1(3) Delhi
Rashmi Saxena Sahni, DIT
(Transfer Pricing) – I, Delhi

DETERMINING ALP OF TRANSFER OF INTANGIBLE

Transfer of fully developed intangible in ready-to-exploit phase to AE – claim of cost contribution arrangement rejected – intangible valued by income method and relief from royalty approach – hypothetical comparable royalty computed and adjusted for tax - discounting factor applied to find net present value of intangible

Tata Motors Ltd., a leading Indian automobile company, was engaged in the manufacture of medium and heavy commercial vehicles. Since 2004-05, the company (assessee) had been developing a new technology for the manufacture of components (cabin, front body, bumpers, lamps etc) of commercial vehicles in a cost-efficient way that would also impart a higher power to weight ratio and other contemporary features to the vehicles. An associated enterprise, being an overseas joint venture (JV) set up by the assessee in Korea, had been involved since 2004 itself as a contract R&D service provider for developing this technology. However, the assessee was the sole owner of all intellectual property rights (IPRs) in the technology.

2. In March 2009, the assessee entered into an agreement with the JV, transferring half of its ownership rights and title to all IPRs in the technology to the JV for a lump-sum amount of USD 26.95 million. In its transfer pricing study report for A.Y. 2009-10, the assessee benchmarked this transaction using the comparable uncontrolled price (CUP) method. The entire estimated project cost of ₹ 419.76 crore was allocated between the assessee and its JV in the proportion 68 per cent:32 per cent, using an allocation key based on estimated revenue shares over a period of 5 years for both concerns. On this basis, the transfer of half of the IPRs to the JV for the stated sum, was treated by the assessee as being at arm's length.

3. The agreement of March 2009 between the assessee and the JV was made out to be in the nature of a cost contribution arrangement. On perusal of the agreement, however, the Transfer Pricing Officer (TPO) found that prior to March 2009, there was no intention of the parties to jointly develop and own the technology. After analysing various clauses of the agreement, the TPO concluded that the transaction was clearly one of sale of IPRs in XYZ Technology to the extent of 50 per cent share, so that the assessee and the JV would have joint ownership rights over all IPRs in the technology.

4. The issue now was one of valuing the interest in IPRs transferred, and thereby come up with a CUP against which the actual consideration could be tested. Data base search did not come up with any information in the public domain on any uncontrolled comparable transaction undertaken during the relevant year 2008-09. Therefore, the valuation by the TPO had to be based on one of the prevalent methods for valuation of intangibles i.e. Income Method, Market Method and Cost Method. Taking guidance from IVS210 Asset Standard issued by the International Valuation Standards Council on Valuation of Intangible Assets, the TPO observed that in an uncontrolled transaction, the person selling an IPR would consider the present goodwill in the market, the useful life of the IPR and the future income potential of the IPR. Sincethe sale price of a fully developed technology would depend more on future earnings than on development costs, the TPO adopted the income method, where the value would be determined by reference to the value of the hypothetical royalty payments that would be saved through owning the intangible, as compared to licensing the intangible from a third party (relief from royalty approach).

5. The useful life of the IPRs was estimated to be 15 years, based on the assessee's assertion that it expected grant of patents for 20 years and that its technical designs and drawings had already been granted patents for 10 to 15 years from the date of filing. The TPO accordingly considered it reasonable to project revenues for 15 years, whereas

the assessee had projected revenues only for 5 years. On searching the royalty database 'royaltystat.com' for licensing of automotive technology, the TPO found an agreement of 20 years duration for license to use "Alpha Truck Engines" trademark, where the royalty was 8 per cent of sales. Assessee responded by producing different royalty agreements for auto components, but these were not found comparable in terms of the technology transferred.

6. Hypothetical royalty payments over the next 15 years were accordingly computed. The aggregate was adjusted for tax at the prevailing corporate tax rate in Korea and discounted to present value using a factor of 8.1 per cent found to be appropriate on the basis of information available in public domain. The resultant amount exceeded the consideration actually received by the assessee by ₹ 589.6 crore. This amount was held to be the transfer pricing adjustment required to be made towards sale of Intellectual Property Rights (IPRs) by the assessee to its JV.

7. The assessee had also given a financial guarantee during the year, for a sum of ₹ 11246.51 crore on behalf of its subsidiary in UK, covering a bridge loan taken by the subsidiary for acquisition of a business in UK. Though the transaction was disclosed in Form 3CEB, the assessee did not consider it to be an international transaction.

8. The TPO benchmarked the transaction using corporate bond yields prevailing in UK at the relevant time. He found that Standard &Poors had assigned to the assessee a global rating of 'BB' on 04-04-2008 for long-term foreign issuer. For the subsidiary, the assessee furnished a credit rating of Moody's at B1 (equivalent to B+ of S&P) using Moody's RiskCalc software tool. However, the TPO found this rating to be based on financials up to 31-03-2007, whereas the date of loan advanced by the bank to the subsidiary was 31-03-2008. Considering the adverse economic circumstances of the year 2007-08, the TPO considered the rating of the subsidiary at 'CCC' (three notches below 'B+).

9. The corporate bond yields corresponding to these credit ratings were then found, and the differential was taken as indicating the difference in interest rates payable by the subsidiary with and without the guarantee extended by assessee. This benefit of interest savings was split in the ratio 60:40 between the assessee (guarantor) and the subsidiary (borrower). Based on this benefit derived by the subsidiary, and after considering other factors such as credit worthiness of the subsidiary, costs to the assessee and its increased leveraged position, the guarantee fee receivable by the assessee was calculated at the rate of 1.536 per cent p.a., which translated into a transfer pricing adjustment of ₹ 172.74 crore on this issue.

Names of the Officers: D. Prabhakar Reddy,
Addl.DIT (TP)-II(6), Mumbai
Sangeeta Singh, DIT(TP)-II, Mumbai

DETERMINING ALP IN FINANCE AND CAPITAL TRANSACTIONS

Indian multinational investing in and financing subsidiaries – also providing corporate guarantee – innovative methodology used for determining arm's length interest rates, guarantee commission rates and value of equity shares

BhartiAirtel Ltd. is an Indian multinational engaged in the business of providing telecommunication services and has subsidiaries in several countries.

2. During the period relevant to A.Y.2009-10, the taxpayer company extended a corporate guarantee to Deutsche Bank on behalf of its Sri Lankan subsidiary, BhartiAirtel Lanka (Private) Ltd. for NIL consideration. In its transfer pricing report, however, the assessee computed the arm's length guarantee commission at 0.5 per cent on the basis ofan internal comparable uncontrolled price (CUP), and declared the same as income. The Transfer Pricing Officer (TPO) rejected the internal CUP, holding that its comparability had not been established with regard to factors such as contractual terms,period of transaction and market conditions prevailing. Instead, the TPO gathered data under section 133(6) from various banks and treated the same as external CUPs. The corporate guarantee charge receivable was estimated at 4.71 per cent and an adjustment of ₹ 17.36 lakhs was accordingly made.

3. The taxpayer had also received interest on foreign currency loans extended by it to its subsidiaries at Libor+450 bps (which worked out to about 7.3 per cent). These transactions were benchmarked by the taxpayer using an internal CUP, and alternatively using external CUPs based on Reuter's loan connector search. The data furnished in respect of the internal/external CUPs was rejected by the TPO, as comparability on factors such as date of transaction, profile of loan

provider, market conditions and contractual terms etc. could not be established. The external CUP was also rejected as it was not in conformity with Rule 10D(3).Further enquiry by the TPO revealed that the sources of funds for the foreign currency loans were rupee funds available with the taxpayer. The TPO held that the arm's length rate of interest would be the rate expected by the lender and hencethe country in which the loan originated and the currency used would be the important factors for benchmarking the interest rate. In the present case, the interest rate prevaling in India and the opportunity cost of such funds if they were invested in the business,would be relevant. Further, adjustment was required to be made for credit risk and single customer risk, since the taxpayer was not in the business of financing. Based on these factors, the interest rate was benchmarked using external CUP in the form of prime lending rate of SBI, to which an appropriate mark up was added to account for the above factors. An adjustment of ₹ 7.72 crore was consequently made on this issue.

4. The TPO further noted that the taxpayer had advanced ₹ 110.66 crore as share application money to its wholly owned subsidiary in Singapore on 31.10.2008. However, the shares were issued only a year later on 22.10.2009. During this period the taxpayer did not earn any interest on the amounts advanced. The TPO held that the advance of share application money, though a transaction on capital account, was an international transaction within the meaning of section 92B(1) read with clause (v) of section 92F. Drawing support from the OECD Guidelines, here-characterized the subscription as a loan and computed arm's length interest receivable at 15.77 per cent. An adjustment of ₹ 7,21,91,792 u/s 92CA was made on the issue.

5. The taxpayer had also invested in the equity capital of its subsidiaries in Sri Lanka and in the UK for a cumulative amount of ₹ 215 crore. The valuation of the shares was made using discounted cash flow (DCF) method. The TPO rejected the use of DCF method on the ground that the estimation of several factors like terminal growth rate, risk free rate of interest and market risk premium was

not supported by relevant data. The valuation of shares was done in accordance with Rule 11UA, which relates to section 56 of the Act, but lays down an objective method for valuation of shares. The arm's length value of shares was consequently determined at ₹ 173.02 crore.

Names of the Officers: Rahul Garg, Addl. DIT (TP)-1(1), Delhi
Rashmi Saxena Sahni, DIT (TP)-1, Delhi

DETERMINATION OF ALP CONSIDERING LOCATION SAVINGS

Indian Subsidiary engaged in contract manufacture and R&D – transactions benchmarked by assessee using TNMM – TPO finding Location Specific Advantages – location savings determined and allocated, resulting in adjustment to profits shown –research and development services rendered from India also held to involve location savings – similar adjustment made

Watson Pharma India (the assessee) was a wholly owned subsidiary of Watson Pharma USA (WP USA), rendering contract manufacturing as well as contract R&D services to its US parent. During the year relevant to A.Y. 2009-10, the assessee purchased raw material mainly from third parties and carried out manufacture of Active Pharmaceutical Ingredients (APIs) and Finished Dosage Forms (FDFs) at its manufacturing facility in India, and exported them to WP USA. In its transfer pricing analysis, the assessee aggregated the contract manufacturing and R&D transactions and used the transactional net margin method (TNMM) to benchmark them.

2. The Transfer Pricing Officer (TPO) analysed the assessee's functions and activities and found that the solid dosage products manufactured by it were earlier manufactured by WP USA. The production had been shifted to India in FY 2007-08 with the main aim of reducing costs. The TPO was of the view that WP USA was enjoying location specific advantages (LSAs), more specifically, location savings in the form of lower cost of production. The TPO held that in the context of transfer pricing, location savings, being the net cost savings resulting from relocating operations from a ''high cost'' to a ''low cost'' location, resulted in a competitive advantage for which the contract manufacturer must be compensated. He drew support from the UN Practical Manual on Transfer Pricing for Developing Countries, which reflected India's position on location

savings by stating that the price determined by benchmarking on the basis of local comparables did not take into account the benefit of location savings, and was hence inconsistent with the arm's length principle.

3. The TPO asked the assessee to furnish figures of the cost of production in India and in the USA, and state whether the reduced cost of production was passed on to the end customer. The assessee did not provide any data, stating that it was privileged information available only with WP USA. The TPO therefore held that the cost savings had not been passed on to the end customers, and that an adjustment to the income of the assessee on account of such location savings was required to be made.

4. The assessee contended that the arm's length attribution of location savings depended on competitive factors relating to access to LSAs and the realistic alternatives available to the foreign parents given their relative bargaining power. It was stated that WP USA had various alternatives in the manufacturing facilities in Florida, California and India; that there were hundreds of third party contract manufacturing and R&D service providers in India other than the assessee and that WP USA faces stiff competition in the US market. Examples were given of competitors who had also outsourced manufacturing and/or research facilities to India or China. It was pointed out that no comparable company had any FDF manufacturing site approved by the US Food & Drug Administration, as obtaining approvals for shifting manufacturing facilities was an expensive process. It was further argued that the assessee had incurred substantial site transfer expenses which were reimbursed by WP USA, and hence the assessee was in fact in a better bargaining position, and that a proper comparability analysis under TNMM would take care of cost savings, if any.

5. However, the assessee did not furnish any specific evidence or any information about comparable companies. The TPO reasoned that

since the US FDA process was very lengthy and expensive, WP USA would not be able to easily shift manufacturing to any third party in India. Additionally, not all Indian manufacturers could manufacture the patented drugs for WP USA. He concluded that considering the need for maintaining quality, control and flexibility, the assessee was more useful to the parent than the other way around.

6. In working out the cost saved in manufacturing generic drugs in India, the TPO excluded the cost of raw material, since it was mostly imported from WP USA or from third parties. He captured data on other factors of production like land, labour, electricity and infrastructure, reflected in manufacturing expenses. Relying on certain research articles, the overall cost of production of the assessee (excluding raw material) was estimated by the TPO to be about 40 per cent of the corresponding cost in USA. Since the assessee had not passed on the benefits to end customers, the entire differential of ₹ 50.38 crore was taken to be the location savings arising due to the production facility being located in India.

7. The allocation of such location savings in an uncontrolled situation would largely depend upon the bargaining position of the parties. While the assessee with its FDA approved sites and technical manpower was important for WP USA, the assessee needed WP USA for marketing and penetration of the US market in generic drugs. As the association was mutually beneficial, the TPO split the location savings between the assessee and its parent in the proportion of 50:50 and determined an adjustment of ₹ 25.19 Crore on this account.

8. The assessee was also performing product development services including contract research and development and analytical testing for the Watson Pharma group. It also rendered reverse engineering services for finding bio-equivalent drugs in respect of off-patent drugs, and filing Abbreviated New Drug Applications before FDA, USA.

9. Here again, a detailed functional analysis of activities carried on

by the assessee indicated that the main aim of the Watson group since 2007 had been to exploit the reverse engineering skills in India at a lower cost. From a research article giving the number of study sites, study subjects and costs for the fifty most active countries, the TPO found that investigator fees in India and other emerging countries were 50 per cent lower than in other countries. Based on this data, the overall cost of Research & Development in India, excluding raw material, was estimated to be around 50 per cent of what it would cost in the USA. Accordingly, location saving arising due to location of R&D facility in India was computed at ₹ 18.09 crore. On allocating the location saving between the assessee and WP USA, an adjustment of ₹ 9.04 crore was determined on this issue in the hands of the assessee.

Names of the Officers: D. Prabhakar Reddy,
Addl.DIT(TP)-II(6), Mumbai
Sangeeta Singh, DIT(TP)-II, Mumbai

IDENTIFYING CUP FROM DATA GATHERED THROUGH ENQUIRY

Benchmarking of import price of active pharmaceutical ingredients – use of TNMM by taxpayer rejected and CUP held to be most appropriate method – comparables found from data collected through enquiries made with other pharma companies

Aventis Pharma Ltd. (APL) was the Indian associate of Sanofi-Aventis SA, one of the largest multinational companies of the world in the pharmaceutical sector. APL represented the prescription and over the counter (OTC) drugs business of Sanofi, with a gross turnover of ₹ 935 crore for the financial year ended on 31.03.2009. The international transactions under scrutiny for the relevant A.Y. 2009-10 were the import of active pharmaceutical ingredients (APIs) from its associated enterprises (AEs), Sanofi, Germany and Sanofi, Switzerland. The taxpayer had purchased APIs from these AEs to the tune of ₹ 164 crore.

2. On examining the transfer pricing study report prepared by the taxpayer for the year, the Transfer Pricing Officer (TPO) found several international transactions enumerated therein with various associated enterprises, including import of active pharmaceutical ingredients (APIs) and their distribution, export of pharmaceutical products, toll manufacturing activities and receipt of marketing services. Even though these were all distinct international transactions, the taxpayer had aggregated them for the purposes of the study and adopted the transactional net margin method (TNMM) as the most appropriate method for its transfer pricing analysis. An internal TNMM had been used to benchmark the transactions, claiming net margin in the AE segment at 26.74 per cent and in the non- AE segment at 3.91 per cent on the basis of unaudited financials. Data for FY 2006-07 and 2007-08 had been used in the benchmarking exercise, but no contemporaneous data for FY 2008-09 was used by the taxpayer. The

TPO concluded that TNMM could not be an acceptable method in these circumstances, and the data used was not reliable. He therefore rejected the TP documentation filed by the taxpayer.

3. The TPO held that the transactions relating to import of APIs were required to be benchmarked separately, and that the comparable uncontrolled price (CUP) method was the most appropriate method in the circumstances of the case. In order to find an external CUP, enquiries were made under section 133(6) of the Act from Wockhardt, Dr Reddy's Laboratories, Cipla, Sun Pharma, Alkem Laboratories, Merck, Lupin, Ranbaxy and Torrent Pharmaceuticals. A list of 12 APIs imported by the taxpayer from its AEs was forwarded to these companies, asking for details of purchases and sales made by them in respect of these APIs.

4. The information received was examined and it was found that the major APIs, namely Analgin, Glimepiride, Ramipril, and Frusemide, were all available in the Indian market at substantially lower prices than those at which the taxpayer had imported them from its AEs. The TPO issued a detailed show-cause notice to the taxpayer confronting it with these facts, and the reply filed was examined.

5. The objections raised by the taxpayer on the application of CUP method using data that was not in public domain but was collected under section 133(6), and contentions urging acceptance of Customs data, were rejected. The decision of the Hon'ble ITAT Mumbai Bench dated 7-11-2012 in the case of Wills Processing Services India Vs. DCIT (I.T.A.No.8772/Mum/2010) was relied upon in this regard. The implications of the decision of the Supreme Court of Canada in the case of The Queen v. GlaxoSmithKline Inc., [2012 SCC 52 (18 October 2012)] on the taxpayer's case, were considered. Issues arising out of the stated compulsions of license agreements, that the taxpayer had to mandatorily buy the APIs from its AEs at higher prices, were also considered. Technical reports produced regarding evaluation of quality parameters of medicinal formulations containing Glimepiride

manufactured by different pharmaceutical companies, showing superiority of the API imported by the taxpayer, were also examined at length and rejected. Justifications submitted by the assessee for high margins in AE segment and low margins in non AE segment were also rejected. On the other hand, the taxpayer's case on facts was shown to be exactly comparable to the Serdia Chemicals case decided in favour of the Department by the Tribunal, and distinguishable on facts from the UCB case.

6. Finally, the TPO determined the arm's length price of the imported APIs on the basis of the external CUPs found, and computed a total adjustment of ₹ 31.93 crore.

Names of the Officers: JitendraYadav, TPO I (1), Mumbai
Anuradha Bhatia, DIT (TP)-I, Mumbai

Painting by: Zaheen Akhtar, Age-12, School-Greenway Modern School, Delhi

APPELLATE ORDERS

APPELLATE ORDERS

PAGE NO.

PROACTIVE USE OF APPELLATE JURISDICTION BY CIT(A) YIELDS CLINCHING EVIDENCE OF CASH CONSIDERATION IN PROPERTY TRANSACTION

Appellant and husband sold property through sale of shares in private limited company owned by them – Search action against purchaser group revealed evidence that about 67 percent of the consideration passed in cash – Presumption u/s 132(4A) not available against the assessee since document not seized from her premises – CIT (A) found that transaction was arranged through a mediator who too was in appeal before him in his (the mediator's) own case – CIT (A) collected incontrovertible evidence of receipt of cash by assessee during appellate proceedings in the mediator's case – addition of ₹ 4.24 crore made by AO in assessee's hands confirmed – AO's order strengthened.

Ms. Ritu Parwal, the assessee in this case, her husband Sanjay Parwal, and the Sanjay Parwal (HUF) were the owners of the company Smriti Buildcon Pvt. Ltd. which owned a piece of property in Janakpuri area of New Delhi. During the relevant period, the shares of the said company were sold to one HBN Group of companies headed by one Mr. H. S. Saran. The transaction was arranged through a mediator, Mr. Virender Nehra. The HBN Group was subsequently searched. Certain documents were seized which revealed that the aforesaid sale made by the assessee was for a total consideration of ₹ 12.95 crore, out of which an amount of ₹ 8.70 crore was received by the assessee in cash. This amount was not disclosed by the assessee in her return of income. Only short-term capital gain on sale of shares was disclosed in her return of Income.

2. During the search, the HBN Group admitted that they had paid cash over and above the cheque amount. Papers were also seized

which evidenced payment of cash. However the deeming provisions under Sec. 132 could not be applied in case of assessee whose signature and handwriting did not appear on the documents seized from the premises of HBN Group.

3. Incidentally, appellate proceedings in the case of Mr. Virender Nehra, who was the mediator in the transaction, were also pending before the same CIT (A). During the appellate proceedings in case of Mr. Virender Nehra, CIT (A) obtained the tripartite agreement between HBN Group, Mr. Virender Nehra and Mr. Sanjay Parwal, where clinching details of the entire transaction of sale of shares of Smriti Buildcon Pvt. Ltd by Ms. Ritu Parwal and Mr. Sanjay Parwal for a total consideration of ₹ 12.95 crore, out of which an amount of ₹ 8.70 crore was in cash, was mentioned. This tripartite agreement was signed by the representative of HBN Group, Mr. Virender Nehra and Mr. Sanjay Parwal, It was mentioned in the agreement that Mr. Virender Nehra would collect a token amount of ₹ 25 lakh in cash and ₹ 15 lakh in cheque and hand it over to Mr. Sanjay Parwal. Mr. Virender Nehra submitted before the CIT (A) that in accordance with the tripartite agreement, he collected ₹ 25 lakh in cash and ₹ 15 lakh in cheque and handed it over to Mr. Sanjay Parwal and submitted the copy of cheques handed over to Mr. Sanjay Parwal and the receipt of cash of ₹ 25 Lakh by Mr. Sanjay Parwal which was duly signed by him. The appellant had already admitted that her financial transactions were carried out by her husband on her behalf. Therefore the clinching evidence of receipt of cash by the husband of the appellant on her behalf as per tripartite agreement was collected by the CIT (A) in the appellate proceeding of Mr. Virender Nehra.

4. The appellant was confronted by the CIT (A) with such evidence. Opportunity of cross examination of the mediator Mr. Virender Nehra was also provided to the appellant. The tripartite agreement was signed by Mr. Sanjay Parwal, husband of the appellant. The receipt of cheques and cash by Ms. Rita Parwal's husband on

her behalf was proved beyond reasonable doubt. This agreement was signed by the husband of appellant, Mr. Sanjay Parwal.

5. The admission of HBN Group of paying consideration in cash over and above the cheque amount was already available. Therefore, after collecting clinching evidence from the mediator Mr. Virender Nehra, the CIT (A) confirmed the addition of ₹ 4.24 crore made by the Assessing Officer.

Name of the Officer : Navneet Soni, CIT (A)-XXIV,
New Delhi.

DEDUCTION UNDER SEC. 10B DENIED TO THE EXTENT OF ₹ 31.28 CRORE BY CIT (A) BASED ON INFORMATION ALREADY AVAILABLE IN TPO'S REPORT; INCOME ENHANCED

Assessee engaged mainly in providing IT Application Services – Benefit of S.10B allowed by AO - In appeal, CIT(A), based on careful study of information already available in TPO's report, particularly the assessee's factual averments and supporting material submitted before the TPO, reduced claim under S.10B substantially – Income enhanced.

Mphasis Ltd., the assessee in this case, was an MNC engaged in delivering IT-enabled application services, infrastructure and BPO services. The CIT (A), while disposing of the appeal, enhanced the assessed income by reducing the deduction under Sec. 10B on the basis of information available in the order passed under Sec. 92CA(3) by the TPO.

2. The CIT (A) noticed that the Assessing Officer had applied clause (iii) to Explanation 2 to Sec. 10B without examining the nature of expenses to the tune of ₹ 142.15 crore, and thus ignoring the fact that, i) the appellant had admitted before the Transfer Pricing Officer (TPO) that only 9.5 per cent of the profit was derived from the export of software to Associate Enterprises (AE) and the balance 90.5 per cent was derived from onsite services rendered by the AEs on sub- contract, ii) out of the operating expenses of ₹ 193.85 crore, the amount of ₹ 137.47 crore (70.92 per cent) was paid to the AEs for onsite development of software on sub-contract, iii) deduction under sec.10B could not be allowed on the interest earned on Bank deposits and profit on sale of asset.

3. As per Explanation 3 to Section 10B, the profit derived from onsite development of the software by using personnel of the undertaking is deemed to be profit derived from eligible undertaking.

However, the profit derived from onsite development of software through sub-contractors cannot be deemed to be profit derived from the export of software. Hence the CIT (A) issued a notice under Sec. 251(2) bringing to the assessee's notice that out of the profit of the business of ₹ 46,15,78,786/- claimed to have been derived from the undertakings eligible for deduction under Sec. 10B, the profit of ₹ 35,67,93,266/- has been earned from the development of software sub-contracted to the AEs for onsite development and such profits could not be included as the profit of the business of the undertakings eligible for deduction under Sec. 10B of the Income Tax Act. Similarly, the export turnover and the total turnover connected with the above profit cannot be considered for computing deduction under Sec. 10B In respect of the undertakings eligible for deduction under Sec. 10B.

4. While disposing of the appeal, the CIT (A) held that the appellant was eligible for deduction under Sec. 10B only to the extent of ₹ 13.90 crore for the following reasons:

(i) Deduction under Sec. 10B cannot be allowed on interest from Bank deposits of ₹ 4.23 crore and profit on sale of assets of ₹ 1.30 crore included in the profit of the undertaking;

(ii) The major part of the software development (72.83 per cent and 89.07 per cent in value term) was sub-contracted to the AEs in respect of two undertakings, whereas, according to the export import policy of Government of India (on which reliance was placed by the appellant), the STP Unit can sub-contract only to the extent of 50 per cent in the value terms in India with the approval of the Competent Authority. In such circumstances, sub-contracting for value exceeding 50 per cent outside India in any case was not permissible;

(iii) As per Explanation 2 to Section 10B, unless Computer Software is transmitted or exported from India to any place

outside India, profits and gains shall not be deemed to be derived from the export of computer software. Reliance was placed on the decision in Anil Kumar v. ITO[1];

(iv) It was noticed that the AE of the appellant company which rendered the services for onsite development of software, also provided business development services (including the identification of the customers), follow up, negotiation, achieving closure of contracts and customer relationship services. Thus the business transactions between the appellant and the AEs were so arranged as to show the eligible profits of the undertakings at a higher amount. In terms of the Sub-section 10 of Section 80IA, the profits reasonably deemed to have been derived from the undertakings were arrived at by reducing the profit of the undertaking in the ratio of the software development charges paid to the AEs to the total expenses incurred for the software development and the deduction under Sec. 10B was denied to the extent of ₹ 31.28 crore.

5. The findings of the CIT (A) in this case, resulted in the disallowance of deduction under Sec. 10B to the extent of ₹ 31.28 crore on new grounds whereas deduction of ₹ 24.29 crore denied by the Assessing Officer was not upheld.

6. An important lesson from the case is that the AO, while dealing with transfer pricing cases, should not merely make additions proposed by the TPO, but should make use of the contents of the TPOs report, especially, the factual position taken by the assessee before the TPO during the proceedings and the material presented in support of such positions.

Name of the Officer : O. P. Yadav, CIT (A)-IV, Bangalore.

[1] [2012] 343 ITR 30 (Kar).

BOGUS NATURE OF DEVELOPMENT AGREEMENT EXPOSED BY THE CIT (A) BY ENLISTING HELP OF INVESTIGATION WING

Authenticity of development agreement between the assessees (seven companies) and the developer disbelieved by the AO while completing assessment – In appeal, CIT (A) assumed the role of assessing authority - Help of ADIT enlisted in order to record statement of the Director of the developer company who confirmed the bogus nature of the agreement – Amount claimed to have been paid for cancellation of re-development traced back to the bank account of the assessee company and one other concern – Addition made by AO confirmed – AO's order greatly strengthened.

The assessee, Martand Estate Pvt. Ltd. and six other companies of the Ganesh Housing Corporation group claimed sale of certain land to one CCCP Ltd. and also claimed to have paid compensation to one FFS Ltd. for cancellation of redevelopment agreement entered into with the said FFS Ltd. The said compensation was disallowed by the Assessing Officer on the ground that compensation was not paid during the year and the purchaser CCCP Ltd. had already completed purchase formalities and paid stamp duty etc., prior to the date of development agreement with FFS Ltd. Because the development agreement was subsequent to the sale, the genuineness of the same was doubted by the AO.

During appellate proceedings, the CIT (A) assumed the powers of the Assessing Authority and directed the assessee to produce the Director of FFS Ltd. This was not done. The CIT (A) then asked the ADIT (Inv.) to record the statement of a Director of FFS Ltd. In his statement, the said Director confirmed that no such payment was received by the company, and he had signed the alleged agreement

after being paid a sum of ₹ 1 lakh. Examination of fund-flow revealed that amounts claimed to have been paid as compensation were ultimately deposited in the bank accounts of assessee companies and another account of one scrap concern. Thus irrefutable evidence was gathered by the CIT (A) and the disallowance was confirmed. In the process, the AO's order was greatly strengthened.

Name of the Officer : S. S. Panwar, CIT (A) III, Ahmedabad

REVENUE FROM DEVELOPMENT AGREEMENT TRANSACTION HELD TO HAVE BEEN REALISED – INCOME ENHANCED BY ₹ 28.41 CRORE

Assessee a firm engaged in real estate business – Transferred development rights in land to a closely related company in return for constructed FSI of 16,500 sq. ft. – Also received ₹ 54.68 crore as "security deposit" – AO added ₹ 23.63 lakhs as deemed dividend under S.2(22)(e) – On appeal, CIT (A) held that property stood transferred – Full value of consideration had been received by assessee in the garb of "security deposit"- Since property in question was stock-in-trade, revenue had to be recognized under AS-9, in the AY relevant to the year in which development rights were transferred – Income enhanced by ₹ 28.41 crore.

The appellant firm in this case was engaged in the business of real estate development. It transferred development rights in land through a development agreement dated 04-04-2008 for a consideration of constructed Floor Space Index (FSI) of 16,500 sq. mt. It also received a sum of ₹ 54,68,90,000/- as "security deposit". The development agreement dated 04-04-2008 was registered only on 20/10/2011, i.e., after 43 months. The AO concluded that the agreement had been executed and registered so late only to give the cloak of legitimacy to the loans /deposits of ₹ 54,68,90,000/- taken by the assessee from Skyline Mansions Pvt. Ltd. Based on this finding, the AO held that the provisions of Sec. 2(22)(e) were attracted as all the partners of the assessee firm held more than 10 per cent of the share in the lender company. The addition under Sec. 2(22)(e) was, however, restricted by the AO to ₹ 23,63,010/-, i.e., to the extent of the reserves available with the lender company.

2. At the appellate stage, it was contended by the appellant that development agreement dated 4/4/2008 was for a commercial transaction which had been actually acted upon by obtaining necessary approvals and commencement certificates from Municipal Corporation of Greater Mumbai (MCGM). This, the appellant argued, established that the agreement between the appellant and the company was not a device to cover up the transfer of funds by the company to the appellant firm. Accordingly, the amount of ₹ 54.68 crore received in the course of business transactions was claimed to be for commercial consideration and was not in the nature of loans or deposits within the ambit of Sec. 2(22)(e). It was also contended that the appellant firm was neither a registered shareholder nor a beneficial shareholder of the lender company and hence, in view of the decision in the case of Bhaumik Colour Private Ltd.[1], Universal Medicare Private Ltd.[2], no addition could be made in hands of firm which was not a shareholder.

3. The CIT (A) noted that the agreement dated 4/4/2008, though registered after 43 months, was not a sham agreement as the agreement had been given effect to by both the parties and in pursuance of the agreement, the developer company had obtained necessary approvals from the Municipal Corporation for construction. The CIT (A) observed that delay in getting the agreement registered itself did not make the agreement a colourable device. He observed, however, that though, as per agreement, the assessee was to receive a "security deposit" towards the cost of construction, the quantum of deposit was not specified. The amount of ₹ 54.68 crore actually received by the assessee from the company as "security deposit" was much more than the market value of the land, which was valued at ₹ 42.41 crore by the stamp valuation authority. Considering the fact that appellant and the company were closely related and appellant had granted only development rights in land without conveying the title, there

1 [2009] 118 ITD 1 (SB) Mumbai.
2 [2010] 324 ITR 263 (Bom).

was no need in the first place to take a security deposit at all for this transaction. It was further noted from the ledger account of Skyline Mansions Pvt. Ltd. that the appellant had received deposit of ₹ 19.93 crore in the earlier F.Y. which was much before the execution of the agreement dated 04-04-2008. Hence it was held that the total sum of ₹ 54,68,90,000/- received by it was not wholly in the nature of business receipts pursuant to the agreement. Based on these findings the CIT (A) held that out of the receipts of ₹ 56,68,90,000/-, receipts to the extent of ₹ 42,42,44,500/- (land value) were in the nature of business receipts and the balance (₹ 12,27,45,500/-) were on account of non-business considerations which fell under the mischief of Sec. 2(22)(e).

4. It was further noted that value of the 16,500 sq. mt. of constructed FSI was ₹ 16.5 crore only, but the appellant had already received a sum of ₹ 54.68 crore in the garb of security deposit. Since the land in question was stock in trade, the moment the appellant transferred the development rights and received the market value of development rights in the garb of security deposit, the transaction for transfer of development rights was complete. Therefore, the appellant was required to recognize the revenue / profits from this transaction in AY 2009-10 according to the principles of revenue recognition as per Accounting Standard-9 (AS-9). After analyzing various clauses of the agreement, the CIT (A) demonstrated that the appellant was divested of all current and future rights in the land from the date of agreement itself and had no material role in development of the project, nor the appellant could have revoked any of the terms of the agreement.

5. From the commencement certificate dated 1/2/2011, it was noted that the plans were approved on 1/12/2008 itself, i.e., in FY 2008-09 which negated the claim of the appellant that the development work had not started in AY 2009-10. Further, as per clause 9(c)(i) of the agreement, the right to enter the premises was already given to developer from the date of execution of agreement itself to carry out the survey of the property and prepare layout and other plans. Hence, the appellant's claim that the entire sum of ₹ 54,68,90,000/-

was in nature of security deposit and that no development work had started in A.Y. 2009-10 was demonstrated to be incorrect. Therefore, the year of chargeability was held to be the date of agreement and not date after receipt of approval or commencement certificates. The profit and gains from grant of development rights as per agreement dated 4/4/2008 was computed at ₹ 28,41,34,500/-, which was liable to be assessed as business income for AY 2009-10. While coming to his conclusions, the CIT(A) analyzed thoroughly the implications of AS-9 as well as the scope and ambit of Sec.2(47)(v) i.e., transactions allowing possession of immovable property to be taken in part-performance of an agreement. He also drew support from the decision of the Hon. Bombay High Court in Chaturbhuj Dwarkadas Kapadia of Bombay v. CIT[3] where the material facts were almost identical to the present case. Hence, as a consequence of the CIT (A)'s order, the income of the appellant be enhanced by ₹ 28,41,34,500/- after deducting the cost of land at ₹ 14 crore.

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

3 [2003] 260 ITR 491 (Bom).

DEDUCTION UNDER SECTION 80IB TO THE TUNE OF ₹ 20.87 CRORE ALLOWED BY THE AO DISALLOWED IN FIRST APPEAL

Assessee engaged mainly in import, manufacture and assembly of ATMs – The AO, based on TPO's report, made adjustment only of ₹ 8.40 crore on international transactions relating to purchase of parts and spares etc. from overseas AEs – CIT (A) noticed that before TPO, assessee itself had emphatically claimed that no manufacturing had been carried out and that profit from manufacturing was, in any case, not more than ₹ 4.18 crore – Also, claim of deduction under S. 80-IB at ₹ 20.87 crore, was much higher than the mean profit of comparables, and also the net profit of appellant company – Discrepancies also found in segmental information presented to the TPO and also between Annual Report and S. 80-IB Report – Deduction under S.80-IB to the tune of ₹ 20.87 crore denied based on information already available from TPO's report.

In addition to the distribution of Automated Teller Machines (ATM) & Magnetic Ink Character Recognition (MICR) devices imported from Associate Enterprises (AEs), NCR Corporation (India) Pvt. Ltd., the appellant in this case, had also started the manufacturing of ATMs at its plant at Pondicherry. It also provided systems integration and services associated with such machines to the customers. Except for the transactions relating to purchase of parts and spares used in assembling of ATMs, the Transfer Pricing Officer (TPO) accepted the other international transactions of the assessee. In his order, he proposed an adjustment of ₹ 8.40 crore using Transactional Net Margin Method (TNMM) holding the purchase of spares etc. to be manufacturing.

2. The CIT (A) noticed that the TPO had worked out the adjustment based on the segmental information for manufacturing

as per the estimation provided by the assessee which had no basis as it was repeatedly claimed by the assessee before the TPO that no manufacturing had been carried out. The CIT (A) also noticed that the Assessing Officer had allowed the clain of deduction under Sec. 80IB to the extent of ₹ 20.87 crore (17.78 per cent on sales) ignoring the fact that as per the appellant's own admission before the TPO, no manufacturing had been carried out, and that the profit from manufacturing, if any, was not more than ₹ 4.18 crore (3.45 per cent of sales), which was more than mean margin of comparables (1.47 per cent).

3. The CIT (A) held that the Resale Price Method (RPM) applied by the assessee was not the most appropriate method. At the same time, the CIT (A) also rejected the Transaction Net Margin Method (TNMM) applied by the TPO in which the TPO had made an adjustment taking the mean margin (profit) of 10.98 per cent. Based on the assessee's submission before the TPO, the CIT (A) noticed that the deduction claimed under Sec. 80IB at ₹ 20.87 crore was much higher than the mean profit of 1.47 per cent of the comparables arrived by the assessee, and also much higher than the net profit of the Company at 1.44 per cent. The CIT (A) also found that there was a huge variation in sales, other income, provision of bad and doubtful debts, professional fees etc., in the segmental information provided to the TPO and the information contained in the audit report filed for claiming deduction under Sec. 80IB. Hence, the CIT (A) issued a Notice asking the assessee to show cause as to why deduction allowed under Sec. 80IB should not be withdrawn.

4. The significant discrepancies between the 80IB Report and Annual Report noticed by the CIT (A) were as under:-

(a) As per the Annual Report, the sale of manufacturing goods was ₹ 114.13 crore against which, expenses as per the 80IB Report were ₹ 100.53 crore but in the 80IB report were shown as ₹ 126.49 crore.

(b) The 80IB Report was not reliable as the said report was based only on the management's certificate. Interestingly, the Audit Report in Form 3 CD (dated 31-10-2004), was prepared after the 80IB Report. The Audit Report was also not certified as correct. The lack of reliability of the Audit Report was also proved from the fact that the following expenses claimed as deduction in manufacturing were much lower than the expenses claimed in the subsequent assessment year where the sales were almost same :-

EXPENSES	**ASSESSMENT YEAR 2004-05**	**ASSESSMENT YEAR 2005-06**
Salaries	1,17,14,553/-	2,21,45,032/-
Obsolete stock & scrap	1,42,87,248/-	2,61,98,410/-
Miscellaneous expenses	68,57,143/-	3,15,30,566/-

(c) If the sales were taken as per the Annual Report and expenses were taken as per the submission made before the TPO, manufacturing results into loss of ₹ 1.43 crore.

5. The CIT (A) concluded that the manufacturing goods of the eligible business were transferred to the other business carried out by the appellant, i.e., sale of ATMs, system integration and services. Similarly, the raw material imported for the other business was transferred to the eligible undertaking for manufacturing. The appellant had failed to furnish the correct quantum of sales, expenditure and the profit derived from manufacturing. Under the circumstances, the CIT (A) held that neither the loss worked out above nor the profit computed by the appellant could be taken as correct the CIT (A) held that the profit derived from manufacturing could reasonably be taken at 1.44 per cent on sales at par with the net profit derived by the company on the gross revenue. Accordingly, the CIT (A) computed the profit derived from the 80IB undertaking at ₹ 1.64 crore as per Proviso to Sub Section (8) of Section 80IA read with section 80IB(13).

However, no deduction under Sec. 80IB was found allowable in view of Section 80IA(5) read with section 80IB(13), as there was a loss of ₹ 1.73 crore from the Undertaking for the AY 2003-04.

6. The finding of the CIT (A) resulted in withdrawal of deduction under Sec. 80IB to the tune of ₹ 20.87 crore allowed by the Assessing Officer.

Name of the Officer : O. P. Yadav, CIT, (Appeals)-IV, Bangalore

DISALLOWANCE OF NOTIONAL LOSS FROM RE-CATEGORIZATION OF ASSETS BY BANK UNDER RBI GUIDELINES UPHELD BY CIT (A)

Appellant, a co-operative bank, claimed 'loss' from shifting of securities from the category of 'Available For Sale' (AFS) to the category of 'Held Till Maturity' (HTM) – AO disallowed loss – On appeal, CIT (A) observed that the so-called loss had resulted because the closing stock of securities under AFS category were not marked to market in the preceding year as required under RBI Guidelines – It was further held that the 'loss' was purely a notional one resulting from re-categorization of securities as per RBI Guidelines, which had nothing to do with computation of taxable income under the I-T Act – Ratio of Apex Court's decision in Southern Technologies Ltd. applied.

The assessee, the Nagpur Nagrik Sahakari Bank Ltd., purchased government securities in month of January and February 2008 under the category "Available for Sale (AFS)" and converted them into the category "Investment" and later again converted these securities into the category "Held To Maturity" in April 2008. The securities were purchased at a cost of ₹ 73.89 crore as stock in trade, and were converted into Investment at a value of ₹ 69.88 crore. The appellant claimed the difference of ₹ 4.01 crore in value on the date of conversion and the purchase price of stock in trade as loss though no transaction had taken place, and the Assessing Officer disallowed this loss. The appellant preferred an appeal before the CIT (A) claiming that loss on conversion from AFS to HTM was allowable as per RBI Guidelines as HTM securities were valued at book value in the balance sheet.

2. The CIT (A) analyzed the RBI Guidelines and found that the conversion should be carried out at a value which is least of cost/ book value/market value on the date of conversion. The CIT (A) held that as the conversion of government securities took place on 02/04/2008,

AFS securities should have already been marked to market value as per RBI Guidelines on 31/3/2008, and there could not be any scope of providing loss & depreciation on account of conversion of Government Securities on 02.04.2008 under AFS category. The CIT (A) further held that the assessee claimed a notional figure of loss by the exercise of shifting of securities from the category of AFS to HTM and profit and loss would only arise when the securities were finally transferred/sold to an outsider. The CIT (A) relied on the decision of Hon. Supreme Court in the case of Southern Technologies Ltd v. JCIT[1] wherein it was held that the RBI directions were concerned with the disclosure of relevant facts by the banks and had nothing to do with the computation of taxable income under the Income Tax Act or under the principles of accounting.

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

1 [2010] 320 ITR 577.

NON-DEDUCTION OF TAX ON ROYALTY ON BOOKS LEADS TO ENHANCEMENT OF INCOME BY CIT(A)

Appellant engaged in the business of printing and publishing of school books – ₹ 4.41 crore paid as royalty to authors on which no tax deducted at source u/s 194J – AO overlooked the fact – Notice of enhancement given by CIT (A) for disallowance u/s 40(a)(ia) – CIT Held: "any copyright" mentioned in Sec.9 was sufficient to take into its fold transfer of copyright of books – Enhancement of income by ₹ 4,41,63,114/- for non-deduction of tax at source as per Sec. 40(a)(ia).

'Bharati Bhawan', the assessee in this case, was engaged in the business of printing and publishing of school books. The AO disallowed discount given as no tax was deducted at source.

In appeal, CIT (A) granted relief to appellant on this issue in view of the decision of ITAT Patna Bench in ACIT v. Treasury Office, Gaya[1]. He held that discount/commission does not fall under the definition of commission or brokerage within the meaning of Sec. 194J.

2. The CIT (A), however, observed that a further sum of ₹ 4.41 crore had been paid as royalty to various authors of books published by the assessee. No tax at source had been deducted on this amount. A notice under section 251 was issued calling for an explanation as to why this amount should not be disallowed in view of provisions of section 40(a)(ia). It was submitted that royalty is defined in Explanation 2 to section 9(1)(vi) and that the above definition did not specifically include royalty on books and that as per definition of books in Section 80QQB, 'text books for schools' had been excluded from this definition.

1 ITA No. 384/Patna/2006.

3. After careful analysis of agreement executed between the assessee and the authors, it was noted by the CIT (A) that the authors were owners of the works and were entitled to unencumbered copyright therein and had power to transfer all or any right of the work and in consideration of payments such exclusive rights in relation to the copyright stood transferred to the publisher. Such transfer of copyright is covered by Clause (v) of definition of 'Royalty' as per Explanation 2 to section 9(1)(vi) which includes transfer of all or any rights (including the granting of a licence) in respect of any copyright. Thus, it was held that this definition is wide enough to cover transfer of any copyright without any qualification, be it a copyright in respect of books or any other thing. It was further held that the purpose of Section 80QQB is to grant deduction in respect of books which were works of literary, artistic or scientific nature and not work of routine nature such as text books and hence sums received on account of such work were not considered 'royalty' for the purpose of granting deduction under section 80QQB. The reference to 'royalty' in section 80QQB has a restrictive meaning for the limited purpose of granting deduction in respect of special category of works.

4. It was further held that the words "any copyright" mentioned in the section 9 were broad enough to take into its fold transfer of copyright in books. In addition, it was also found that there were comprehensive written agreements between such authors and the assessee and all payments to such authors were being made in pursuance of such agreements. Hence the above payments made to authors were also covered by Section 194C which covers "payments of any sum to any person for carrying out any work in pursuance of a contract", the work in this case being writing of books and other related services. Accordingly, it was held that the assessee was liable to deduct tax on these payments and there was a clear failure on its part to do so. Therefore, it was held that the above amount of ₹ 4,41,63,114/- was

liable to be disallowed under Section 40(a)(ia) of the Income Tax Act, 1961. An enhancement to income of ₹ 4,41,63,114/- was made.

Name of the Officer : S. K. Chauhan, CIT (A), Dhanbad

ALLOTMENT OF SHARES UNDER EMPLOYEES STOCK OPTION SCHEME LIABLE FOR FBT – AO's ORDER STRENGTHENED AND CONFIRMED BY CIT (A)

Assessee allotted ₹ 18.57 crore worth of stock options to employees but did not declare the same for purposes of FBT – In appeal, arguments put forward by the assessee effectively rebutted by CIT(A) – Held to be liable for FBT on stock options

The assessee, Bartronics India Ltd., filed its return of income (including return of fringe benefits) admitting the value of fringe benefits at ₹ 1,10,89,702/- . From the Annual Report it was noticed by the AO that the assessee had allotted shares under Employees's Stock Option Scheme – 2008 (ESOS-2008) amounting to ₹ 18.57 crore to its employees but had failed to offer the same for FBT in its return. As the value of fringe benefits was believed to have escaped assessment, a notice under Sec. 115 WH was issued. The assessee neither complied with this notice nor provided any information relating to the allotment of shares or computation of value of fringe benefits.

2. During assessment proceedings, the AO noticed that Mr. Sudhir Rao, Managing Director of the assessee company, was allotted 8 lakh shares at a subscription price of ₹ 10/- per share. The date of grant was shown as 29.01.2007 and the date of vesting of the share as 29.01.2008. The fair market value of shares on the date of vesting was ₹ 244/- Thus, the value of Fringe benefit was ₹ 18,72,00,000/- (₹ 234 x 800,000 shares). The appellant submitted that at the extraordinary general meeting held on 25.02.2008, 8 lakh equity shares of ₹ 10/- each had been allotted to Mr. Sudhir Rao. In the same submission, it was stated that the resolutions dated 25.02.2008 stood cancelled and provisions of Section 115 WA were not applicable. The Assessing Officer assessed an amount of ₹ 14,97,60,000/- as fringe benefits on

account of shares allotted to Mr. Sudhir Rao.

3. At the appellate stage, the appellant did not comply with notices and the appeal had to be decided on the basis of the Statement of Facts filed with the appeal and the assessment records called for by the CIT (A). It was seen from the returns filed by the appellant before the Registrar of Companies, that shares were allotted to Mr. Sudhir Rao in two instalments of 80,000 on 09.02.2008 and 560000 shares on 4.3.2008.

4. In his letter dated 26.09.2011, Mr. Sudhir Rao gave details of payments as: a) on 30.01.2008 an amount of ₹ 800,000 by a cheque on ICICI Bank; b) on 4.3.2008 by a cheque of ₹ 56,00,000 on ICICI Bank; c) on 10.07.2008 ₹ 16,00,000/- by a cheque on ICICI Bank. But contrary to this submission, the appellant company had contended (vide letter dated 29.11.2011) that the share allotment made to Mr. Sudhir Rao had been cancelled on 25.02.2008 at an extraordinary general meeting in view of the resentment caused by allotment of shares only to Mr. Sudhir Rao to the exclusion of others. This appeared incongruous because, if the company had cancelled the share allotment to Mr. Sudhir Rao on 25.02.2008 how could Mr. Sudhir Rao submit the details of allotment of ESOS to him along with the details of payments made by him vide letter dated 26.09.2011 and not mention that the said allotment was cancelled? If the contention of the appellant company was correct, it should have supported its contention by furnishing the return in Form No.2 filed before the Registrar of Companies (ROC) regarding cancellation and re-allotment in different category and should have filed proof for collection of the difference from Mr. Sudhir Rao and also the details of allotment of shares to the other promoters of the company.

5. The Companies Act stipulates that any further allotment/ issue of shares to the promoters/ shareholders should be done in the share-holding ratio. Therefore, shares could not be allotted only to Mr. Sudhir Rao as a promoter, to the exclusion of other shareholders/

promoters.

6. Accordingly, the order of the Assessing Officer was confirmed by holding that the contention of the appellant about the cancellation of allotment of shares under ESOS and issue of shares in promoters' quota was only to circumvent the provisions of Fringe Benefit Tax. The demand raised in this case was ₹ 7,39,30,492/-.

Name of the Officer : K. Kamakshi, CIT(A)-II, Hyderabad.

STATE HOUSING BOARD RUNNING ON COMMERCIAL LINES HELD LIABLE FOR PAYMENT OF INCOME-TAX

Assessee, a state housing board, transferred income for the year to the State Government without paying income tax – AO held the surplus transferred to the State Government to be taxable income – In appeal, assessee raised multiple arguments challenging its taxability under I-T Act including its status as a 'Local Authority' and its 'charitable' nature – Also invoked Article 289 of the Constitution – Allowability of the amount transferred to State Government as business expenditure and diversion of income by overriding title also claimed – CIT (A) in a detailed and reasoned speaking order, rejected all the arguments – AO's order strengthened and upheld.

This case addresses certain fundamental issues in taxation of state government enterprises, including the interplay of central and state legislation, the concept of diversion of income by overriding title, 'charitable purpose',' local authority', 'business expenditure' etc.

2. The assessee, the Andhra Pradesh Housing Board (APHB) functions like a commercial venture dealing in realty projects in both residential and business sectors. Previously, the assessee was paying taxes on its surplus. However, for the relevant assessment year (AY 2008-09) the assessee directly transferred its entire surplus to the State Government and did not pay any income tax on the same.

3. The Assessing Officer disallowed the amount transferred to the State Government and held that it was not a legitimate business expense.

4. Before the CIT (A), the assessee argued that:

   i. It was an arm or agency of the Government and hence not taxable.

ii. There had been an amendment in the Andhra Pradesh Housing Board Act whereby all surpluses, i.e., profit before tax, was to be transferred to the State Government thus it was stated that surplus was diverted by overriding title

iii. APHB was a charitable organisation and not working with profit motive

iv. APHB was a 'local authority'

v. Income of APHB could not be taxed under Article 289 of the Constitution of India

vi. The surplus had to be treated as a legitimate business expense

5. The CIT (A) made a careful study of Article 289 of the Constitution, the functioning of the Housing Board, its structure, rules, and status of its employees etc. The provisions of the APHB Act were also examined in detail. Based on a detailed analysis, it was demonstrated that APHB was not performing sovereign functions of the state and hence could not be regarded as a part of the government or as its instrumentality. It was, therefore, concluded that the APHB did not fall within the purview of Article 289 of the Constitution of India.

6. Scrutiny of internal correspondence and memos of the government and the APHB revealed that the Board functioned as a commercial entity though owned by the State Government. There was not a hint of charity. Interestingly, the Board had transferred some land to the state unit of a national political party at a price lower than the market price at the Government's directions. The Government had compensated the Board by ₹ 12.74 crore for this transaction. In one of the internal meetings of the Chief Minister, targets were fixed for the APHB, HUDA and other such organizations to earn profits and remit them to the State Government.

7. It was also discovered that contrary to the assertion of the appellant, APHB functioned independently and the flow of funds to the Government was only by way of surplus or profit. From the website of the appellant details of townships were downloaded which indicated that premium and high-end penthouses, modern clubs, and top class commercial centres were also developed by APHB.

8. The fundamental tests for the allowability of expenditure under the I-T Act were discussed and applied to the case. The argument of overriding title was also effectively countered. It was demonstrated that the income had reached the appellant and the appellant had thereafter transferred the profits.

It is interesting to note that the Income Tax Act has been amended on the reasoning put forward by the CIT (A) in the order.

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

DISALLOWANCE OF DUBIOUS CLAIM OF DEPRECIATION ON INTANGIBLE ASSETS UPHELD, ASSESSMENT ORDER STRENGTHENED

Assessee a global leader in manufacture of catalysts – acquired two units of ICI India Ltd – submitted valuation report incorrectly allocating value towards intangible assets, mainly 'knowhow' – Depreciation claimed thereon – Through a detailed analysis and factual enquiry (including a report from the Kanpur Development Authority on the market value of land), CIT (A) brought out that the main component of purchase price paid was the option to purchase the leasehold lands of the two units at ₹ 1 lakh, on which no depreciation was allowable – The appellant had wrongly allocated the payments to various nonexistent intangible assets and claimed depreciation thereon – Income enhanced by ₹ 24.83 crore – On 'goodwill' and 'non-compete fee', AO's decision reinforced.

The assessee, Johnson Matthey Chem Pvt. Ltd., an MNC, bought the business of two units of ICI India Ltd. The assessee submitted a valuation report bifurcating the price paid for acquisition of the two units towards intangible assets (mainly "Know how", "Goodwill", "Non Compete" and "Trademark"). A part of this price was also allocated towards "Right to acquire assets" of Unit 1 on which no depreciation was claimed by the appellant. A small part of price was allocated towards the tangible fixed assets and current assets (working capital) of Unit 2. The assessee claimed depreciation on the intangible assets, i.e., "Know how", "Goodwill", "Non Compete", "Trademark", and other tangible assets.

2. The Assessing Officer disallowed the claim of depreciation on "Goodwill" and "Non Compete fee" on the ground that these capital assets were non depreciable and were not similar to the intangible

assets such as patents, copyrights, trademarks, licenses or franchises.

3. In appeal, it was argued by the assessee that goodwill could also depreciate if there were losses. An alternate plea to allow "Non-compete" payment as revenue expenditure or as deferred revenue expenditure was also taken.

4. The CIT (A) upheld the AO's view that "Goodwill" and "Non Compete" could not be equated with intangible assets like patents, copyrights, trademarks licenses or franchises. The CIT (A) also held that depreciation could not be allowed on "Non Compete fee" because a restrictive right cannot be similar to an intangible asset for the purpose of Section 32. The CIT (A) issued an enhancement notice in respect of claim of depreciation by appellant on intangible assets, mainly "Knowhow".

5. Upon closer study by the CIT (A), it emerged that the appellant had paid ₹ 153.18 crore for acquiring the business of Unit 1 and Unit 2 of ICI India Ltd. As a consequence of the transaction, the appellant acquired the option of purchasing the leasehold right of land, building, transfer of employees, plant, equipment of Unit 1 as also the option of purchasing the leasehold right of Unit 2 by paying a nominal amount of ₹ 1 lakh. The other tangible fixed assets and net current assets of Unit 2 were acquired immediately after this agreement by the appellant. The appellant submitted a valuation report from E & Y in respect of the assets acquired through the aforesaid agreement with ICI India Ltd. as per which, values had been allocated to net current assets like stock, debtors etc., working capital of Unit 2, fixed tangible assets of Unit 2, "Goodwill", "Non Compete" assets "Knowhow", "Right to acquire business of Unit 1 in future". No value was, however,ascribed to the right to acquire land forming part of acquisition of the catalyst business of ICI India Ltd.

6. The CIT (A) discovered that the business of Unit had been purchased by ICI India Ltd from HLL in 2001 and the price paid for acquisition of leased rights in the land was ₹ 13 crore. CIT (A) found

that in 2009 the appellant exercised the option to acquire leased rights in this land for which the payment had already been made in advance as part of agreement with ICI India Ltd in 2002. Therefore, CIT (A) allocated ₹ 13 crore payment out of ₹ 125.68 crore by appellant to ICI India Ltd, towards acquiring leased right in the land of Unit 2. Thereafter, CIT (A) obtained a report from Kanpur Development Authority in respect of market value of land of Unit 1 in 2002 and found that the value of the land of Unit 1 which the appellant finally opted to acquire on lease was ₹ 174.36 crore. The CIT (A), therefore, held that the entire payment of ₹ 125.68 crore by the appellant to ICI India Ltd had been made mainly for securing the leased rights in lands of Unit 1 and Unit 2 and for securing the right to purchase other assets of Unit 1. CIT (A) referred to the report of the Auditor where they had clearly stated that appellant had not ascribed any value to its "Right to acquire land forming part of acquisition of catalyst business" and the auditors were of the view that appellant should have capitalized such "option" as tangible fixed asset and should have mentioned the fair cost of the land. CIT (A) found out that the valuer, had ignored the most valuable tangible asset "option of purchasing the leasehold right of land" of both the units and allocated values to non-existent or irrelevant intangible assets.

7. The CIT (A) further observed from the agreement of purchase between appellant and ICI India Ltd that there was no specific clause which referred to any "Knowhow" transferred by Unit 1 and Unit 2 of ICI India Ltd to the appellant. Contrary to the claim that knowhow had been transferred by ICI India Ltd to the appellant, the agreement stated that manufacturing activity was to be carried out on the basis of technology and technical information provided by the appellant to ICI India Ltd. The CIT (A) further found out that appellant was a global leader in the business of manufacturing various catalysts and it did not require any knowhow from ICI India Ltd. The purchase of two units of ICI India Ltd in India by appellant was for increasing appellant's market share in this line of business rather than acquiring

and "Knowhow". CIT (A) found that the valuer had allocated about ₹ 94 crore for acquisition of "Knowhow" only on the suggestion of the management. CIT (A) held that the allocation of such incorrect value to "Knowhow" and to other insignificant intangible assets in the name of "Goodwill", "Non Compete fee", "Trademark" etc by E & Y was obviously incorrect when the entire value of ₹ 125.18 should have been allocated towards the main asset, "option of purchasing the leasehold right of land" of both the units and towards the "option of purchasing other tangible assets" of Unit 1. Therefore, CIT (A) disallowed the claim of depreciation of ₹ 24.83 crore on nonexistent intangible assets like "Knowhow". As no depreciation was allowable in "option of purchasing the leasehold right of land", the CIT (A) enhanced the income of appellant by ₹ 24.83 crore.

Name of the Officer : Banwari Lal, CIT (A) - I, Thane.

SHARE APPLICATION MONEY IGNORED BY THE AO HELD TAXABLE UNDER SECTION 68 BY CIT (A), INCOME ENHANCED

The Assessee, a private limited company, accepted share application money from certain parties - AO doubted the credits in respect of three parties and made an addition u/s 68 after reopening the case – CIT (A) confirmed the addition and enhanced the addition from ₹ 2.40 crore to ₹ 15.10 crore as the AO had overlooked the receipt of share application money in respect of four other entities.

In this case, a return of income was filed by Shree Ashtavinayak Traders Pvt. Ltd. declaring total income of ₹ 28,989/-. The DIT(Inv), New Delhi, informed the AO that one Mr. Tarun Goyal had created a number of private limited companies and firms for providing accommodation entries. The directors of these fictitious companies were Mr. Goyal's employees who signed various documents based on which a number of bank accounts were opened where huge cash was deposited. Later, cheques were issued to various beneficiaries to give a colour of genuineness to these transactions. During search at the premises of Mr. Tarun Goyal, statements on oath of the employees present at the premises were recorded. It was admitted by the employees that they were signing various documents related to a number of companies at the behest of Mr. Tarun Goyal. It was seen that the assessee had received share application money of ₹ 2.40 crore from three such companies viz. Bhavani Portfolio Pvt. Ltd., Tejasvi Investment (P) Ltd. & Taurus Iron & Steel Co. (P) Ltd. Therefore, a notice under Sec. 148 was issued to the assessee asking it to give details of its transactions with these companies and to produce the Principal Officers of the said companies. An addition of ₹ 2.40 crore was made under Sec. 68 by holding that the share application money was received in a bogus transaction and the credit-worthiness and

genuineness of the share applicants was not proved.

2. In appeal, it was contended by the assessee that sufficient evidence had been brought before the AO to prove the identity of the share applicants and that the reassessment was bad in law as the same was made on the basis of material collected behind the back of the assessee without giving it an opportunity to rebut the same. It was further stated that the AO had issued summons under Sec. 131 to Mr. Tarun Goyal who had not only appeared before him but also confirmed the transaction.

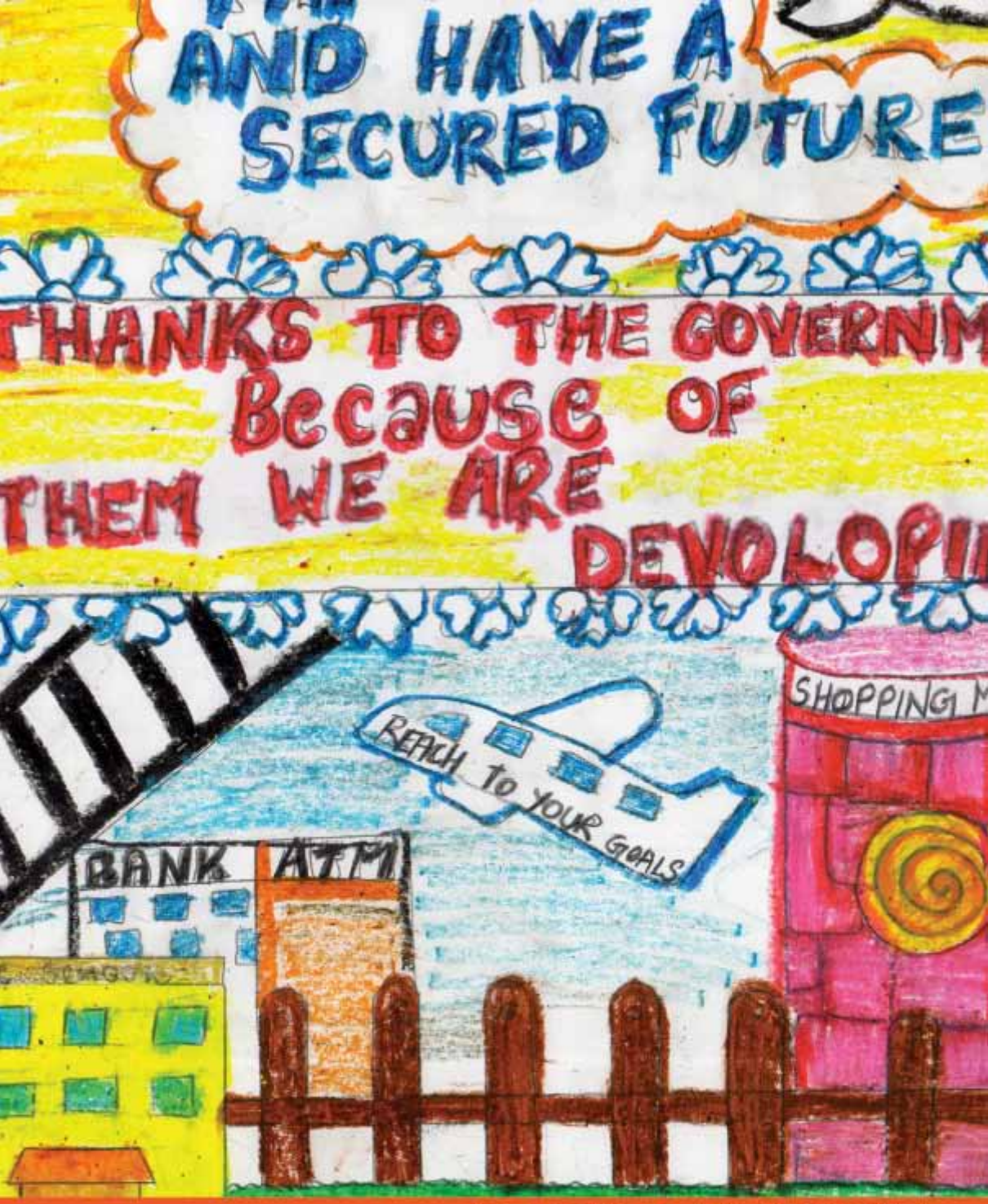
3. The CIT (A) held that the initial burden was on the appellant to explain the source of share application money received and to furnish the details in the form of PAN, Resolution, Bank statement etc to prove the credit-worthiness and the financial strength of the creditor/ subscriber. The CIT (A) relied on CIT v. Oasis Hospitalities Pvt. Ltd. (Del)[1] and Nova Promoters & Finance Pvt. Ltd. (Del)[2] in support of the findings that the statement of the entry providers during the course of search confirmed the practice of taking cash and issuing cheques in the guise of subscription to share capital for a consideration in the form of commission.

4. The CIT (A) also found that the appellant had not received ₹ 2.40 crore (as stated in the order of the AO) but ₹ 15.10 cr. Accordingly, an enhancement notice was issued to the appellant in respect of the balance amount of ₹ 12.70 crore. The CIT (A) held that the appellant had not been able to prove the creditworthiness of the persons advancing the share application money because their returns showed nil income and their accounts had insufficient cash balance which led to a reasonable doubt about their credit-worthiness. It was further held that no evidence was led to prove the genuineness of the transaction. CIT (A) also based her decision on the statement of Mr. Tarun Goyal recorded on oath at the time of search where

1 [2011] 333 ITR 119 (Del).
2 [2012] 342 ITR 169.

Mr. Goyal had accepted that he was providing accommodation entries for which he had floated various companies. It was further observed that statements of the auditors of these fictitious companies had also been recorded wherein they had confirmed that they had no knowledge about the directors of these companies and that all the audits were done at the instruction of Mr. Tarun Goyal. CIT (A) also held that the confirmation for giving advance was signed by Mr. J. Kumar or someone other than Mr. Tarun Goyal but the cheques were always signed by Mr. Tarun Goyal. The CIT (A) also brought out the fact that deposits and withdrawals were made on same dates and that different persons were signing the cheques and confirmations and entirely different persons were shown as directors in the bank accounts. Thus, it was held that the identity of shareholders was not proved. In the absence of the lack of creditworthiness of the creditors and the genuineness of the transaction, the entire sum of ₹ 15.10 crore was to be treated as unexplained in the hands of the appellant.

Names of the Officers: Alka B. Singh, CIT (A)-XI, New Delhi



Painting by: Kajal Dhingra, Age-14, School-Blue Bell Model School

SEARCHES & SEIZURES

SEARCHES AND SEIZURES

PAGE NO.

FIU – IND INFORMATION LEADS TO DETECTION OF SERIES OF BANK ACCOUNTS USED FOR BOGUS IMPORTS

Huge deposits detected in a non-filer's bank accounts – found to be deposited by importers showing high sea sales of imported goods - no transactions by the assessee concern – found to be a mere conduit for helping importers make cash payments, under invoicing, unaccounted production etc. – by charging commission for the same

Proceedings started in this case with the receipt of a STR (FIU-IND Information) against Aditya Overseas, a proprietorship concern of one Asish Dholakia. The STR mentioned cash deposit of about ₹ 1.22 crore in one account of Aditya Overseas. Subsequent enquiries, however, succeeded in detecting many more accounts of Aditya Overseas in Dena Bank, Oriental Bank of Commerce, Gandhidham Mercantile Co-operative Bank (GMCB) and Bhuj Mercantile Co-operative Bank (BMCB). Total cash of more than ₹ 74 crore was found to have been deposited in these accounts.

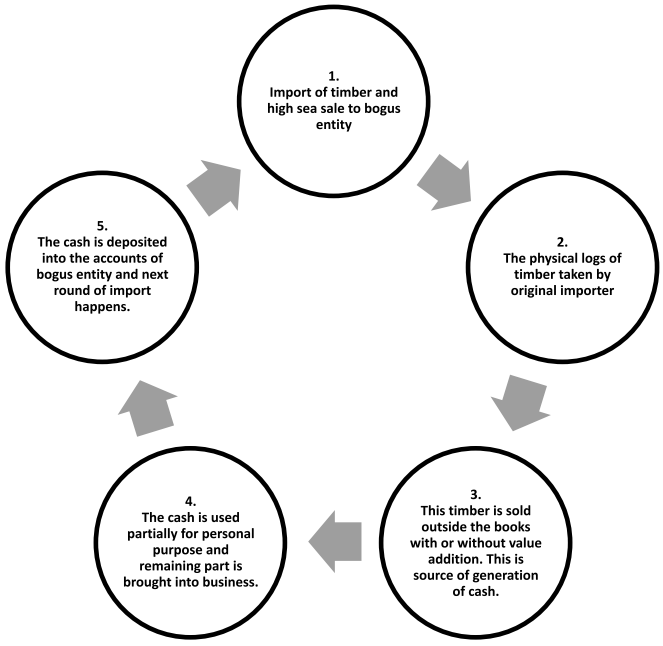
2. ITD database revealed that Mr. Asish Dholakia had not filed his returns of income for the past six years. The address provided in the PAN database was also found to be incorrect.

3. Mr. Asish Dholakia was examined u/s 131 wherein he admitted that: he had not filed his returns of income since 2001; he had not maintained any books of account; he did not have any sale bills, purchase bills, vouchers or any other kind of evidence of running a business; he facilitated/allowed use of his bank accounts to many timber importers; the cash in his accounts was deposited by the importers; and importers had shown high-sea sales of the goods imported by them. Further, he had made cheque payments to importers to complete the transaction; delivery of goods had been taken by importers and not him; he had

issued cheques to importers against cash deposited by them in his accounts for high sea purchases; and he received commission of 0.25 per cent from importers for providing these entries.

The above modus-operandi can be depicted as below:

4. At this point, action u/s 132 of the I.T Act was launched on



16.5.2012 on Mr. Asish Dholakia and following four Importers i.e beneficiaries: Kedia Group; Poddar and Goyal Group; Agarwal and Goyal Group; and Bath Group. Search action established the above modus-operandi. During the course of search, following types of evidences were found: under-invoicing of sales by about 10 per cent-12; out of books sales of logs and plywood; unaccounted production of plywood; and manipulation of books of account.

5. Examination of clearing agents confirmed that clearing was done on behalf of the importers and not Aditya Overseas. The physical logs of timber were transferred to the premise of Importers and not of Aditya Overseas. Details of cash payment to labourers,

cash payments for purchase of stores and production sheets were found evidencing unaccounted production. Under-invoicing and out of books sales generated cash which was used for re-routing through Aditya Oversees and for unaccounted investment in properties, jewellery and other valuables. Several cash deposits in the accounts of Aditya Overseas were identified as deposited by aforesaid Importers totaling ₹ 65.63 crore.

6. Apart from these cash deposits mentioned above, payments were also made to various clearing agents for duty, transportation and other related expenses, which were also identified, and these amounted to ₹ 8.48 crore. Hence, total cash deposit made in the account of Aditya Overseas was ₹ 65.32 crore plus ₹ 8.48 crore which equalled to ₹ 74 crore approximately.

7. The search findings were shared with Customs, Excise and Commercial Tax Departments as there was evasion of customs duty due to under invoicing of High Sea Purchase, evasion of excise and Sales Tax due to under invoicing of sales and unaccounted production/ sales. This was also found to be a prevalent modus operandi in other imports as well. High Seas transactions, therefore, deserved closer scrutiny.

Names of the Officers: Purusottam Kumar,
DDIT(Inv), Gandhidham, Rajkot
U. B. Mishra, Addl. DIT (Inv.) Rajkot
Harish Kumar, DIT(Inv.), Ahmedabad
A. K. Jain, DGIT (Inv.), Ahmedabad

UNRAVELLING THE ACCOUNTING FOLLOWED BY AND NON-DISCLOSURE OF TRUE INCOME BY HORSE RACE BOOKIES

Discreet enquiries made by mingling with bookies at the Turf Club – modus operandi used by bookies deciphered - dealings in off-tax transactions that were not recorded in the books unearthed –several bookies and Turf Club covered – substantial detection of undisclosed income admitted

Horse race is a speculative activity and is the only form of betting permitted in India. This industry runs mainly on the betting amount paid by people who are called Punters. They speculate on the winning horse and bet their money with either the club or the bookies. Bangalore Turf Club, amongst the leading race clubs in India, invites a lot of activity on account of the year-round races held and the accompanying glitz and glamour.

2. Pre-search visits to the betting ring at the Bangalore Turf Club revealed that a large number of lower middle class people thronged the venue in the hope of becoming millionaires overnight. But this remains a dream for most. Since most of the punters were interested only in the winning amount, the transactions were mostly cash based. During visits to the club by the DDIT(Inv)/Inspectors of the Directorate of Investigation, Bangalore, it was noticed that people were investing tens of thousands of rupees over the counter without obtaining proper receipts. In case they won, the winning amount was collected immediately without TDS. Thus both the winners and the bookies gained by the informal nature of the transaction. The winners saved on TDS and disclosure of full income whereas the bookies got to suppress their turnover.

3. A study of the nature of activities revealed that broadly, all the bookies followed similar modus operandi. The business depended

on the amount of trust commanded by them as the dealings were mainly informal. A punter could bet on horse races which were held at Bangalore Race Club or in other places like Delhi, Mumbai, Pune, Hyderabad and Kolkata. Generally 8 races were held in a single day. A punter could bet on Winning Horse (WNP), Second Horse (SHP) and for any place including third place (PLP) and so on.

4. To understand the betting activity ITIs of the Directorate of Investigation, Bangalore moved in and around BTC for over 3 months. In the guise of prospective punters the unit Inspectors developed rapport with the bookies and their gang. Most of the information collected in respect of their code noting was collected from senior punters who had lost everything in the betting activity and were a disgruntled lot. For instance, a person betting with a bookie for ₹ 1,000/- needed to pay ₹ 1200 (15 per cent betting tax and 5 per cent club commission). In the "off tax" method the bookie collected ₹ 1,100/- instead of ₹ 1,200/-, i.e., ₹ 100/- less than the amount collected in "with tax" method. In this "off tax" method they did not enter the transaction in the books. A bookie was supposed to make entry in the race chart and issue receipt card to the players. But most of the bookies did not issue receipt card for the amount collected. They made entries on loose sheets and in a hand book. If they made entry in the club chart and issued receipts they were liable to pay the betting tax to the state government and commission to the club. In this method the actual turnover got disclosed. For this reason they chose "off tax" method. On the other hand people who bet were not particular in demanding receipts as they had to pay less money in the off tax method. The turnover in the off tax method constituted around 80 per cent to 90 per cent of the total turnover of the bookies which was in the region of ₹ 5 to 10 lakhs per day per bookie. In this manner bookies were grossly understating their actual turnover.

5. Based on the above information collected discreetly, a search and seizure operation was mounted on 06/02/2012 at the Bangalore Turf Club and at the offices / residences of as many as 9 bookies, as

also a horse owner. During the course of the search, incriminating evidences like investment in movable assets, gold, jewellery etc. were found and seized. In one instance a lap-top found in the office of a leading bookie was cloned and a detailed forensic examination revealed substantial out-of-books transactions for a month.

6. Post search, evaluation/examination of the seized material showed un-disclosed income of ₹ 53.02 crore, as estimated by the Wing. The total disclosure made by these entities came to ₹ 39.44 crore. The seized material also led the Directorate to leads, such as some bookies being members of Foreign Turf Clubs, regarding which information was subsequently obtained through the FT & TR Division of CBDT. This led to further evidence regarding investment in foreign bank accounts in one of the cases.

7. Based on the information gathered, the TDS wing also passed an order u/s. 201(1) of the IT Act 1961, for non-deduction of tax u/s. 194BB on stake money, raising a demand of more than ₹ 100.00 crore.

Names of the Officers: V. Sreenivasa Rao, Snehangshu Sadhu, Deb Sundar Gore, Inspector
Pankaj Kumar, DDIT (Inv) Unit I (2), Bangalore
V. Palanivel Rajan, Addl.DIT (Inv), Unit – I, Bangalore
Ashutosh Chandra, DIT(Inv), Bangalore
Rani Singh Nair, DGIT(Inv), Bangalore

INFORMATION GATHERED FROM ASSESSMENT PROCEEDINGS AND FIU-IND, BACKED BY EFFECTIVE SURVEILLANCE LEADS TO SUBSTANTIAL DISCLOSURE

Detection of undisclosed business location through sustained surveillance - retrieval of documentary evidence at such premises – detection of cash generated by unaccounted trading and on-money from real estate transactions routed back as share capital.

Vizag Profiles group is a leading trader and manufacturer of iron and steel in Visakhapatnam, Andhra Pradesh. They are also into real estate and production of electricity through captive power plant.

2. A Search and Seizure operation was carried out in the business and residential premises of the group on 3.4.2012 at Visakhapatnam, Hyderabad and Kolkata. The main issues were:

(a) Huge capital infusion from Kolkata concerns.

(b) Bogus purchase of goods / materials from Kolkata. Payments were made through banks but the goods were never delivered in reality.

(c) On-money received in cash in the real estate business.

(d) FIU-IND information received against a director of a Company related to the group.

(e) Information gathered as DCIT, Central Circle-1, Visakhapatnam in this group during the assessment proceedings that a Kolkata based company- Umashiv Garments Pvt. Ltd was investing in this group year after year.

3. Pre-search enquiries were conducted in Kolkata which revealed that the Company was investing in shares of the group (at a premium) and also that the concerns supplying goods / materials to the group

were not existing at the given addresses. Further, discreet enquiries conducted in the real estate business revealed that the group was collecting approximately 40 per cent of sale proceeds of villas / flats in cash, which was not brought into the books.

4. With the above information, discreet enquiries were continued and surveillance was mounted on the group. As the group had different concerns at different locations, it was suspected that the group may be having its second office for maintaining the records / accounts which are not brought into the books. Accordingly, three of their accountants were identified and followed for six months. Finally, perseverance paid off and an apartment 2-3 kms away from the registered office of the group was identified. To confirm the same, the team (officers and Inspectors) working on this case kept the apartment under observation from a visible distance. It was noticed that the accountants would enter the apartment after 12 pm and come out only after 6 pm One particular corner flat - No.505, was zeroed down upon as the target.

5. On the day of the search, as suspected, this apartment was found to be the second office of the group for maintaining both accounted and unaccounted business details of the group. Evidence relating to unaccounted income of the group in iron and steel trading, on-money received in cash, cash sent to Kolkata which came back in the form of share capital to the group, unsecured loans taken in cash etc was found in the premises. This record pertained to the period 1.4.2005 till the date of search i.e 3.4.2012. With the above evidence, the main person of the group was confronted. As he had no explanation to offer, he admitted that the evidences found were unaccounted transactions of the group. Accordingly, he admitted additional income of ₹ 150 crore on the day of the search in the hands of group companies for various years. After analysis of seized material and post search investigation, the total admission of additional income in the group stood at ₹ 173.97 crore.

6. During the search proceedings, it was also noticed that another group company (trading in iron and steel) and its Director had filed returns of income declaring losses of ₹ 21.40 crore and ₹ 17.84 crore respectively for Asst. Yr. 2010-11. The total loss claimed was ₹ 39.24 crore. When confronted as to how there was a huge loss while there was no fluctuation in steel price during the particular year, the Director of the Company and the main person of the group admitted that there was no real loss and agreed to file a revised return of income nullifying the loss. If this was taken into consideration, the total admission of additional income of the group in this case came to ₹ 213.21 crore. Cash and jewellery seized was ₹ 91.82 lakh.

7. The group has so far paid taxes of ₹ 30 crore being 52 per cent of the liability, and 100 per cent collection will be effected before the year-end.

Names of the Officers: T. James Singson, DDIT(Inv.),
Unit-III(1), Visakhapatnam.
B. B. Rajendra Prasad, Addl.DIT(Inv.),
Unit-III, Visakhapatnam.
N. Biswal, DIT(Inv.), Hyderabad
Mukesh Kumar, DGIT(Inv.), Hyderabad

SEARCH REVEALS RUNNING OF PONZI SCHEMES IN THE GARB OF CHIT FUND COMPANIES

Assessees running chit fund companies – promising high rates of interest – actually only ponzi schemes – no NBFC license - deposits collected used for non economic activities – value of assets inflated – old investors paid out of new deposits – money siphoned off or spent on lavish life styles, and cash payments – huge disclosure results from searches

There has been a mushrooming growth of Chit Fund companies in the recent years. Search and seizure operations were conducted by the Kolkata Directorate on some of the bigger players of that region, viz., the Rose Valley Group (date of search: 03/02/2011), the Prayag, and the Ramel Group (date of search: 06/06/2011) leading to substantial disclosures.

2. All the above-mentioned groups were running chit-fund companies engaged in mobilization of deposits from the general public, mainly from rural and semi-urban areas of most of the States in the eastern region. The schemes floated by them had misleading names like land allotment scheme, installment purchase scheme, travel to Singapore scheme etc. However, these were just a façade to avoid regulator's attention. In fact they were not even chit-fund companies in the strict sense of the term. The real nature of business was of a bank although none of them had even the NBFC license from the RBI. They mobilized deposits by promising very high rates of interests varying from 13 per cent to 17 per cent per annum which was invariably much higher than the prevalent rate offered by the banks and financial institutions. The money was collected through freelance collection agents who got a commission of 30 to 35 per cent on deposits mobilised. The deposit raised was partly siphoned-off, partly spent in paying various groups who helped them remain in business

and partly spent on doing un-economical activities like running TV channels, newspapers etc. A large part was spent on advertisement. What was left was invested in FDs, land and other assets. Often, the value of the assets in the books was also inflated. The real worth of the assets of the companies was not even 25 per cent of the real liability. They were actually running a typical 'Ponzi-scheme' where the fresh deposits were used to pay the matured claims. As the deposits kept increasing and often poor gullible depositors re-invested their money in the hope of making more money, the business went on and there was hardly any default, leading to further credibility. However, once fresh deposits started drying up the whole business would collapse.

3. Since the nature of the businesses of all the three above-mentioned groups was same, so was their modus operandi of tax evasion. Detailed post-search investigation in all of them revealed, without exception, that they were indulging in tax evasion in the following manner:-

a) Non-deduction of tax at source on commissions paid to their field agents (30 to 35 per cent), non-deduction of tax at source on payments made to contractors in the real estate, hotel and media and film businesses and non-deduction of tax on interests paid on maturity of the fixed deposits;

b) Large scale inter-company cash transfers within the group under the head 'loan', thereby violating the provisions of Sec. 269SS of the Income Tax Act, 1961 and repayment of loan in cash violating the provisions of Sec. 269T of the Income Tax Act, 1961;

c) Substantial payment in cash towards procurement of land and real-estate properties;

d) Regular siphoning off funds and payments outside the regular books of accounts;

e) Lavish lifestyle of promoters not supported by their

disclosed drawings.

4. In the Rose Valley Group, the search action resulted in a total disclosure of ₹ 200 crore and the group has already paid its full tax liability of ₹ 66.43 crore. The assessment has also been completed. In the case of the Ramel Group, the assessee offered ₹ 93 crore of undisclosed income for tax and paid ₹ 23.17 crore by way of tax. Since the assessed figure was more than that, the assessee has gone in appeal before the CIT(Appeals) against the assessment order. In the case of the Prayag Group, the assessee disclosed ₹ 150 crore on the date of search and has already paid its full tax liability of ₹ 45 crore and has approached the Settlement Commission with a hope of getting its penalty waived. Thus merely in two searches these three companies had made a disclosure of ₹ 433 crore and have paid tax of ₹ 134.6 crore.

Names of the Officers: Sunil Kumar Agarwal, DDIT(Inv.),
Unit1(3), Kolkata
Prabal Chowdhury, DDIT(Inv.)
Unit-I(I), Kolkata
Rajat Subhra Biswas, Addl.DIT(Inv.),
Unit-I, Kolkata
Bishwanath Jha, DIT, Kolkata
T. B. C. Rozara, DGIT(Inv.) (East) Kolkata

IN DEPTH ANALYSIS OF DIGITAL DATA REVEALS SUPPRESSION OF RECEIPTS BY HOSPITAL

Search conducted to verify information of suppression of full receipts – assessee denies unaccounted receipts – challenge accepted by the Wing – seized digital data thoroughly examined by designing an electronic discovery tool – actual receipts unearthed

The assessee was running a hospital, in the name and style of GG Hospital, as a proprietary concern in Chennai. The assessee had specialised in providing IVF treatment to childless couples. Pre-search reconnaissance revealed that the assessee was collecting amounts in cash and the receipts shown in the tax returns were far less compared with estimates based on intelligence gathered.

2. During the search, the authorised officers found diaries for over three years containing summary narration of daily collections made in cash and amount handed over to the assessee. The daily collection figures found in the diaries were added up year wise and compared with the gross receipts as recorded in the tally account and as disclosed in the returns of income filed. This resulted in detection of suppression of gross receipts by ₹ 29.96 crore for a period of over three years. On being confronted with the evidence the assessee admitted unaccounted income of ₹ 29.96 crore for the AYs 2009-10, 2010-11, 2011-12 and 2012-13 on the day of search. As a result, the modus operandi of suppression of receipts became clear. When questioned about unaccounted income for the earlier years, the assessee emphatically stated that as she was involved in research work at the relevant time she did not have any such income. Practically,

the assessee threw a challenge to the processing team that they could not detect unaccounted income pertaining to earlier years. The team accepted the challenge in the right spirit and processed further.

3. Digital data of about 10 GB was seized during the search from three computers being used in the accounts department and also the main application server. There were hundreds of MS Excel files and MS Word files in the seized data along with SQL server database file used by the billing software.

4. An electronic discovery tool was designed and developed to filter the contents of the files for certain key words. This analysis revealed excel files containing the original receipt reports taken from the billing software "Digimed" used now and also the reports taken from the previous billing application software, used by the assessee prior to"Digimed".

5. As the present format was not directly usable for analysis, the data was imported to MS Access using a custom built ETL (Extract, Transform and Load) tool. The original accounting software for initial three years were also recovered and analysed after breaking the passwords. The data thus extracted and compiled revealed the actual receipts of the assessee from 01-04-2005 onwards, revealing total undisclosed receipts of ₹ 44.25 crore for AYs 2006-07 to 2011-12 including the undisclosed receipts of ₹ 29.96 crore admitted during the search. As the assessee had recorded the entire expenditure in the regular Tally accounts, no expenditure was required to be set off against the undisclosed receipts. Thus, the undisclosed receipts tantamounted to undisclosed income.

6. Specific MS Excel files were found that revealed the actual working of suppression by the accountants. A worksheet contained a report showing columns titled 'Actual' and 'Corrected'. Certain

receipts were modified in the corrected column to show much lesser receipts at random. The sum of column titled 'Actual' matched with the professional fee and other receipts of the assessee as per billing software and the diary wherever available. The total of the column "Corrected Receipts" matched with the entries in Tally that were reflected in the Returns. The evidence gathered proved concealment from the stage of actual bills raised, downward correction of certain bills, entry of corrected bills in Tally accounts, recording of actual receipts in the diary till passing on the excess cash over the receipts recorded in the Tally accounts to the doctor on daily basis. This finding established the fact that the concealment was a well planned and managed activity.

7. The billing software 'Digimed' was also used to record the pharmacy sales. While studying the workflow of "Digimed" it was seen that only part of the sales from the pharmacy were recorded through the billing software. The total pharmacy sales were recorded in the Pharmacy sales table in the software that was found using SQL query. Comparison of data from Pharmacy sales table with that of the billing software revealed suppression of pharmacy sales. A sum of ₹ 7.4 crore, being the difference between total pharmacy sales and the billed sales, was identified as undisclosed pharmacy sales. The entire amount of undisclosed pharmacy sales represented undisclosed income of the assessee considering that the corresponding purchases were found recorded in the regular Tally accounts. Thus the total detection of suppressed income of the assessee went upto ₹ 51.65 crore.

8. Information contained in the digital data seized was used to the full extent and concealment was detected scientifically till the last rupee backed by evidence. The investigations in this case were carried out following proper methodologies (and meeting the requirement of

forensic accounting methods). The assessee's claim of expenses from the suppressed income was proved false by showing her entries of the same in the disclosed Tally account.

Names of the Officers: J. X. Peter, DDIT(Inv.),
Unit-III(2), Chennai
Sanjay Deshmukh, JDIT (Inv) Unit-III,
Chennai
V. Nagaprasad, DIT (Inv), Chennai
J. Suresh, DGIT (Inv.), Chennai

SEARCH REVEALS MODUS OPERANDI FOR PROVIDING ACCOMMODATION ENTRIES THROUGH DUMMY COMPANIES

Assessee providing accommodation entries for expenses – dummy companies with bogus share capital floated for the purpose – capital raised through circular transactions – providing bogus bills of capital expenditure - search reveals assets worth ₹ 80 crore – information disseminated to other Charges

Kolkata has emerged as a hub of entry operators giving entries of bogus purchase, one time share capital, selling shell companies with artificial capital and assets and also giving unsecured loans for a commission. Although such activity is done throughout the country, Kolkata has emerged as a major center since the rate of commission charged by the operators is cheapest there.

2. A search and seizure operation was conducted on 13/09/2012 against one Mr. Praveen Kumar Agarwal, Chartered Accountant who was one of the major players of Kolkata in this field. Mr. Agarwal was in the business of providing accommodation entries and bogus bills to different companies/entities and for the said purpose he had floated around 300 dummy paper companies by appointing different dummy directors from time to time. Since all the dummy directors were mere staff of Mr. Agarwal, all such companies were controlled and managed by him. Bogus share capital was raised in those companies to the tune of crore of rupees and after some time the said companies were sold out to the actual beneficiaries throughout India in lieu of commission.

3. During post search investigation, it was revealed that Mr. Agarwal was basically doing the following types of bogus transactions for commission which are discussed as under:-

a) Providing bogus entries of expenses in different forms as

commission, professional fees, sub-contract and interest expenses etc. and utilizing the same in raising bogus share capital. The value of such benefits from bogus sub-contract alone over a period of six years was around ₹ 3500 crore.

b) Forming new shell companies and raising their share capital artificially through circular transactions and subsequently selling them to various beneficiaries in lieu of commission. The bogus share capital of such sold companies alone was to the tune of ₹ 2500 crore.

c) Providing one time share capital to different beneficiaries from the paper companies having artificial capital.

d) Providing bogus unsecured loan through capital raised as mentioned at (b) above;

e) Selling artificial turnover to various listed and unlisted companies, thereby helping them in getting increased credit facilities from banks;

f) Providing bogus bills of capital expenditure to numerous listed and unlisted companies, thereby increasing their cost of plant and machinery and helping them in siphoning off public funds.

4. Mr. Praveen Kumar Agarwal did not make any disclosure in the course of search, but the Directorate had located nearly nine companies where his wife was a director in which real income earned by him had been parked and real assets worth nearly ₹ 80 crore were located. This undisclosed investment would be added in the assessment which was pending. Information has been passed on to all the DGsIT(Inv) in whose jurisdiction the beneficiary companies were assessed. As the sold companies were still assessed in Kolkata, information was passed on to the jurisdictional CsIT to take appropriate action under the IT Act, 1961. This case may not have resulted in immediate surrender

of undisclosed income but has an all India impact and the ultimate realisation of tax would be huge.

Names of the Officers: Sumit Kumar Agarwal, DDIT(Inv.),
Unit-I, Kolkata
Rajat Subhra Biswas, Addl. DIT(Inv.),
Unit-I, Kolkata
Bishwanath Jha, DIT, Kolkata
B. B. Mohanty, DGIT (Inv.)(East),
Kolkata

QUICK RECONNAISSANCE AND ACTION LEADS TO A HUGE CACHE OF UNACCOUNTED ASSETS

Information of substantial cash received late at night – recce carried out at night itself – databases examined – all premises identified at night – warrant obtained before morning – related businesses also covered - modus of inflating expenses on liquor bottles detected – huge cash also found and seized

Late in the evening of 10/05/2012 source information was received that substantial cash belonging to a group dealing in liquor business was parked at the residence of one Mr. Vishnuprasad located at No. 78 Poes garden, Gopalapuram, Chennai-86. Considering the quantum of cash involved, it was decided to carry out reconnaissance immediately.

2. Reconnaissance was carried out discreetly in and around the residence of Mr. Vishnuprasad at No. 78 Poes garden, Gopalapuram, Chennai-86 late into the night, even though the residence was in the high security zone, being very close to the residence of the Chief Minister of Tamil Nadu. The description of the residence and also the movements of the person matched with the given information. The said address was shown in the Google map as the 'Guest House' of the company G Tech Stone Ltd. Mr. Vishnuprasad was the Director of the company. It was verified from the watchman that Mr. Vishnuprasad was alone in his house at the time of enquiry. Further enquiries confirmed that the family was very closely related to the family of an important liquor group. The enquiries also confirmed that both the families had enough potential to deal with and possess huge cash. All the crucial premises belonging to both the groups were quickly identified, maps prepared and kept ready by early in the morning. Satisfaction note was prepared and warrants to search the premises of Mr. Vishnuprasad and G Tech Stone Ltd were obtained

by early morning. Simultaneously, search teams were formed and all the officers and ITIs drafted for the duty were informed through SMS during the night. At the same time, extra teams were formed and kept in readiness to cover the liquor group considering the possible contingency.

3. The residential premises of Mr. Vishnuprasad and also the premises of G Tech Stone Ltd were searched in the morning of 11/05/2012. In the dressing room attached to the personal bedroom of Mr. Vishnuprasad the search team found 35 corrugated board cartons, each containing cash of ₹ 1 crore neatly packed in denominations of ₹ 500/- and ₹ 1,000/-.

4. When questioned, Mr. Vishnuprasad stated that the cash belonged to his brother-in-law (Sister's husband) Mr.. Aravind Nandagopal, Managing Director of Mohan Breweries and Distilleries Ltd (MBDL) residing at No-6, 6th street, Rutlandgate, Chennai. Based on his sworn statement, the residential premises of Mr. Aravind Nandagopal and the premises of MBDL,the liquor manufacturing company of the group were covered immediately by issuing consequential warrants. Mr. Aravind Nandagopal admitted that the cash was his own unaccounted income taken out from MBDL by inflating purchases of old liquor bottles. In the statement recorded u/s.132(4) of the I T Act, he admitted the total cash seized at ₹ 35 crore as his unaccounted income. Within seven days after the search an affidavit was filed confirming the sworn statement. Within another 3 days Mr. Aravind Nandagopal filed the return admitting the cash of ₹ 35 crore as his undisclosed income for the assessment year 2012-13. He also requested to adjust the tax liability out of the seized cash.

5. During the search, certain incriminating documents were seized from the residence of Mr. Aravind Nandagopal and business premises of MBDL. On detailed analysis of the seized papers the modus operandi of generating cash was detected to be by inflating

purchases of old liquor bottles. Later, based upon the seized cash, the seized documents and the post search investigations carried out, Mr. Aravind Nandagopal admitted that an amount of about ₹ 150 crore was taken out by inflating purchases of old liquor bottles over a period of six years. He also admitted that out of such amount he took out an amount of ₹ 100 crore for his personal investments and used about ₹ 50 crore to meet the expenditure of the company outside the books of account. Hence, he disclosed additional income of ₹ 100 crore in his individual capacity and further amount of ₹ 50 crore in the hands of MBDL.

6. Mr. Aravind Nandagopal filed a letter on 22nd February 2013 reaffirming the figure of disclosure of unaccounted income with a request to adjust the seized cash towards the self assessment tax liability. As a result, the seized cash lying in the PD account was adjusted. Thus, within 9 months of the search, the seized cash was adjusted towards the admitted liability of the assessee.

7. It is a case in which search operations of such magnitude were carried out within the shortest possible time of about 12 hours. Entire reconnaissance work was done by using all resources, viz., internet, GPS, ITDMS, SMS, personal contacts, etc., to the best possible advantage.

Names of the Officers: J. X. Peter, DDIT(Inv.),
Unit-III(2), Chennai
Sanjay Deshmukh, JDIT (Inv) Unit-III,
Chennai
V. Nagaprasad, DIT (Inv), Chennai
J. Suresh, DGIT (Inv.), Chennai

VERIFICATION OF INFORMATION LEADS TO DETECTION OF SUPPRESSED TURNOVER

Information of suppression of turnover – thorough verification and cross checking with Railway records – huge suppression of turnover detected and disclosed by the assessee before the ITSC

A Search and seizure operation under section 132 of the Income-tax Act, 1961 was conducted on 29.02.2012 at various premises of Riddhi Siddhi Udyog and related parties at Kolkata. Riddhi Siddhi Udyog is a proprietorship concern of Sri Rabindra Kumar Bhalotia. It is engaged in the manufacture and supply of brake blocks and brake shoes to Indian Railways. It is the only supplier of brake blocks and brake shoes to the railways. It's entire turnover is from supplies to the Indian Railways.

2. Information was received from one of the competitors of Riddhi Siddhi group that this group was indulging in huge suppression of its turnover. It was also alleged that the group was not even registered with central excise by showing a suppressed turnover of 1.5 crore when the actual turnover was nearly 100 crore. It was further alleged that the group was depositing the payments received from Railways in an undisclosed bank account standing in its own name in some bank. Since the group did not pay Income tax, Sales tax or Excise duty, it quoted such low rates in the Railways tender that it had virtual monopoly in the supply of brake blocks and brake shoes to the Indian Railways. Initially the allegation appeared malicious and motivated. How could someone deposit payments from Railways in a bank account in its own name and not show it in the books? However, preliminary investigation revealed that there was truth in the allegation and therefore the case was developed for action under section 132 of the Act.

3. It was gathered in pre-search enquiry that before the goods

were supplied to railways, they are compulsorily inspected by RITES (RITES Ltd. - a Government concern), for which RITES charges inspection fee at the rate of 0.45 per cent of the contract value. Therefore, on the date of search itself a team was sent to the office of RITES with summon under section 131 to collect the details of inspection charges paid by the Riddhi Siddhi group. It was found that from 2007-08 to 2010-11 Riddhi Siddhi Udyog had paid inspection charge of ₹ 44,50,104/- which meant that supplies worth ₹ 98.89 crore had been made to the Railways, whereas, the assessee had shown a turnover of only ₹ 9 crore during this period.

4. During the search it was found that the assessee was depositing its undisclosed turnover in an account in its name in the Central Bank of India, N S Road branch, Kolkata. On the date of search the balance in that account was ₹ 13.30 crore, which was seized.

5. During the search, the assessee made a voluntary disclosure of only ₹ 20 crore. However, subsequently the assessee filed a petition before the Settlement Commission, Kolkata bench and the figure of undisclosed income was enhanced to ₹ 22 crore. The entire tax on the settled amount has been paid. Information was shared in the REIC with other agencies like Sales tax and DGCEI.

Names of the Officers: Rajat Kumar Kureel, ADIT(Inv.),
Unit-IV, Kolkata
Muzzaffar Hossain Addl. DIT(Inv.),
Unit-IV, Kolkata
Bishwanath Jha, DIT, Kolkata
B. B. Mohanty, DGIT (Inv.)(East),
Kolkata

USE OF FIU IND INFORMATION TO DETECT INFLATION OF EXPENDITURE BY INFRASTRUCTURE COMPANIES IN HYDERABAD

Creation of bogus firms of sub contractors for siphoning off cash- Layering of work orders- Related payments through banks- Interplay of genuine firms and bogus firms- Integrating multiple strands in investigation.

Enquiries in FIU-IND references in the case of two individuals drew a blank as none of the persons and their connected entities could be traced at their given address and their whereabouts remained unknown. Analysis of their linked bank accounts clearly indicated movement of funds between various accounts and withdrawal of cash in small amounts presumably to avoid any attention. As the main persons were not traceable the gamut of transactions could not be unravelled and their real beneficiaries could not be established.

2. In a separate development during this period, the case of Ratna Infrastructure & Projects Ltd, a company in the Infrastructure sector, was being processed by the officers of this Directorate. A detailed study of e-TDS return of Ratna led to identification of subcontract payments to two entities connected to the above mentioned FIU-IND references. Analysis of their IT returns on AST led to matching of the partners of these two entities with that of some of the entities discovered in FIU-IND reference. Even these two subcontractor entities could not be traced at their given addresses. The only traceable link found at this stage was that of Mr. AB, a Chartered Accountant, whose name was appearing in the AST returns as the one who conducted tax audit in these cases.

3. Based on these leads, a search was then conducted on 26-03-2012 in the case of Ratna, along with HES Infra Pvt Ltd, another company

in the same sector. Simultaneously, the office premises of Mr. AB, the Chartered Accountant, were covered u/s 133A. This proved to be a turning point. The survey led to stacks of documents in the premises of Mr. AB, evidencing creation of several firms apparently created for large scale siphoning off of funds by various Infrastructure Companies. A large number of files containing sets of work orders, contract agreements, RA Bills, TDS certificates, bank statements and rough books of accounts maintained in Tally were impounded. These documents pertained to 33 concerns for the F.Y 2008-09, through whom ₹ 300 crore had been siphoned out. It further emerged from the impounded material that the non-traceable entities encountered in the FIU-IND references were also part of this network.

4. On noticing that the searched concerns Ratna and HES had made subcontract payments to some of these 33 entities, they were examined in detail as to the actual works carried out by them. They claimed ignorance of the above entities and their activities, and stated that subcontracts were given as per the advice of one Mr. KR, MD of another company Megha Engineering & Infrastructure Ltd from whom they have received work orders. No evidence of any works executed by any of these entities was found during the course of Search.

5. Based on these statements, a Search was then conducted on 24-04-2012 in the case of the above company Megha. Mr. KR, MD of this company denied all knowledge of the above 33 sub contractors, and strongly refuted the statements given by Ratna and HES. He stated that his company Megha had subcontracted works to Ratna and HES, who in turn submitted RA bills after completion of works. He claimed that the works have been completed and certified by the respective Government agencies and payments have been received. Megha made payments to genuine and existing companies (Ratna, HES, etc) - who are in the same line of business, after deducting tax at source. He, therefore, stated that it is Ratna and HES, who should prove the existence and genuineness of the sub contractor entities. Effectively,

therefore, a stalemate was reached with all concerns disowning the 33 bogus firms.

6. While matters stood thus, as a part of continuing post search investigations, another consequential search was carried out on 07-09-2012 at the residence of Mr. R K, an employee of the above company Megha. Evidence found indicated the inflation of expenditure under the guise of steel purchases and the utilization of cash so generated. Mr. RK deposed that certain loose sheets on which he was examined contained jottings made by him as dictated by his boss Mr. KR, MD of Megha. This was the first instance where direct evidence implicating Mr. KR, widely believed to be the lynch pin, was found. These jottings were analysed and it was found that they indicated payments made by Megha during F.Y 2012-13 to steel suppliers and to some other Infra companies. These jottings also indicated generation of Cash and its application. Payments as per these jottings were quantified at a relatively small figure of ₹ 60 crore. Their evidentiary value, however, had a more significant and persuasive influence on Mr. KR, to come clean on a host of contentious transactions.

7. During post-search investigations the impounded material was analysed. More than 300 connected bank accounts were identified and statements collected. On thorough analysis of the bank accounts and on painstaking trail of debits and credits, names of some more entities have emerged. Analysis of their AST returns and Form-26 AS resulted in detection of siphoning of additional funds to the tune of ₹600 Crore by several Infra companies during F.Y 2008-09, 2009-10 and 10-11 in the guise of subcontract payments to 48 concerns. The entire maze of entities and bank transactions were created with a set of about 15 persons and 10 addresses used in various combinations to comprise various layers.

8. Subsequently, nation-wide searches/enquiries were carried out in the case of other infrastructure companies who had availed

the services of this cluster of 48 concerns. Information pertaining to beneficiaries in other and neighbouring Directorates was shared, resulting in some outstanding disclosures of bogus expenditure. This Directorate itself returned with disclosure of bogus sub contractor expenditure aggregating to ₹ 550 crore in three subsequent Searches conducted after Dec 2012.

Names of the Officers: Abhishek Kr Jha, Ch Ramakrishna, A H Farooqui, ITIs, Unit I, o/o DIT(Inv), Hyderabad
A Sitarama Rao, IRS, DDIT(Inv), Unit I(2), Hyderabad
T Vijayabhaskar Reddy, IRS, Addl DIT (Inv), Unit I, Hyderabad
Narahari Biswal, IRS, CIT-4, Hyderabad. (the then DIT_Inv)
V. Srinivas, IRS, DIT(Inv), Hyderabad
Mukesh Kumar, DGIT(Inv.), Hyderabad
Dr. P Raghu, IRS, DGIT (Inv), Hyderabad

METICULOUS PLANNING, MONITORING AND DETAILED POST SEARCH INVESTIGATION LEADS TO DETECTION OF BOGUS SHARES PURCHASE

One of the biggest searches on retail trader –meticulous planning and floor wise monitoring leads to success – huge unaccounted stocks found –multi-agency probe into purchase of shares leads to admission of bogus contract notes for purchase of shares

A search and seizure operation u/s. 132 of the Income-tax Act was organized on 18.08.2011 in the group cases of Saravana Stores, Chennai. It was the biggest search operation organized with the man power of about 600 officers and staff in Tamilnadu and Puducherry region. Even though man power was mobilized from various places of Tamil Nadu, utmost secrecy was maintained.

2. "Saravana Stores" and its group concerns were the biggest retail traders in Tamil Nadu, running 10 huge retail outlets in multi storied buildings. Each of the outlets employed about 500 to 800 Staff. They dealt with all sorts of house hold articles, textiles, Jewellery, electronic items, etc. Hence, verification of stock in trade was considered to be the biggest challenge and the physical stock worth ₹ 750 crore had to be verified during the day of search itself.

3. Considering the challenges in execution of searches in the group, the operation was meticulously planned as under:

- Deployed man power of more than 500 staff and 60 Authorized officers(AOs)
- Each retail shop was monitored and supervised by one DDIT and each floor of the retail outlet was controlled and verification of stock was made by a team under the control of one ACIT/ ITO.

- A Control room with 3 DDITs was set-up. The assessee group was divided into 3 sub groups and each such group was supervised by one DDIT.
- Strike time was fixed at 8.15 AM to ensure that the search party reaches the retail outlets before their opening in order to control entry of staff and customers.
- AOs were asked to use the services of staff of the retail shops for stock verification.
- Different proformae for taking different kinds of inventories were given to AOs of each floor and the inventorisation was done accordingly.

4. The searches revealed that four individuals of the group claimed to have entered into contract for purchase of shares at a specified price as debited in their books of account. It was also claimed that the shares were purchased off-line in physical form and in the absence of Demat account at the time of purchase of these shares, the advance towards purchase consideration was paid with an agreement to transfer the shares into their Demat account whenever delivery was asked for, after opening the Demat Account in their respective individual names. The shares were found sold through Mumbai Stock Exchange. Further, the assessees claimed the profit derived from the sale of these shares as Long Term Capital Gain (LTCG) and also claimed exemption u/s.10(38) of the IT Act.

5. In the course of post search investigation summons seeking details were issued to various agencies, viz., to the companies whose shares were transacted, share brokers through whom the shares were sold, service provider of the demat account of the transferor of shares and to the transferor of the shares regarding the mode of acquisition and basis for transfer etc. While some replies started flowing, the assessee came to know about the investigation being carried out and admitted that the contract notes for purchase of shares were bogus and also admitted the entire amount as their business income by filing

notarized affidavits. The search revealed that the total unaccounted income in such transactions was about ₹ 140 crore. Subsequently, major part of the taxes due on the admitted amount was paid.

6. Taking stock of so many varieties and such a huge volume was a mammoth exercise. In course of reconnaissance the processing ADIT(Inv) visited all the floors of all the establishments of the group and noted down the kind of stock placed on each floor at all the places. He devised separate proforma for each variety of stock and handed over to the respective search teams. As a result of meticulous planning, unaccounted stock of textiles, gold jewellery and electronic items to the tune of ₹ 140 crore was found. The same was admitted by the group as their undisclosed investments.

7. Unaccounted investment was seized in the form of bullion and jewellery worth ₹ 10 crore at the residences of the partners. Evidence was seized establishing unaccounted cash payment for purchase of immovable property to the tune of ₹ 7.50 crore.

8. During search and post search investigation, the assessees of the group admitted and disclosed additional income of about ₹ 300 crore and major portion of the taxes due have been paid.

Names of the Officers: S. Senthil Kumaran, IRS, DDIT (Inv.), Chennai
S. Ravichandran, IRS,
Additional DIT (Inv.), Chennai
H. Burman, IRS, DIT (Inv.), Chennai
Sudhir Chandra, DGIT (Inv.), Chennai

DETECTION OF INFLATED PURCHASES THROUGH EXTENSIVE PRE SEARCH ENQUIRIES AND VERIFICATION OF SAP SYSTEM

Assessee suspected of generating cash by booking bogus bills – supplier parties found to be only on paper with no stocks – entire supply chain investigated during the search – verification of SAP systems reveals unusual patterns in purchases – accommodation entries given by suppliers proved – including payment by cheques and receipt of cash back

The Flagship Company of the Group "Praj Industries Ltd" from Pune, one of the most reputed companies for carrying out turnkey projects in brewery and distillery sectors, was engaged in the business of design, development and installation of distillery equipment, bio-ethanol, process equipments and waste water management etc. The main allegation against the company was that the company was generating cash by inflating expenses by booking bogus steel bills and sale of unaccounted scrap.

2. Pre-search enquiries revealed that certain supplier parties were operating on very thin profit margins on a relatively high turnover. Discreet enquiries revealed that these supplier parties who were providing accommodation entries were operating from table space and did not have any stock at the premises. On further enquiry a few of the supplier parties assured that if any concern was ready to do business throughout the year, they are willing to give accommodation entries of 20 to 25 per cent of the amount of business done with them during the year subject to payment of commission and VAT.

3. Search u/s 132 was carried out on 03/04/2012 at various business and residential premises belonging to group concern. During the search action the flow of material i.e. movement of raw material from

requisition of material to issue of material and production of the final products was understood. The steps involved in this procedure and the persons involved/responsible for accounting each step were identified and the documents and records maintained by these people were verified. Similarly movement of final products and the procedure followed for storage and disposal of final products was studied. It was found that the company was using ERP Software, SAP (Systems, Applications and Products in data processing) to maintain a central database for all the departments and accounting.

4. On verification of the SAP system it was seen that there were certain Purchase Orders (PO) for which no Purchase Requisitions(PR) were raised. Normally all POs are backed by PRs; only in exceptional cases POs are not backed by PRs. All such POs were segregated. It emerged that a particular log-in id and a particular dealer appeared with unusual frequency for such POs. All such Purchase orders were generated using the log-in id "FA1". A Purchase Officer was entrusted to generate the Purchase Orders within ERP System, for which no material was to be received. The employee using the log-in id "FA1" was confronted with these facts. The employee admitted the practice of booking non-genuine purchases for which no material was received. The premises of the supplier parties based in Mumbai were also covered swiftly, as a result of which, they also confirmed providing accommodation entries.

5. It was found that the subcontractor of PIL, Elina Solutions Pvt Ltd. (ESPL), was also taking accommodation entries from these suppliers and passing on the cash to PIL. The premises of ESPL were also covered u/s 132. It was revealed that bogus purchases of ₹ 135.35 crore were booked by PIL and ESPL. Certain other suppliers parties were also found providing similar accommodation entries which amounted to ₹ 6.45 crore. The total bogus purchases detected in the form of steel expenses amounted to ₹ 141.80 crore for FY 2005-06 to FY 2011-12. It was also seen that PIL was involved in unaccounted sale of scrap resulting in disclosure of additional income of ₹ 6 crore

for various years.

6. During the course of search data imaging of laptops of various top officials of PRAJ Industries was done. The files and documents in the laptops were examined in the post-search period. Two deleted Excel Sheets were retrieved. The excel sheets contained all the details of cheques issued to vendors and cash received back from them, which was confirmed in the statement of the employee maintaining the notings in the excel sheet.

7. The total cash generated by way of accommodation entries and unaccounted scrap sale was ₹ 147.79 crore. The group disclosed the same as additional income in various years and has since paid tax of ₹ 31.55 crore.

Names of the Officers: Dr. Nitin Waghmode, DDIT (Inv),
Unit 1(3), Pune
Harshad Vengurlekar, DDIT (Inv),
Unit 1(1), Pune
Sangram Gaikwad, Addl.DIT (Inv),
Unit 1, Pune
M. K. Dubey, DIT (inv), Pune
Ujjwal Choudhary, DGIT (Inv), Pune
D. P. Sharma, DGIT (Inv), Pune

DISCREET PENETRATIVE ENQUIRIES PAVE THE WAY FOR A SUCCESSFUL SEARCH ON HAWALA OPERATORS

Information regarding hawala activities going on in private vaults – verification by opening and operating lockers in the same vault – close watch kept on hawala operators – information of multiple transactions relayed and operators followed – search conducted leading to disclosure in several hands

Information was received that a group of individuals was carrying out hawala activities involving illegal transfer of cash across places from the geographical location of Zaveri Bazar, Mumbai using private safety vault companies, Gold Sukh Safety Vaults Limited, Samriddhi Safe Deposit Vaults Private Limited and Dalichand Jugraj Safe Deposit Vault. The information contained the name and addresses of the hawala operators and their locker numbers in the safety vaults. The lockers could be in the name of their assistants/employees.

2. The addresses of the hawala operators were verified during discreet enquiry and were found to be correct in most of the cases. In some cases, the hawala operators had changed their addresses. The new addresses were further found through discreet enquiries. It was found that the individuals were indeed involved in hawala activities from the mentioned addresses indicating the credibility of the information. However, to gather conclusive evidence, it was decided to hire a locker in Gold Sukh Safety Vaults Limited.

3. The original voter-id and PAN cards of an ITI were scanned and edited. The doctored documents were given and a locker was opened after paying a sum of ₹ One lakhs as security deposit. The names of two Inspectors were authorized for operating the locker. The DDIT thereafter visited Gold Sukh Safety Vaults Limited a number of times along with the Inspectors posing themselves as jewellery traders. The

safety vault was in the form of a big hall wherein all the lockers were maintained. Several persons could operate simultaneously. It was decided to identify the lockers wherein large sums of cash belonging to hawala activities were kept. The details of persons operating such lockers were relayed to the inspectors standing outside the vault, who would then follow the person and identify his address. By this method, additional nine lockers pertaining to hawala operators were found.

4. This process of gathering additional evidences posed enormous challenges as the hawala operators conducted their activities in very clandestine manner, were more alert, hostile and suspicious towards any inquiry. The DDIT and the inspectors had to maintain utmost secrecy as slightest error would have led to the failure of search.

5. Execution of search was yet another challenge as the area of operation was congested and crowded and large scale movement of officials would have alerted the operators. Accordingly, three tiers of officials were made, who reached their respective locations after specified periods of time along with plain clothes armed police.

6. During the search action, cash of ₹ 11.17 crore and bullion of ₹ 2.30 crore was seized, which were admitted to be undisclosed and unaccounted income in majority of the cases. Evidence of cash loans of ₹ 21.26 crore was found in case of Gold Plaza Developers Private Limited, which was admitted. Evidence of on money of ₹ 9.11 crore was found in case of Gold Sukh Developers Private Limited, which was admitted as undisclosed income.

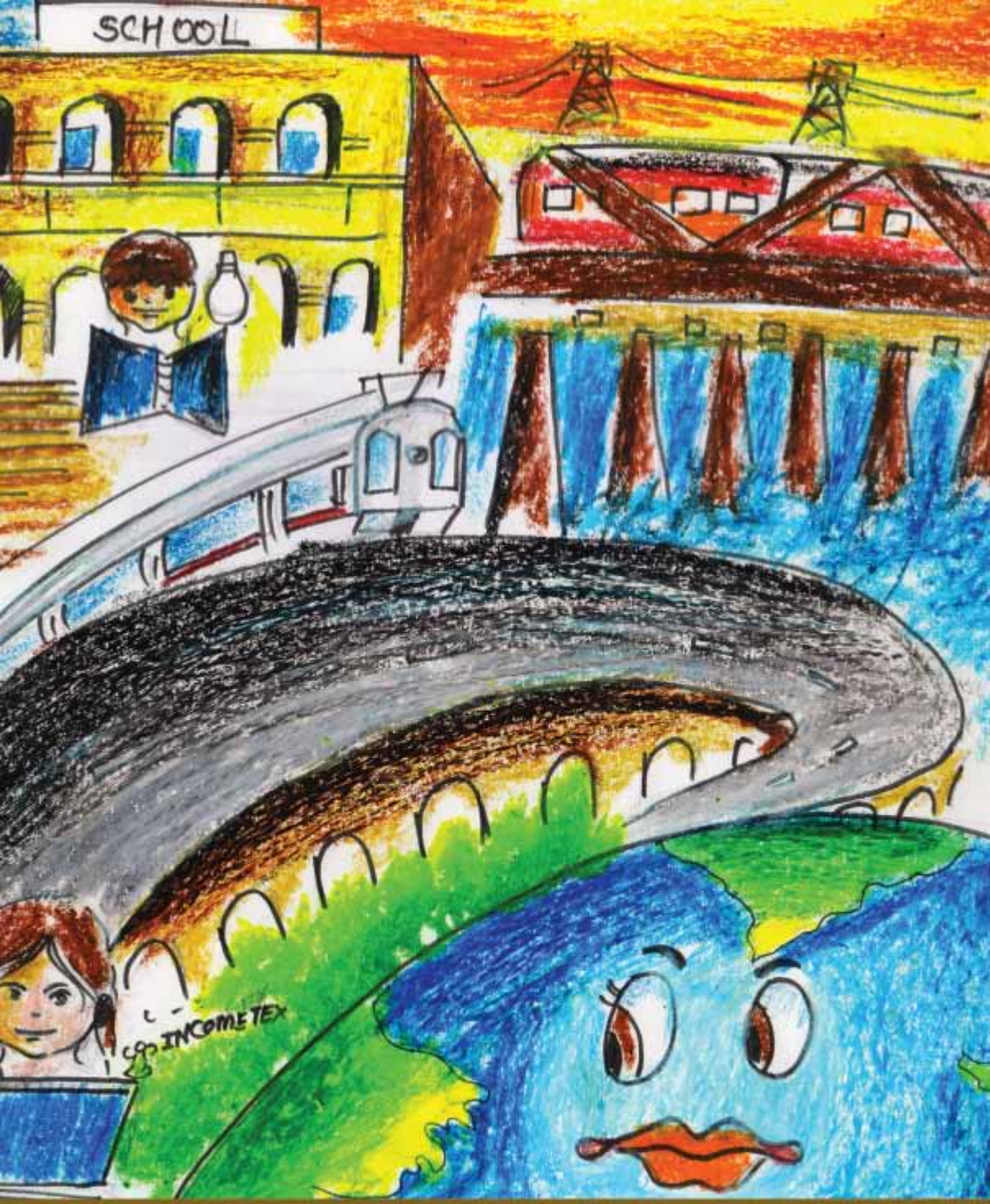
7. Further, the search action on the hawala group created deterrence in the market resulting in a marked decrease in hawala activities and cash dealings. The action got wide media attention earning praises for the Department.

8. The undisclosed income detected in Gold Sukh Safety Vaults Limited and related concerns was around ₹ 126 crore. In case of hawala operators, the undisclosed income detected was around

₹ 15 crore. The seized material contained details of additional persons in possession of undisclosed income.

9. This case gives an understanding of the issues related to hawala activities which help in maintenance and strengthening of an undesirable parallel economy in our country. It was an activity wherein unaccounted cash was transferred from one location to another immediately after paying a commission of about 0.3 per cent. The proper understanding thereof shall result into greater deterrence.

Names of the Officers: Sudhanshu Shekhar, DDIT (Inv),
Unit V(3), Mumbai
Anurag Srivastava, Addl.DIT(inv),
Unit-V, Mumbai
Akhilesh Ranjan, DIT(Inv)-I, Mumbai



Painting by: Deepak Kumar, Age-15, School-Govt. Boys Sr. Sec. School, Harkesh Nagar, New Delhi

SURVEYS

SURVEYS

THOROUGH INVESTIGATION FOLLOWING FIU IND INFORMATION LEADS TO DETECTION OF LAYERING AND SUPPRESSION OF INCOME

Verification of FIU IND information leads to suspicious transactions – round tripping – bogus concerns – non filers – introduction of share capital by bogus companies and undisclosed incomes – declaration of low profits –booking of bogus expenses – finally resulting in admission of huge unaccounted income.

Lloyds Steel Industries Ltd and Shree Global Tradefin Ltd were into manufacturing, trading and sale of steel products, engineering and fabrication. FIU-IND information was received in these cases and their Bank account statements and the account opening forms were discreetly obtained from the Bank. On verification of the same, the following points were noticed:-

a) Though the accounts were in the names of different concerns, the fund movement from the bank accounts and into the bank accounts were same;

b) The turnover involved in each account was significant and overall activity appeared meaningless and not in line with the profile of the entity declared to the Bank;

c) The concerns and proprietors from their logistic details appeared to be fronts placed to confuse the trail of the origin funds;

d) During verification on ITD application, it was found that all these concerns were proprietary concerns and running from the common addresses;

e) Most of the persons had either not filed any return of income or declared nominal income in some years;

f) Discreet inquiries were conducted on the given addresses and it was found that these entities did not exist on the given addresses;

g) The verification of the bank account opening forms of all these concerns revealed that they were showing same witnesses, even though the bank account holders were apparently not interrelated to each other;

h) All these accounts were having same e-mail ID and i) Perusal of these bank statements showed that the money was deposited into these bank accounts in lieu of bogus sale bills issued by these persons and the entire amount was being transferred to two or three concerns only.

2. The Bank account statements and the account opening forms were discreetly obtained from the Bank of the entities appearing at the second layer. Perusal of the bank statements of these concerns showed that they were engaged in circulation of huge amounts of funds without any proper economic reason. It was further seen on ITD application that all these concerns were running from the same address and that they had not filed their Income Tax Returns. The Bank accounts were examined and it was found that money was being transferred to various companies at the third layer.

3. Enquiries were conducted with regard to these companies and it was found that most of them existed on paper only and were involved in providing accommodation entries. Perusal of their bank statements further showed that the money was transferred from these accounts to some companies existing at the fourth layer. The addresses of these companies were found out from the MCA site and it was found that no business concerns were running from those addresses. Some of them were having registered offices in Kolkata. Perusal of their bank statements showed that the money was ultimately being transferred from there to Shree Global Tradefin Ltd.

4. Shree Global Tradefin Ltd. was registered with Bombay Stock Exchange. The detail of the company's performance over last five years was taken out from the ITDMS and money-control website. Following facts emerged out of deeper scrutiny of financials of Shree Global Tradefin Ltd. It was found that:

a) The company had hardly offered any profit in any financial year. The company's sale and expenditure was nearly equal in all the years;

b) Substantial share application money was received amounting to ₹ 541.96 crore in F.Y. 2009-10;

c) Considering the profit declared by the company in various years, it was highly unlikely that any prudent businessman would be interested in investing such a large amount as 541.96 crore in this company as share application money;

d) and discreet enquiries conducted in this case showed that the assessee was involved mostly in circular trading without doing any real business.

5. Detail of the investors of the share application money was procured from the money control website and MCA database and it was found that Shree Global Tradefin Ltd. had received share application money of ₹ 542 crore from various concerns. Verification on MCA website and ITDMS, showed that all the companies were registered at one address having common directors.

6. The share holding pattern of Shree Global Tradefin Ltd. as on 31-03-2010 was examined and it was found that Team work Stockfin Ltd. and Blossom Stockfin Ltd. were holding 37.56 per cent and 37.31 per cent of shares respectively. Another 25 per cent of shares were held by the family members of Agarwal and Gupta families who were promoters of Lloyd Group. The details of share holding patterns of Team work Stockfin Ltd. and Blossom Stockfin Ltd. was examined

and it was found that they were also wholly owned by the members of Agarwal and Gupta families.

7. The above discussion clearly proved that Shree Global Tradefin Ltd was directly controlled by the family members of Gupta and Agarwal families of LIoyd group and that the source of share application money in this company was not explained. Further, since no genuine business activity was being carried out in Shree Global Tradefin Ltd, the source of unexplained fund introduced by the promoters of Lloyd Group in SGTFL had to be out of the concealed income of Lloyds Steel Industries Ltd.

8. Accordingly, a survey action u/s. 133A was mounted simultaneously in the cases of Lloyd Steel Industries Ltd., Shree Global Tradefin Ltd., Indraneel Properties Ltd, and Nirvana Properties Ltd. etc. The statement of the Directors of the Companies which had finally invested in share application money of SGTFL was also recorded wherein they admitted that all these investments were arranged by Mr. Babulal Agarwal, Managing Director and Controller of Lloyds Group. Further, the Broker who had arranged entries by layering from various companies was also summoned and he also admitted that all these transactions were arranged at the behest of Mr. Babulal Agarwal. During the course of survey proceedings, all these facts were confronted and statement of Mr. Babulal Agarwal, Managing Director and Controller of Lloyds Group was recorded where he admitted all these facts and disclosed ₹ 556.96 crore as unaccounted income spread over different financial years in the hands of Lloyds Steel Industries Ltd.

9. It was found that Lloyds Steel Industries Ltd had generated unaccounted income through suppression in the yield of finished goods, non-genuine purchase of steel which was used in construction of plant and machinery, inflation of cost of raw material and non-genuine purchase of steel in trading activity in various assessment

years and the same had been introduced in the form of bogus share capital through 14 companies of Jogia Group, managed and controlled by the promoters of Lloyds Group only.

10. This case gives an understanding of issues related to generation of unaccounted income by booking bogus purchases, suppression of production and corresponding unaccounted sales and introduction of this unaccounted income in the form of share capital. Further, the case also gives an understanding of how to find out layering of undisclosed funds through use of bank details, the details available on various websites such as MCA, BSE, Money-control and ITD & ITD-MS.

Name of the Officer : Rajesh Mahajan, DDIT(Inv),
U-IX(3), Mumbai

REPATRIATION OF ACCUMULATED PROFITS UNDER THE GUISE OF PURCHASE OF NON EXISTENT CAPITAL ASSET

Payment by Indian company to Mauritian parent company – claimed as payment for acquisition of patents – survey leading to detection of fact that the Mauritian parent company not owner of the patents - payment was actually distribution of profits - claim of the assessee merely a device.

The assessee, Comstar Automotive Technologies Pvt Ltd (CATPL), was engaged in the business of manufacture and sale of automobile components and accessories. The company was part of Visteon Group, USA (part of Ford group of companies) and was originally named as Visteon Power Train Control System Pvt Ltd. Later, Visteon exited the business and the company was taken over by Comstar Automotive group. The assessee company is 100 per cent subsidiary of Mauritius based parent company Comstar Mauritius Ltd (CML). Till the AY 2008-09, the assessee company enjoyed the benefit of exemption u/s 10B.

2. For the AY 2010-11, which is a year after the end of the tax holiday, during scrutiny proceedings it was observed that the assessee filed return of income disclosing taxable income of 'Nil' after adjustment of brought forward losses and unabsorbed depreciation of AY 2009-10. Major claim during AY 2010-11 was claim of depreciation of ₹ 17.78 crore on an intangible asset being 'Patents', which was claimed to have been purchased from Comstar Mauritius Ltd (CML), the parent company. The assessee company had added this 'Intangible asset' valued at ₹ 71.11 crore to the fixed asset schedule and claimed depreciation at the rate of 25 per cent on it.

3. The assessee company was manufacturing starters and motors for the past 15 years and during the relevant year, there was no new

line of assembly and only the manufacturing process got altered depending upon the requirement of the customers. Thus, the assessee had been in possession of these patents for the past 15 years. Therefore, the Assessing Officer felt that there was no requirement for any patents or designs during the year since new products had not been introduced. Therefore, it was felt that the amount of ₹ 71.10 crore paid to the parent company to acquire patents was not necessary for manufacturing operations of the company. Further, it was felt that the claim of payment towards acquisition of patents was only a device to distribute profits without payment of Dividend Distribution Tax. Thus, it was suspected that the assessee adopted the aforesaid modus operandi to achieve the following twin objectives:

a) Distribution of dividend without payment of Dividend Distribution Tax.

b) Suppression of taxable income by claiming depreciation on patents.

Besides, the assessee had chosen AY 2010-11 which was outside the tax holiday u/s 10B, which it enjoyed till AY 2008-09. This also aroused the suspicion of the Assessing Officer.

3.1 It was observed by the A.O that in the past also i.e., in the FY 2007-08, the assessee had made substantial payment of ₹ 21.48 crore to the parent company without paying any taxes. For the FY 2007-08, the assessee company brought back shares from the parent company at a premium of 100 per cent. Taking advantage of India-Mauritius DTAA, the assessee claimed that no tax was payable by the parent Mauritian company on the Capital gains on sale of shares.

3.2 It was also noticed that CATPL had filed an application u/s 245Q(1) before the Authority of Advance Ruling in AAR NO. 994 OF 2010 to adjudicate on the issue involving acquisition of patents from Comstar Mauritius Ltd. Vide an application, CATPL sought an advance ruling from Hon'ble AAR, as to whether any tax liability

would exist on CML under the Indian Tax Laws read with DTAA with Mauritius on the payment of ₹ 71.10 crore towards outright purchase of patents through the Intellectual Property Transfer Agreement dated 26/8/2009 . The consideration was arrived at ₹ 71.10 crore based on the valuation report of Grant Thornton. As per the assessee, since the transactions were in the capital field, resulting in acquisition of capital asset, it was not Royalty and hence liability to withholding tax did not arise. Alternatively, the gains on sale of Intellectual property of CML could not be subjected to tax in India as per Indo Mauritius DTAA and hence, according to the assessee, sec. 195 did not apply. Either way, the transactions according to the assessee must not and should not suffer tax in India in the hands of CML, its holding company.

3.3 In the light of the foregoing facts, in order to examine the correctness of the claim of ownership of patents by Comstar Mauritius Ltd., and the veracity of claim of acquisition of the said patents by the assessee company CATPL for ₹ 71.10 crore, survey u/s 133A was conducted on 30/3/2012.

4. During the survey proceedings, the original documents relating to patents being Intellectual Property Transfer and License Agreement dated 3/9/2007 between Visteon (a Ford group company) and CML were obtained. Further, the 'Patent Assignment Abstract of Title' was extracted from the official website of United States Patent and Trade Mark Office. Verification of the documents/information stated above revealed the fact that CML was never the owner of any patents. It did not acquire any 'assigned patents'. The 'Assignment of Assignor's Interest' in all the patents which were under consideration and registered with United States Patent and Trade Mark Office (USPTO) vested with Ford Motor Co. or Ford Global Technologies. Only the license rights had been conferred on CATPL by CML. When the assets and liabilities were transferred by Visteon, a Ford group company, to Comstar, it would not make sense if the licence on patents is not bestowed on the manufacturer who is actually using the patents. It would be like selling the computer without the operating

software. Hence, the ownership of patents was retained by the Ford group and fairly vested the licence rights over the patents involved in the manufacture to Comstar. If the claim of CML and CATPL was true, the Assignment of Assignor's Interest should have fallen on CML and thereafter to CATPL. But, nothing of that sort happened.

4.1 Thus, as a result of survey, it was found that the payment of ₹ 71.10 crore by the assessee company to the holding company for acquiring the so called patents was neither 'Royalty' nor incurred towards 'Purchase of Patents'. This was because Comstar Mauritius Ltd was never the owner of any patents. The documentation was fabricated to create an impression that CML was actually the owner of 42 patents which were transferred to the Indian entity by way of outright sale for a consideration of ₹ 71.10 crore.

4.2 Thus, through thorough examination of evidences gathered during survey proceedings it was established that the parent and the Indian subsidiary had tried to mislead the Department and AAR by distorting the facts. It was established that CML was not assigned with any Assignor's interest over the patents. So, the payment made to the Mauritian Holding Company to out-rightly acquire a non-existing patent, was only a decoy to siphon the profits and distribute it to the holding company, free of tax. Since, it had not resulted in acquiring any asset, the payment was dividend distribution and needed to be taxed accordingly.

4.3 Elaborate enquiries were caused and it was proved that the Intellectual Property Valuation Report of Grant Thorton valuing the patents at ₹ 71.10 crore was a self serving document. The number and nature of patents and other relevant details were examined. Examination of the pricing and valuation of patents in the U.S and worldwide, including thousands of listings syndicated on the Tynax exchange, was carried out. As a result of these enquiries, it was concluded that even if the patents had to be acquired in reality, it would not cost more than 480000 USD or ₹ 2,40,00,000/-. Thus, it

was established that the payment of ₹ 71.10 crore to parent company by CATPL was not at arm's length.

4.4 Thus, as a result of survey, crucial documents were retrieved based on which it could be clearly concluded that the purchase of patents by CATPL from its Mauritian parent CML was only an effort to repatriate accumulated profits under the guise of purchase of non-existent capital asset. This arrangement was adopted to distribute profits without payment of dividend distribution tax and also to make a wrong claim of depreciation on such patents.

5. It is pertinent to note that this issue had also been examined by the O/o CIT (International Taxation) while making their representation before the AAR. The O/o CIT (International Taxation) had given a finding that the payment of ₹ 71.10 crore for "Assignment of patents" should be considered as Royalty and be subjected to withholding tax. The findings and the end result of the survey, once brought to the notice of AAR, would enhance the case of the department and bring clarity on the facts before the AAR.

6. This case highlights the issue of repatriation of accumulated profits from the country. Multinational companies were devising various ways to repatriate accumulated profits with least tax incidence like share buyback by subsidiary Indian Company, purchase of patents by Indian company etc,.

Names of the Officers: K. N. Dhandapani, ACIT,
Company Circle-I(3), Chennai
S. Uma Venkatesan, Addl.CIT,
Company Range-I, Chennai
P. R. Ravi Kumar, CIT-I, Chennai

SURVEY REVEALS UNACCOUNTED PURCHASES OF OLD GOLD FROM CUSTOMERS

Reputed jeweller – habitual payment of taxes through Self Assessment Tax instead of Advance tax and delay in filing of returns Income – survey leads to impounding of "Gold Issue Register"- leads to disclosure of undisclosed income and payment of taxes

The assessee Original Kerala Jewellers, was a reputed firm engaged in the business of gold and diamond jewellery for many decades at Chennai. The assessee was in the habit of paying taxes through Self Assessment Tax only instead of Advance Tax. Further, despite having turnover exceeding ₹ 100 crore, the assessee had not filed the return of income for AY 2011-12. It was suspected that the procrastination in filing the returns of income and habitually paying taxes only through Self Assessment Tax was to suppress income by manipulating the books of account before filing the returns of income. Had the assessee maintained books of account correctly on a day-to-day basis, it would have paid advance tax on true and correct income periodically. Besides, it was felt that the income disclosed by the assessee firm in the returns of income was not in consonance with the nature of business and standing enjoyed by it.

2. Therefore, a survey u/s 133A of the I.T. Act, 1961 was conducted at the business premises of the assessee on 18-03-2012. During the survey, the survey team rummaged a huge pile of documents and inter-alia impounded crucial evidence in the form of "Gold Issue Register". As a result, modus operandi of not reflecting the old gold purchases from customers in the books of account was unearthed. The old gold thus purchased was issued to the gold smiths for manufacture of gold ornaments outside the books of account. Examination of evidences revealed the fact that the assessee was indulging in this practice of unaccounted purchases for the past many years. Physical verification of

stock revealed substantial variations in stock. Thus, the documentary evidences were corroborated by evidences gathered through physical verification of stock.

3. The Managing Partner and the General Manager were examined on oath. The Managing Partner admitted undisclosed income for all the years starting from AY 2006-07. The returns of income of earlier years were revised and undisclosed income was disclosed in the said returns. As a result of the survey, undisclosed income of ₹ 9.88 crore was unearthed. An amount of ₹ 7.90 crore including interest was collected out of which ₹ 4 crore of tax was collected within few days of survey before the end of March, 2012 itself.

4. Thus, well planned and professional execution of the Survey lead to unearthing of the modus operandi of the assessee and inclusion of undisclosed income of ₹ 9.88 crore in the returns of income as well as collection of taxes of ₹ 7.90 crore.

Names of the Officers: V. Vidyadhar, ACIT,
Business Circle-II, Chennai
Alimelu Lakshminarayanan, JCIT,
Business Range-II, Chennai
Shailendra Mamidi, CIT, Chennai-IV,
Chennai

CONCEALMENT OF INCOME THROUGH JOINT DEVELOPMENT AGREEMENTS

Non-filer – development of real estate project by way of Joint Development Agreement with a builder – thorough reconnaissance and survey leading to admission of undisclosed income and collection of taxes.

The assessee in this case J. B. Hara and Properties was developing a real estate project. This fact came to light during the visit of the Addl.CIT to his jurisdictional area. Enquiries revealed that assessee had entered into Joint Development agreement with a builder FBD Projects in the Financial Year 2006-07 according to which the assessee firm was entitled to 41 per cent of the total revenue on sale of sites. However, the assessee had not filed any returns of income from AY 2007-08 onwards.

2. Therefore, Survey U/s 133A of the I.T.Act, 1961, was conducted. During the Survey it was found that assessee had received a sum of ₹ 11.82 crore as its 41 per cent share of total revenue on sale of plots during AY 2007-08 to 2008-09 pursuant to Joint Development Agreement with FBD Projects. However, assessee had not filed any returns of income for AYs 2007-08 to 2011-12. Further, as a result of survey it also came to light that the assessee had received compensation of ₹ 6,87,20,418/- from KIADB during AY 2009-10. However, the Capital Gains on the said compensation was not offered to tax.

3. All the important evidences were impounded and the partners of the firm were examined on oath. As a result, the assessee firm admitted undisclosed income of ₹ 8,10,89,651/- for AY 2007-08 to 2011-12. Taxes of ₹ 4,21,96,908/- were collected fully.

4. Taking a cue from the successful Survey in the case of J. B. Hara and Properties wherein it was found that assessees were selling lands in the outskirts like Yelahanka, Doddaballapur etc., but not disclosing

income in their returns of income, surveys were conducted in similar cases in those areas. One such survey was in the case of Mr. Diwakar and related persons which resulted in detection of substantial concealed income of ₹ 15,09,24,101.

5. The case highlights the importance of officers visiting their area of jurisdiction to keep a watch on the developments and happenings. The case also highlights the fact that incidence of tax evasion in property transactions is very high and hence calls for a larger enquiry into all the high value property transactions.

Names of the Officers: K. S. Patil, ITI, Ward 6(2), Bangalore
S. N. Nagendra Kumar, ITO,
Ward 6(2), Bangalore
S. S. Mantri, Addl.CIT,
Range-6, Bangalore
Chhina, P. S., CIT-III, Bangalore

DETECTION OF UNACCOUNTED CASH RECEIPTS, CHARGING INDIRECT EXPENSES TO TAXABLE PROJECTS AND DEFERMENT OF REVENUE RECOGNITION

The assessee collecting substantial on-money in cash on sale of land - indirect expenses were entirely being charged to the non-80IB projects - Revenue recognition on sale of flats also deferred, Survey results in unearthing these dubious methods - disclosure of additional income

Om Sai Construction was a firm engaged in the business of real-estates, builders and developers. It was also engaged in transactions in TDRs. Four other sister-concerns of the above assessee were Chandrarang Builders and Developers Pvt. Ltd., Kadam and Jagtap Associates, Rishi Chandrarang Associates and ABS Properties.

2. On 04.12.2012, survey operations u/s. 133A were conducted in the business premises of the assessee group. The surveys were carried out because on review of the assessment in the case of Om Sai Construction for an earlier assessment year, the predecessor Commissioner of Income-tax had noticed that despite having 80-IB as well as non-80-IB projects the assessee was apportioning the indirect expenses only to the non-80-IB projects. The above assessee was also found to be transacting in land and TDR on a large scale. Enquiries were caused to be made which indicated that the assessee was also collecting on-money on sale of land. Surveys in the group cases confirmed the above findings / indications and yielded very positive results.

3. During the course of the survey in the case of Om Sai Construction, the indirect expenses (salary to partners, interest, depreciation, transport etc.) were apportioned to the 80-IB as well as the non 80-IB projects proportionately. Accordingly, the expenses to

be charged against income from the 80-IB projects were worked out at ₹ 5.28 crore spread over the Financial Years 2007-08 to 2010-11. On being confronted with the working, the assessee agreed to file revised returns for the relevant assessment years by declaring the aggregate sum of ₹ 5.28 crore as its additional income. The assessee also agreed that no additional remuneration would be given to the partners on the enhanced income.

4. During the course of the survey in the case of Chandrarang Builders and Developers Pvt. Ltd., documents evidencing unaccounted cash receipts on sale of land during the months of May and June, 2012 were found and impounded. The Director of the company accepted the factum of cash receipts which amounted to ₹ 5.41 crore and agreed to declare the same as the assessee's undisclosed income for the F.Y. 2012-13 relevant to the A.Y. 2013-14.

5. At the time of the survey, the Profit and Loss Accounts in respect of the ongoing projects of Kadam & Jagtap Associates, Rishi Chandrarang Associates and ABS Properties were found in the Tally Software. The profits for the F.Y. 2011-12 worked out to ₹ 15.59 crore, ₹ 2.62 crore and 2.67 crore respectively. However, these three firms had paid meager Advance Tax for the A.Y. 2012-13 despite having handed over possession of large number of units / flats in their projects on which huge profits had been earned. It was apparent that their intention was to treat the entire sales as work-in-progress by taking shelter in the project completion method. None of the three firms had got the accounts in respect of the aforementioned assessment year audited, nor had they filed the Returns of Income. On being confronted that profit recognition could not be postponed after handing over possession of the flats, the assessees agreed to follow the percentage completion method and declare their Net Profit for the A.Y. 2012-13 as per the Profit and Loss Accounts found in the Tally Software. The aggregate declared income worked out to ₹ 20,89,13,085/-.

6. At the time of the survey, the profits of the above three firms in respect of their ongoing projects for the A.Y. 2013-14 were also worked out on the basis of estimate. The three assessees accepted the aggregate estimates of ₹ 23.11 crore thus worked out and agreed to pay Advance Tax on the same for the A.Y. 2013-14.

7. Similar facts as in the case of the aforementioned three firms were also noticed in the case of Om Sai Construction for the A.Y. 2012-13. For this assessment year, the assessee had paid paltry Advance Tax of ₹ 5 lakh by following a faulty accounting policy of revenue recognition. During the course of the survey, the actual profits were worked out at ₹ 4.63 crore. The assessee accepted the above working and agreed to file its Return of Income for the A.Y. 2012-13 after paying taxes on the profit of ₹ 4.63 crore.

8. In sum, the survey resulted in declaration of additional income of ₹ 59.32 crore. Taxes to the tune of ₹ 12.77 crore have been already collected.

Names of the Officers: Sanjiv Verma, ITO, Ward 4(6), Pune
Kailash Raut, ITO, Ward 4(5), Pune
Shanteshwar Swami, DCIT,
Circle-4, Pune
D. S. Kothari, Addl.CIT, Range-4, Pune
Tejinder Singh, CIT-II, Pune

DETECTION OF UNACCOUNTED CASH RECEIPTS AND ERRONEOUS CLAIM OF EXEMPTIONS U/Ss.54B AND 54F

Assessee making substantial collection of on-money in cash on sale of flats - unassailable documentary evidences in respect of such cash receipts found - disclosure of additional income - Erroneous claims of exemptions u/s.54B and 54F, unexplained credits in the books etc. also detected.

The Bhondve-Gaikwad group consisted of N. D. Construction, N. B. Bhondve and Associates C/o East-West Developers, Uday Construction (Prop. Mr.. Balasaheb V. Bhondve) , Bhondve Gaikwad Associates, and, Bhalchandra Nagari C/o Diamond Associates. The above assessees were mainly engaged in construction and sale of residential units / flats.

2. A piece of AIR information regarding land transactions by an assessee of the group led to discreet enquiries by the officers, mostly as decoy customers. These enquiries revealed that the assessees of the group were indulging in unaccounted cash receipts of substantial amounts on sale of flats. Hence a survey u/s.133A was carried out on 25.10.2012 at the administrative and various site offices of the assessee group.

3. During the course of the survey at the site offices of N. B. Bhondve & Associates C/o East-West Developers, incriminating documents evidencing cash receipts over and above the agreement value of flats were found and impounded. The total cash receipts as per these documents worked out to ₹ 6,44,65,263/-. On being confronted, Mr. N. B. Bhondve accepted the factum of unaccounted cash receipts and agreed to declare the sum of ₹ 6,44,65,263/- as the assessee's additional income for the A.Y. 2013-14.

4. Loose papers evidencing similar unaccounted cash receipts were

found in the main administrative office of N. D. Construction. The aggregate cash receipts as per these loose papers worked out to ₹ 1.75 crore. It was accepted by Mr. N. B. Bhondve that these cash receipts had not been incorporated in the regular books of account. He in fact volunteered to regularize such transactions by offering an additional income of ₹ 3 crore.

5. Incriminating documents evidencing unaccounted cash receipts were also found in the main office of Uday Construction, another associate of the group. On being confronted, the proprietor of this concern, namely, Mr. Balasaheb V. Gaikwad disclosed the aggregate sum of ₹ 14.25 crore as his additional income, over and above the regular income for the A.Y. 2013-14.

6. At the time of the survey in the premises of Bhondve Gaikwad Associates, a partnership firm, it was found that the partnership had launched a project named 'Hill Top Residency'. The land on which the project was being constructed belonged to the family members / relatives of Mr. Popat Moreshwar Bhondve, one of the partners. It was also seen that even though the concerned family members viz. Mr. Dhondiba Tukaram Bhondve, Mr. Tukaram Bhondve and Mr. Popat Moreshwar Bhondve had filed their Returns of Income for the A.Y. 2010-11 admitting therein capital gains, they had also made wrongful claim of exemptions u/s. 54B and 54F. The mistake in making such erroneous claims was admitted by the three assessees who disclosed sums of ₹ 0.59 crore, ₹ 2.43 crore and ₹ 2.43 crore on this account for the assessment year 2010-11.

6.1 In the very same premises, evidences were also found indicating cash receipts over and above the agreement value of flats of the project 'Hill Top Residency'. The survey party meticulously inventorised the unaccounted cash receipts as per these evidences. The same totalled up to ₹ 6.55 crore. Further, a customer who had come to the site office along with cash was also examined and his statement taken on oath. When Mr. Popat Moreshwar Bhondve was confronted with the above

evidences / statement, he came forward to disclose the amount of ₹ 6.55 crore for the A. Y. 2013-04.

7. During the course of the survey, the site office of Bhalchandra Nagari, C/o Diamond Associates was also covered. Mr. N. B. Bhondve had set up this concern in partnership with the Patel family of Diamond Developers Group. During the course of survey in the above premises, incriminating loose papers evidencing unaccounted cash receipts in respect of a housing project were detected. On being confronted, Mr. Dinesh P. Patel, one of the partners of this concern, agreed to disclose amounts of ₹ 0.92 crore, ₹ 2. 70 crore and ₹ 0.30 crore for the A.Ys. 2010-11, 2011-12 and 2012-13 respectively.

8. Over-all, the surveys in the Bhondve-Gaikwad Group cases resulted in disclosure of additional income of ₹ 28.12 crore involving an estimated tax liability of ₹ 8.64 crore. Tax of ₹ 6 crore has been already collected till date.

Names of the Officers: A. K. Mahala, DCIT, Circle-9, Pune
Rajib Jain, Addl.CIT, Range-9, Pune
M. K. Singh, CIT-V, Pune

SURVEY LEADS TO RE-WORKING OF MAT LIABILITY AFTER INCLUDING TRANSLATIONAL GAINS FROM FOREIGN CURRENCY TO INDIAN CURRENCY

Trans-national companies with head offices outside India but operations exclusively in India – sale proceeds from Indian operations realized outside India and invested in bank deposits/ mutual funds abroad - survey reveals translational gains from foreign currency to Indian currency not included for working out MAT liability – companies file returns of income after including the translational gains for working out tax liability under MAT.

The assessee, Cairn India Ltd. (CIL), was a multi-national company which was one of the largest oil and gas exploration companies operating in the private sector in India. After going through the consolidated financial results put out in the public media for the company and its 30 subsidiaries for FY 2011-12, a survey under section 133A was conducted at the office of the company in Gurgaon on 1/11/2012 to verify the correctness of the working of income tax liability of the companies.

2. It was found during the survey that income earned by certain group companies, notably Cairn Energy India Pvt. Ltd. (CEIPL) and Cairn Energy Hydrocarbon Ltd. (CEHYL), from bank deposit and mutual funds outside India, was not being offered for tax in India. The two companies, which were registered in Australia and UK respectively, had their business operations (prospecting, drilling, exploring and producing oils, gas and other by-products), only in India. The revenues earned in foreign currency by these companies from sale of crude oil and natural gas outside India were being invested in bank deposits/mutual funds outside India by their head offices. It was claimed that the bank deposits/mutual funds belonged to the respective head offices and not to the Indian operations. The

translational gain from foreign currency to Indian currency on the said investments was not being included in taxable income in India though the investments, as already stated, were sourced exclusively from the proceeds realized from Indian operations. The amounts in question included ₹ 631 crore pertaining to CEIPL, and ₹ 170 crore pertaining to CEHYL, thus amounting to a total of ₹ 801 crore. These amounts were not included in the Profit & Loss account of CEIPL and CEHYL for working out the MAT liability under section 115 JB. However, the said translational gain had been duly considered in the consolidated P&L account of the holding company (CIL) for which purpose the assets and liabilities had been converted into the functional currency, namely, Indian Rupees. The interest from such deposits was also being offered to tax in India by the said companies.

3. It was felt that the investments in question had a direct nexus with the company's Indian operations and just because revenue had been received outside India, the same could not be attributed to the head office. As per Circular No.740 dated 17/4/1996, for the purposes of taxation, the Permanent Establishment (PE) in India and the foreign head office were two different legal entities. The investments having been made out of the revenue earned by the Indian PE, the receipts rightly belonged to it. The sale proceeds were received outside India only due to an arrangement between the buyer and the seller.

4. Two issues arose for consideration in this case. The first issue was a substantive one, i.e., whether or not such translational gain from foreign currency to Indian currency on account of bank deposits/ mutual funds sourced from sale proceeds of Indian operations was 'income' to be included in the P&L account. The second issue was whether the AO was empowered to make an adjustment in P&L account for the purposes of section 115JB in order to include such gain for the working of MAT liability.

5. With regard to the above, it was noted that under the Accounting Standard relating to recognition of foreign currency transactions

(AS-11), foreign currency transactions on monetary items need to be translated into functional currency for the purposes of the financial statement. This view has also been upheld by the Hon. Supreme Court in CIT v. Woodword Governor Pvt. India Ltd.[1] in relation to gain on foreign currency fluctuations, balances in the foreign currency bank accounts, sundry creditors etc. As such, it was evident that by not including the aforementioned translational gain in P & L account, the two companies had failed to maintain their books of account in accordance with AS-11, and therefore, as per Part II and III of Schedule-VI to the Companies Act. Part II of Schedule-VI to the Companies Act dealt with the requirements of the Profit and Loss account. It was provided in the aforementioned Part II (Form of Statement of Profit & Loss Account) vide Col. 4 that finance costs (which include net gain/loss on foreign currency transactions and translation) were to be included in the profit and loss account. It was further provided therein that the Profit and Loss account should be so made as to clearly disclose the result of working of the company during the period covered by the account and should disclose every material fact.

6. Based on the above analysis, detailed show cause notices were issued to the companies. CIL filed a return of income for AY 2012-13 on 30/11/2012 which included profits of CEIPL (the business of this company had been taken over by CIL in October 2012) to the tune of ₹ 631 crore on account of foreign currency gain and included the same for working out taxable income under MAT. Self assessment tax to the tune of ₹ 84.13 crore was paid by CIL and the balance was adjusted from TDS. Further for AY 2013-14 CIL included foreign currency gain of CEIPL amounting to ₹ 92.4 crore for calculating advance tax liability for December quarter. Advance tax to the tune of ₹ 439 crore was paid in December 2012.

7. Recognizing that similar instances may be prevalent at other

1 [2009] 312 ITR 254 (SC).

places, the Directorate at Gurgaon proposes to refer the matter to the Directorate of International Taxation.

Names of the Officers: Partinder Malik,
R.K. Yadav, Inspectors
Kumar Avikal Manu, DDIT(Inv.)-I, Gurgaon
Krishan Kumar Mittal, Addl. DIT(Inv.), Faridabad
P. S. Puniha, DIT(Inv.), Chandigarh.
S. T. Ahmad, DGIT(Inv.), Chandigarh

DETECTION OF BOGUS CLAIM OF DEDUCTION UNDER SECTION 54F OF THE INCOME TAX ACT

Four promoters of assessee group earned long term capital gains on share transactions - claimed exemption under section 54F on account of investment in villas – incontrovertible evidence gathered that construction of the villas was nowhere near completion at the end of the statutory period of three years – claim of exemption denied – taxes partly collected.

The assessees in this case (the Bansals), were four of the promoters of the M3M Group of Gurgaon. During a search action initiated against the group by the Investigation Wing in June, 2011, it was found that the aforesaid four promoters had earned long term capital gains to the tune of ₹ 587.3 crore through transfer of shares on 14.10.2009. Out of this amount, they claimed exemption to the extent of ₹ 541 crore under section 54F in AY 2010-11 on account of investment in four villas to be constructed in a real estate project being developed by M3M India Limited, a group concern.

2. After making discreet inquiries regarding the state of completion of the villas in question, a limited survey action under section 133A was undertaken at the site of the project. A registered valuer and photographers (still and video) also accompanied the survey team.

3. During the survey, a comprehensive statement of the company's executive was recorded, extensive photographic and videographic evidence was collected, the site was inspected thoroughly.

4. In the course of post-survey investigations, detailed enquiries were made with the contractors and architects involved with the project and also with the relevant governmental authorities.

5. The evidence collected during the survey revealed that the site

originally earmarked for the villas was nothing but a piece of barren land. It was claimed by the executives of the company that site of the villas had been shifted in May, 2011. It was found, (and duly documented through photo and videographic evidence), however, that even at the new site, no villas were in existence. Only a partially-built concrete super structure was standing at the site, which covered less than 50 percent of the total area on which construction was to be completed by the end of the statutory period of three years from the date of transfer of the original asset.

6. The Registered Valuer reported that construction at the site was not only at a preliminary stage, but was also not as per the drawings. As per his estimate, the amount spent by the company on construction of all the four so-called 'villas' as on date of survey was only ₹ 6.49 crore (as against the purchase price of ₹ 550 crore claimed by the assessee individuals).

7. Enquiries made with the architects revealed that at the site now claimed to be the new site of the villas, originally, low-rise towers (six stories per tower) were partially constructed. The said towers had since been re-designated as 'villas'. Enquiries were also made with the architects stated to be the architects for the villas. It was found they had only prepared preliminary drawings to be submitted to the governmental authorities for obtaining approvals. They had never even visited the site. In fact the drawings prepared by them were in the nature of elementary concept drawings.

8. Detailed examination of the fund-flow position of the company was also carried out which revealed that the amount of ₹ 550 crore received by the company from the promoters had been utilized for regular business purposes and had not been used for the purpose of construction of the villas.

9. Enquiries made with the Directorate of Town and Country Planning (DTCP), Haryana revealed that originally villas were to be constructed on land admeasuring 5664 sq. mt., with each villa having

ground plus two floors, and terrace. The company had approached the DTCP on 13.03.2012 for statutory approval for the construction of villas at present location and the approval was obtained on 01.10.2012. What presently existed at the site, however, were multi-storey apartments (Ground + 8 floors). There had, however, been no change in the agreement signed in March, 2010 and the full payment had also been received by the company from the promoters in 2010.

10. From the findings of the survey as well as the post-survey enquiries, it was established beyond the shadow of doubt that the legal requirement of completion of construction of the new asset within three years after the date of transfer of the original asset (the shares on which the capital gains incurred to the assessees were transferred on 14.10.2009) as prescribed under section 54F had not been met and, therefore, the claim of deduction to the tune of ₹ 541 crore made by the Bansals under section 54F for AY 2010-11 was clearly not allowable.

11. The assessees were confronted with the entire evidence and the legal position under section 54F and Board's Circular No. 667 dated 18.10.1993 which emphasized the requirement of completion of construction within three years. The detailed findings from the survey were reported to the officers of the Central charge in Gurgaon. As of 15.03.2012, the assessees had paid ₹ 40 crore out of the total liability of ₹ 108 crore.

Names of the Officers: Partinder Malik,
R. K. Yadav, Inspectors
Kumar Avikal Manu, DDIT(Inv.)-I, Gurgaon
Krishan Kumar Mittal, Addl. DIT(Inv.), Faridabad
P. S. Puniha, DIT(Inv.), Chandigarh.
S. T. Ahmad, DGIT(Inv.), Chandigarh

Painting by: Mehak Devgun, Age-15, School-Bal Bharti Public School, Noida

MISCELLANEOUS ORDERS

MISCELLANEOUS ORDERS

PAGE NO.

REVISION UNDER SECTION 263 – INCORRECT SET OFF OF LOSS/DEPRECIATION

Accumulated business loss and unabsorbed depreciation of amalgamating company allowed without verification in assessment of amalgamated company – incorrect appreciation of BIFR order in case of amalgamating company – assessment order set aside by Commissioner

The assessee Intas Pharmaceuticals Ltd., Ahmedabad was engaged in the business of manufacturing and trading in pharmaceutical products. Consequent on a search carried out in its case, assessment proceedings under section 153A of the Act were initiated. The assessee filed its return of income for A.Y. 2006-07 showing income of Rs. Nil and paid minimum alternate tax under section 115JB. The Assessing Officer (AO) passed the assessment order making certain additions but still determining total income under the normal provisions of the Act at Nil. In doing so, the AO allowed set off of unabsorbed depreciation of ₹ 4.67 crore and accumulated business loss of ₹ 43.49 crore of Dolphin Laboratories Ltd. ('Dolphin'), a company which had amalgamated with the assessee company during the year. Balance unabsorbed depreciation of ₹ 3.36 crore of Dolphin was allowed to be carried forward in the hands of the assessee and set off against the income of A.Y. 2007-08.

2. Subsequently the Commissioner noticed that the BIFR had approved a scheme of rehabilitation in respect of Dolphin, wherein the 'cut off date', i.e. the date for consideration of relief and concessions as envisaged in the scheme, was taken as 30.9.2006 falling in F.Y. 2006-07 relevant to the AY 2007-08. On a careful perusal of the relevant part of the BIFR order it was seen that though specific directions had been given to banks and other Govt. agencies, the Income-tax Department was only required 'to consider' condonation of delay in filing of audited accounts, the applicability of section 41(1) and claim of carry

forward and set off of unabsorbed losses and depreciation. The only relief specifically laid down in the order was regarding waiver of interest and penalty for delayed payment of income-tax dues.

3. The Commissioner then examined the records in detail and found that the AO, while making the assessment on 30.12.2009, had not verified the following aspects and issues before allowing the set off of unabsorbed depreciation and accumulated loss of Dolphin Laboratories Ltd.:-

(a) Whether the DIT (Recovery) had passed any order in accordance with the scheme of rehabilitation?

(b) As per the Scheme, the loan liabilities of Dolphin had been reduced from ₹ 11.39 crore to ₹ 3.90 crore. Whether the A.O. had verified the applicability of section 41(1) of the Act and the taxability of such remissions in the hands of the amalgamating company?

(c) Whether the unabsorbed losses or depreciation had been quantified by the assessing officer in the case of Dolphin by way of assessment?

(d) Whether and to what extent would the losses be set off under section 72A read with Rule 9C?

4. In view of these facts the Commissioner held that the assessment order passed 153A was erroneous and prejudicial to the interests of revenue, and passed order under section 263 accordingly directing the Assessing Officer to reframe the assessment order de novo, after considering all the relevant facts and circumstances and allow the set off of carried forward business losses and unabsorbed depreciation of Dolphin Laboratories Ltd. in accordance with law.

Name of the Officer: V. K. Mathur, CIT (Central)-II,
Ahmedabad

USE OF NEGOTIABLE INSTRUMENTS ACT FOR RECOVERY OF TAX DUES

Tax deducted at source but not deposited – post-dated cheques submitted by assessee dishonoured by bank – complaint filed under Negotiable Instruments Act – tax collected without going into regular process under Income-tax Act

A survey under section 133A of the Act was conducted at the premises of Medsave Healthcare (TPA) Ltd., Delhi, on 18.01.2012 for verification of compliance with provisions relating to tax deduction at source (TDS). During the course of survey operation it was noticed that the assessee had been deducting TDS under various provisions of the Act during the F.Ys. 2009-10, 2010-11 and 2011-12, but had not deposited the same into the Govt. account. The total liability worked out during the survey came to ₹ 29.23 crore.

2. The default was duly admitted by the assessee as an infraction of law during the course of survey and the assessee undertook to clear the liability. In order to secure the interest of revenue, six cheques (five cheques of ₹ 5 crore each and one cheque of ₹ 4.23 crore) aggregating to ₹ 29.23 crore were tendered by the assessee suo moto.

3. The assessee deposited the demand for F.Ys. 2009-10 & 2010-11 of about 15 crore, but failed to deposit the remaining demand for F.Y. 2011-12. In order to recover this demand, the cheques amounting to ₹ 14.23 crore were duly presented for payment on 08/06/2012, which were dishonored by the bank due to insufficient funds.

4. Legal opinion regarding further action to be taken in this regard was sought from the Departmental Senior Standing Counsel, who opined that a complaint under section 138 of the Negotiable Instruments Act can be filed against the company, and its directors who signed the cheques or who were persons responsible and in charge of the affairs of the company. Notice of filing the complaint

was given to the Company and its directors within 30 days from the date of receipt of the return memo from the bank. However, the assessee did not respond to the above said notice.

5. The complaint under section 138(b) of the Negotiable Instruments Act was therefore duly filed. Meanwhile, prosecution proceedings under the Income-tax Act were also initiated in the case. After filing of the complaint, the balance demand amounting to about ₹ 15 crore was deposited by the assessee.

6. When the matter was heard, the Court expressed its opinion that since the payment had now been made against the cheques in question, the Department should settle the matter and close the case after imposing penalty/fine on the accused. It was submitted by the Revenue that since the Income Tax Department has no authority to impose any fine under the Negotiable Instruments Act, the Hon'ble Court may impose a suitable penalty/fine as per law.

7. Thus in this case, recovery of tax was achieved by proactive measures taken without going through the lengthy procedure of raising a demand and then pursuing its recovery under the regular provisions of the Income-Tax Act.

Names of the Officers: Dr. Monisha, ACIT (TDS), New Delhi
Rohit Anand, DCIT, New Delhi
Smita Jhingran, CIT (TDS), New Delhi

DEEMED DIVIDENDS IN THE HANDS OF PARTNERSHIP FIRM

Firm controlled by individuals – partner companies also controlled by same individuals – held in revision that firm had beneficial interest in partner company – capital contributed by company taxable as deemed dividends

Wig Investment was a firm having four partners, namely, Pradeep Wig (HUF) through its Karta Mr. Pradeep Wig; Ms. Neera Wig, W/o Mr. Pradeep Wig; Kwality Ice Creams India Pvt. Ltd. (KICIPL); and Kwality Processed Food Services & Equipment Pvt. Ltd.(KPFSEL). For the A.Y. 2006-07 the assessee firm declared short term capital gain of ₹ 4.18 crore from purchase and sale of equity and debt instruments. Regular assessment was completed accepting the returned income.

2. In the course of review, the Commissioner (CIT) noticed that Mr. Pradeep Wig and his wife Neera Wig held controlling stakes in the two companies KICIPL and KPFSEL. Further, he observed that the entire capital of the firm was contributed by the two companies. Mr. Pradeep Wig (HUF) and Ms. Neera Wig contributed nothing, but still had a share in the profits in the proportions of 20 per cent and 10 per cent respectively. The CIT was of the view that Mr. Pradeep Wig and his wife Ms. Neera Wig had created a colorable device for avoiding taxation in their hands, and that the firm was chargeable to tax on deemed dividends in accordance with the provisions of section 2(22)(e) of the Act. He was also of the view that the intent of the firm as per the partnership deed was the carrying on of business of investment in stocks, shares/debentures, bonus, mutual funds and other securities, and hence the firm had incorrectly declared income under the head 'Capital Gains', in order to avail of a much lower average rate of tax. Since the Assessing Officer (AO) had failed to examine these issues, the CIT initiated action under section 263 and issued a show-cause

notice detailing the above points.

3. In reply, the assessee contended that the scope of the deeming provisions of section 2(22)(e) could not be extended to the capital contribution of partners. The assessee also argued that it merely invested in units of mutual funds, the dividends received were automatically re-invested and some of the units were redeemed after a certain period at an appropriate time. Thus the operations of the assessee were not in the nature of trading and comprised only investment activity. It was further contended that the investments were held as 'Investments' in the Balance Sheet, which were redeemed at the opportune time in subsequent years.

4. The CIT examined the record minutely and observed that the funds of the two partner companies provided to the assessee firm ostensibly as capital contribution were always at the disposal of the two individuals i.e. Mr. Pradeep Wig and his wife. These persons were therefore beneficial owners of such funds of these two companies and also had substantial interest in the firm. Both partners, Pradeep Wig (HUF) and Ms. Neera Wig, also had substantial share-holding in the two partner companies. He further noted that the capital contributed by KPFSEL included 6034 shares of KICIPL, which were admittedly in the name of Mr. Pradeep Wig and were actually held by him only. At the same time, KPFSEL was in fact completely held by Mr. Pradeep Wig as he was either the first or second owner of all the shares subscribed in joint names by his family members. The CIT held on the basis of these facts that the assessee firm, through its partner, was a beneficial owner of majority of the shares of KPFSEL. The firm was therefore assessable on deemed dividends under section 2(22)(e) of the Act. He also found that the firm always intended to carry on a business of trading in shares and the income derived was assessable as business income. The CIT further observed that creation of the firm was merely an artifice created for avoidance of tax in different hands and stages.

4.1 With these findings, the CIT set aside the assessment order passed by the AO and directed him to make the assessment afresh as per the correct provisions of law and after taking into account the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Mukundray K Shah [(2007) 290 ITR 433(SC)].

5. The order of the CIT passed under section 263 of the Act was subsequently upheld by the Tribunal, which held that the provisions of Section 2(22)(e) of the Act were attracted in this case as the partnership deed has been found to be a mere artifice. In the re-assessment made, an amount of ₹ 21.08 crore was added to the income as deemed dividend under section 2(22)(e), and the income of ₹ 4.28 crore shown by the assessee as short term capital gains was assessed as business income.

Name of the Officer : Gopal Kamal, CIT-XI, New Delhi

RECOVERY PURSUED OVER THIRTY YEARS

Assessee and legal heirs employing all possible dilatory tactics – filing numerous appeals, petitions and writs – case handled with perseverance results in High Court ordering payment of full demand after about thirty years

Consequent on a search in the case of Mr. A. Koilpillai Nadar, Tuticorin in July 1984, the original search assessments for A.Ys. 1979-80 to 1985-86 were duly completed on 12.03.1986. Thereafter, the assessments went through a series of appeals where they were set aside, re-made and set aside again. Re-assessments were finally completed on 22.07.2009. Meanwhile, the assesse had passed away in 1999.

2. The legal heirs of the assessee filed appeal before the CIT(Appeals)-I, Madurai, but subsequently withdrew the same and filed a petition under section 264 of the Act before the CIT-I, Madurai in July, 2011. The petition was rejected in August, 2011 since it was filed beyond the prescribed time limit. The assessee's application under section 154 against the rejection order was also dismissed in September, 2011. The case was referred to the Tax Recovery Officer (TRO) for collection of taxes.

3. The TRO initiated proceedings to auction a cinema theatre owned by the assessee for recovery of taxes, against which the assessee moved the High Court to obtain an interim injunction. The Madurai Bench of Madras High Court initially granted interim stay of all the proceedings, but subsequently vide order dated 22.08.2011, directed the assessee to pay 50 per cent of the tax, surcharge and interest in respect of each assessment year on or before 16.09.2011 and stayed the auction. The total liability was ₹ 74,43,177. The assessee paid ₹ 37,92,965 on various dates.

4. Meanwhile, the assessee had filed a writ petition before the

Madras High Court challenging the rejection of the petition filed under section 264. The High Court directed the CIT to pass order on the application for condonation of delay and decide the revision petition within a period of three months. After hearing the assessee, an order under section 264 was passed by the CIT-I, Madurai in February, 2012 rejecting the revision petition. Against this order, the assessee again filed a writ petition before the High Court. The Hon'ble High Court found the order of the C.I.T. to be well-reasoned, containing all relevant facts and legal aspects. The court was pleased to order collection of taxes without waiting for the final decision on the writ petition. The balance amount payable was ordered to be paid in four monthly equated instalments, starting from 05.10.2012.

5. Thus, due to the sincerity and perseverance of the Department, a sum of ₹ 75 lakh could be collected even though the assessee and his legal heirs had adopted all possible dilatory tactics to avoid payment of taxes for the past thirty years. The interest u/s.220(2) was not collected because of stay by the Hon'ble High Court.

Names of the Officers: S. Jayalakshmi, Tax Recovery Officer
Arul Joseph, Tax Recovery Officer
M. Krishnasamy, CIT-I, Madurai

PROSECUTION FOR NON-PAYMENT OF TAXES

Income surrendered in survey - Declared in return filed but taxes not paid - Prosecution launched for failure to pay tax and assessee convicted

In a rare judgment, Mr. Harish Chadha, resident of New Delhi has been convicted for an offence punishable under section 276(2) of the Income Tax Act and sentenced to pay a fine of ₹ 1,00,000/- along with rigorous imprisonment for two years. The Ld. ACMM also directed that in case of default of payment of fine the convict shall also undergo simple imprisonment for six months.

2. A survey under section u/s 133A was carried out in the case of Mr. Chadha in 1995. The assessee filed an audit report accompanied with profit and loss account and balance sheet for A.Y. 1995-96 but no return was filed till 26.03.99. From the records it was found that the accused had earned total profit of ₹ 4.06 crore. The assessee had shown profit from sale of import licenses and interest and FDRs, but he did not file any audit report required to claim the exemption under section 80HHC. A notice under section 148 of the Act was issued directing the assessee to file his return for A.Y. 1995-96. In compliance, the assessee filed a return on 20.02.01 declaring net income of ₹ 27,51,590/-. On 07.03.01 an assessment order was passed for assessment year 1995-96 determining total income at ₹ 27,51,590/- and raising a demand of ₹ 38,13,600/-.

3. The assessee, Mr. Harish Chadha failed to deposit the tax of ₹ 38,13,600/-. He had neither paid any advance tax nor any self assessment tax under section 140A of the Act. Prosecution proceedings u/s 276C(2), 276C, 276D read with Section 279 were launched against him on 31.03.2004 and subsequently the Ld. ACMM(Spl. Acts) Central, Tis Hazari Courts, Delhi convicted Mr. Chadha for offence

under section 276C(2) for wilful attempt to evade payment of tax. He sentenced the accused to pay a fine of ₹ 1,00,000/- along with rigorous imprisonment for two years.

4. The assessee filed an appeal before the Ld. Addl. Session Judge, who confirmed the sentence of RI of 2 years and fine ₹ 1 lakh.

Names of the Officer: Lalitha Santhanam,
ITO Ward 33(1), Delhi

Painting by: Muskan Pandey, Age-14, School-Queens Valley School, Dwarka, New Delhi

REPRESENTATION BEFORE TRIBUNALS, COURTS, ETC.

REPRESENTATION BEFORE TRIBUNALS, COURTS ETC.

PAGE NO.

DEPRECIATION NOT ADMISSIBLE ON 'NON-COMPETE FEE'-DEPARTMENT'S VIEW UPHELD

Assessee company paid a sum of money as "non-compete fee" to another company which was previously holding 49 per cent shares in the assessee company – sought to claim depreciation thereon claiming "non-compete fee" to be an intangible asset - AO disallowed claim of depreciation - CIT (A) upheld AO's action – In appeal before the ITAT, DR successfully argued that neither depreciation nor the claim of full deduction as business expenditure, nor even as deferred revenue expenditure was maintainable – case creates a legal precedent which can be used in many other cases.

During the previous year, the assessee, Arkema Peroxides India Pvt. Ltd., paid a sum of ₹ 3.68 crore as non-compete fees to Sanmar Properties & Investments Ltd. who earlier held 49 per cent share holding in the assessee company. The assessee claimed that by making such payment, it had created an intangible asset coming under the purview of Sec. 32(1)(ii). Being a "commercial right", it was argued, the same is eligible for depreciation. Alternatively, it claimed deduction of the whole amount paid as revenue expenditure or at least as deferred revenue expenditure over a period of five years. The claim was rejected both by AO as well as the CIT (A).

2. Before the ITAT, the assessee sought to argue that non-compete fee is a "business or commercial right" similar to know-how, patent, copyright, trade-mark, licence, franchise, and hence is eligible for depreciation. In reply, DR argued that know-how, patents, copyright, trade mark, licence and franchise are all distinct assets (though intangible) with market value, whereas non-compete fee

lacks both these characteristics. It was also pointed out that provision for allowing depreciation on know-how, patents, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature was provided by the Finance (No.2) Act, 1988. Sec. 28(va) was amended subsequently by Finance Act, 2002, wherein, in addition to the above words introduced in Sec. 32 by Finance (No. 2) Act, 1988, "non-compete fee" was mentioned separately. Therefore, the term "non-compete fee" is not comprised in the phrase "know-how, patents, copy right, trade mark, licence, franchise or any other business or commercial right of similar nature" used in Sec. 32 of the I-T Act.

3. The DR filed written submissions wherein it was brought out that the payment of the so-called 'non-compete fee' was not for the purposes of the business of the assessee as the recipients of the amount were never in the business of chemicals and were, therefore, never a potential threat to the assessee or its business. It was further argued that being in the nature of capital expenditure, it can neither be allowed in full the AY in question nor as deferred revenue expenditure over a period of five years. The thrust of the argument was that all capital expenditure does not result in creation of capital asset.

4. The Tribunal accepted the DR's arguments and held that the payment in question was not for the purpose of the business of the assessee as the recipients of the amount were not in the business of the chemicals and were therefore not a potential threat to the assessee's business. The Tribunal also concurred that the expenditure in question was capital expenditure and, at the same time, it did not create any capital asset which qualified for the claim of depreciation. It also rejected the claim of deferred revenue expenditure since the expenditure was of capital nature.

5. Thus, by reference to legislative history, the bare provisions of law, as well as by drawing upon various judicial pronouncements, it

was demonstrated persuasively that the assessee never acquired any asset by making the payment in question as non-compete right is not an asset as it is incapable of transfer, and it does not have any market value . The decision, being on a legal issue, will have precedent value in many other appeals.

6. It may be mentioned that recently Hon. Delhi High Court in the case of Sharp Business Systems[1] has upheld the view taken Tribunal on the issue of depreciation on non-compete fee.

Name of the Officer : Shaji P. Jacob, Sr. A.R., ITAT, Chennai

1 ITA No. 492/2012, Order dated 15-11-2012.

INTEREST ON BANK DEPOSITS MADE OUT OF FUNDS RECEIVED BY ISSUE OF CONVERTIBLE BONDS/ DEBENTURES ASSESSABLE UNDER THE HEAD 'OTHER SOURCES' & NETTING AGAINST INTEREST PAID ON BORROWALS NOT ADMISSIBLE

Assessee earned interest on bank deposits made out of funds received by issue of convertible bonds and debentures – Declared the same as 'Business Income' and claimed the benefit of netting of interest paid on debentures against such interest income – through extensive reference to judicial precedent, DR succeeded in persuading the Tribunal that the interest income in question was to be assessed under the head 'Income from Other Sources' – Interest paid on borrowals was to be capitalised as pre-commencement expenditure and was not to be netted against the aforesaid interest income.

During the previous year the assessee, Bharat Oman Refineries Ltd., earned interest income from fixed deposits made out of funds received by issuing Zero Coupon Convertible Bonds as well as debenture loans issued in preceding years. Assessee claimed assessment of such interest received as business income and netting of interest paid on debentures against such income. The AO assessed the said interest receipts under the head 'Income from Other sources' and did not allow claim of interest paid on debentures as deduction but capitalised the same treating it as expenditure incurred before commencement of the business. CIT (A) confirmed this position.

On the strength of the decision of Hon. Madras high Court in CIT

v. VGR Foundations[2], the assessee contended that the deduction was rightly claimed and was in line with the decision of the Apex court in Bokaro Steel Ltd.[3] The DR, explaining the decision of Apex Court in Bokaro Steel Ltd., demonstrated that in the that case, the Apex Court had followed its earlier decision in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd.[4] to the effect that interest income earned on fixed deposits during pre-commencement period has to be taxed under the head 'Income from Other Sources' and interest paid on borrowed funds is not allowable as deduction against such income.

On the issue of interest received on advances made to contractors, such interest was treated as capital receipt since it was directly related to the construction of plant. Similarly, rental income received by letting out quarters to employees of the construction company was also capitalized being incidental to the construction of plant.

The DR also cited the decision of Hon. M.P. High Court in Madhya Pradesh State Industries Corporation Ltd.[5] wherein interest income had been earned from deposit of surplus share application money received by the assessee. Another decision of Hon. Kerala High Court in the case of GTN Textiles Ltd.[6] was also relied upon to argue that assessee is not in finance business and hence interest income earned can only be assessed as 'Income from Other Sources'. In addition, decision of Hon. Delhi High Court in the case of Modi Rubber Ltd.[7] and that of the Hon. Rajasthan High Court in Manglam Cements Ltd.[8] were also relied upon in support of the argument that interest received on deposit of idle funds to be assessed under the head 'Income from Other Sources'.

2 [2008] 298 ITR 132 (Mad).
3 [1999] 236 ITR 315 (SC).
4 [1997] 227 ITR 172 (SC).
5 [1968] 69 ITR 824 (MP).
6 [2010] 326 ITR 352 (Ker).
7 [1994] 208 ITR 379 (Del).
8 [1996] 217 ITR 369 (Raj).

In view of the persuasive arguments presented by the DR, the Tribunal upheld the stand of the Department that interest receipts from fixed deposits made out of funds received by issuing convertible bonds and debenture loans issued in preceding years are to be assessed under the head 'Income from Other Sources' and interest paid on borrowed funds was not to be set off against such income.

Names of the Officer: Keshave Saxena, CIT(DR) (ITAT), Indore

STAND OF THE DEPARTMENT ON DRAFT ASSESSMENT ORDER PROCEDURE UNDER SECTION 144C & ON DEDUCTION UNDER SECTION 10B UPHELD

Issuing draft assessment order where no TP addition was made is a procedural irregularity and will not make assessment order null and void - For claiming deduction under Sec. 10B, foreign exchange to be brought to India from the customers to whom exports were made and not from other parties - If deduction made from Export Turnover on account of foreign exchange not brought to India within the allowed period, similar deduction need not be made from Total Turnover while computing the eligible deduction under Sec. 10B. – Case decided in favour of the Revenue

The assessee in this case was Visteon Technical & Services Centre Pvt. Ltd. The TPO did not suggest any addition to the value of international transactions with Associated Enterprises. However, in a subsequent communication, the TPO suggested disallowance of part of deduction claimed under Sec. 10B. Based on the above, AO passed a draft assessment order before the limitation period provided under Sec. 153, followed by a final order after the said period. The assessee contended that since no addition on the Transfer Pricing issue was made in the assessment order, there was no need to issue a draft assessment order as provided in sec. 144C and thus the assessment order passed after expiry of the time-limit provided in Sec. 153 was barred by limitation and thus non est in view of the decision of Hon. Gujarat High Court in Pankaj Extrusion Ltd.[9]

In reply, the DR dwelled at great length on the entire draft assessment order scheme under Sec. 144C vis-a-vis reference to Dispute

9 [2011] 198 taxman 6 (Guj).

Resolution Panel (DRP) by referring to Explanatory Memorandum to Finance (No.2) Act, 2009, and also distinguished the decision of the Gujarat High Court cited by the appellant. It was submitted that reference to DRP is an additional protection to the taxpayers and if at all there was any error on the part of the AO, it was only a procedural irregularity and will not make the assessment order non est. The Tribunal accepted the DR's argument on the issue.

The AO had made a partial disallowance of the appellant's claim under Sec. 10B based on the reasoning that sale proceeds were not brought to India within the extended time granted by the RBI. The assessee contended before the Tribunal that the disallowance was unwarranted as it had brought foreign exchange to India within the period granted to it. Evidence in support of the claim was also submitted. The DR also filed paper book containing various documents filed by assessee itself before AO and the DRP and demonstrated that export proceeds were due from certain sister concerns as on the close of the accounting year whereas subsequent foreign exchange remittances were made by other sister concerns who were not sundry debtors as at the close of the accounting year. It was argued that such remittances can only be treated as loan / advance from such sister concerns and it does not amount to export realization due from other sister concerns. The revenue's assertion on this issue too was accepted by the Tribunal.

The assessee also made an alternate claim for excluding such unrealized sale proceeds from the 'Total Turnover' also in case it was excluded from 'Export Turnover' for the purpose of computing the eligible deduction under Sec. 10B. In making this claim, the assessee relied upon the decision of Hon. Kerala High Court in Abad Fisheries Ltd.[10] which relates to the computation of deduction under Sec. 80HHC in a similar situation. Reliance was also placed on the decision of ITAT Special Bench, Chennai in the case of Sak Soft Ltd.[11] The DR, with the help of certain examples, demonstrated that such an exercise will

10 [2002] 258 ITR 641 (Ker).
11 [2009] 121 TTJ 865 (Chennai)(SB).

negate the statutory stipulation for excluding such unrealized export proceeds while computing the deduction under Sec. 10B, and also distinguished the decisions relied on by the assessee's counsel. Having considered the arguments on either side, the Tribunal rejected the plea of the assessee. The examples which were quoted on behalf of the revenue were incorporated in the order, thus adding strength the order against the assessee.

It may be added that recently Hon'ble Madras High Court in the case of Galaxy Granites P. Ltd.[12] has upheld stand of revenue on similar facts.

Name of the Officer: Shaji P. Jacob, Sr. A.R., ITAT, Chennai.

12 T.C.(A) No. 492 of 2006 (Order dated 23-07-2012).

DEPARTMENT'S VIEW UPHELD ON THE ISSUE OF CAPITAL GAINS ARISING ON SALE OF LAND SITUATED BEYOND MUNICIPAL LIMITS

Assessee sold land situated 15 km. beyond municipal limits – claimed land in question was not 'capital asset' being 'agricultural land'- CIT (A) upheld assessee's claim on the issue – On appeal, it was convincingly demonstrated with document downloaded from website of Registration Department and other factual details that land was 'residential' – Proof of agricultural usage adduced by the Assessee by way of VAO certificate also effectively countered – Case decided by ITAT in Department's favour overturning CIT(A)'s order on the issue.

During the previous year the assessee, Mr. Pallavaram Kothandaraman Ramesh, received profit on sale of land. This was claimed exempt from taxation on the plea that it does not fall under the definition of 'capital asset' as per Sec. 2(14)(iii) being land situated 15 km. beyond the municipal limits and being agricultural land. The AO verified the official website of the Registration Department and found that the said land was categorized as "Residential Area- Class II". Accordingly, the AO held that the land was non-agricultural in nature and brought the profit on its sale to tax under the head "Capital Gains". On appeal, the CIT (A) held that the impugned land was not a capital asset falling under Sec. 2(14)(iii) as it was situated 15 km. away from the nearest municipal limits. On the strength of a certificate issued by the village administrative officer (VAO), the Ld. CIT (A) also held that the land was agricultural in nature.

2. Before the Tribunal, it was argued on behalf of the revenue that when the official website of Govt. of Tamil Nadu shows the land in question as "Residential Area- Class II", VAO's certificate showing it as agricultural land does not have any evidentiary value. Further, it was argued that even the certificate issued by VAO only says that

it is "cultivable dry land" and does not say that the land was put to agricultural operations, which is the deciding factor. The astronomical value of land, location, layout, scheme of road access, present utility etc. were also brought to the notice of the Tribunal.

3. Based on the arguments presented and the evidence adduced the Hon. Tribunal, through a detailed order, reversed the decision of CIT(A) and upheld the Department's stand.

4. It may be added that cases where and adverse decision of the CIT (A) is overturned by the ITAT and decided in favour of the revenue are quite rare.

Names of the Officers: K. N. Dhandapani, DCIT,
Co. Cir.–I(3), Chennai.
T. M. Suganthamala, DCIT (Judl.), Chennai
S. Uma Venkatesan, Addl. CIT,
Co. Range-1, Chennai.
S. Dasgupta, CIT, D.R., ITAT, Chennai

Painting by: Harshit Devalla, Age-12, School-Bal Bhavan Public School

THE ROAD AHEAD

THE ROAD AHEAD

Ever since *'Let Us Share'* was first published, a system of selecting cases for inclusion therein as also their time frame within which such submissions are to be obtained is being followed. However, it has been noticed that entries are usually not forthcoming as per the schedule laid out, nor are all the quality cases reported. In view of this situation, the Editorial Board has considered certain modifications in the system of seeking entries for inclusion in the editions of 'Let Us Share' to be published hereafter.

Of late, the Central Board of Direct Taxes has been placing a lot of emphasis on the quality of assessments. A strategy for quality assessments has also been enumerated in the Central Action Plan documents for Financial Year 2012-13 and 2013-14. Vide F.No. 225/65/2013/ITA-II dated 11.4.2013, all the CCsIT/DGsIT were requested to ensure compilation of at least 50 quality assessments passed in their respective charges out of scrutiny assessments completed during Financial Year 2012-13 clearly bringing out the quality of work done and the resultant revenue impact. All CCsIT/DGsIT were also requested to send the compilation alongwith assessment orders to their respective Zonal Member and copy of only compilation to Member (IT). Further, a copy of the compilation alongwith assessment orders was also to be sent to respective Appraisal Committees constituted for 'Let us Share'.

The compilation would form good source material for Group I (Assessment orders) and Group II (International Taxation assessment orders). The assessments may therefore be examined by the respective Regional Evaluation Committees with reference to the criteria for evaluation of best assessment orders and cases fulfilling the criteria be processed for selection from now on.

As regards the time schedule to be followed, certain changes are

called for as the limitation period for completion of assessment has since been changed from 31st December to 31st March. In the table showing the timelines suitable modifications are being accordingly made for being followed w.e.f. the present financial year.

The time lines to ensure the release of the compilation in time would be as follows:-

S. No.	Action Points	End Date
1	Initiation of Process through an OM by DIT (PR,PP&OL)	15th Sept.
2	Formation of RECs	22nd Sept.
3	Intimation to DIT (PR,PP&OL) regarding the formation of RECs mentioning the names & designations of all the members and Member Secretary and contact details (phone numbers - mobile & land line and email id) (within 5 days in case of change in constitution)	30th Sept.
4	Submission of orders / practices by officers/ officials to the REC	a) 15th Oct. for passed till 30th Sept. b) 15th April, for orders passed after that
5	Six-monthly Evaluation by RECs	a) 30th Oct. & b) 30th April
6	Formation of NECs	10th April
7	Formation of Editorial Board	30th April
8	Forwarding of the selected entries by RECs to DIT (PR,PP&OL)	15th May

9	Forwarding of selected entries by DIT(PR,PP&OL) to NECs	20th May
10	Evaluation by NECs and submission of selected cases/practices to DIT (PR,PP&OL)	30th May
11	Forwarding of the selected cases by DIT (PR, PP & OL) to the Editorial Board	5th June
12	Finalization of the content by the Editorial Board	30th June
13	Finalization of cover design, technical specification by Editorial Board	15th July
14	Compilation ready for printing handed over to approved printer	15th July

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