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9979878590

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81285 67696

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9825719356

CA MEET PALAN
9978076564

CHAIRMAN'S MESSAGE



Dear All,

Let me start by wishing all of you a very happy and prosperous New Year.

But as we start our celebrations, it is also time for us to reflect and take stock of what we have accomplished in the last one year, what we have missed and what we should take up on priority. Wherever we could not accomplish, it is time to restart and set things right. It is time to set up new goals together for the development of our profession and start with renewed zeal. As we enter 2017, it will be wise not only to list new resolutions but to vow to put in collective efforts to fulfil them. Let's resolve to become the best in our profession.

Here, I would like to recall what Natalie Goldberg, an American author, had said somewhere: **Trust in what you love, continue to do it, and it will take you where you need to go.** This is the message we would like to send across to all connected with the accountancy profession. Let us enjoy our work with all our heart.

Now, let us get updated with the developments and opportunities that we have tried to create for our Branch, profession and members at large in particular, and for our society.

Some of the remarkable developments in the matters pertaining to accountancy, economy and finance that took place over the past one month are:

ICAI Designated as First Insolvency Agency in India

I am happy to inform that the Indian Institute of Insolvency professionals of ICAI (IIPI) has been designated as first Insolvency Agency in India. IIPI being a Section 8 Company formed by ICAI will enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy Code, 2016 read with regulations.

Please visit <http://iiipicai.in/> to know the details in this regard. You may also visit the home page of ICAI website for a suitable announcement in this regard. As you may be aware, in a significant move in the direction of economic reforms, the Insolvency and Bankruptcy Code, 2016 has been passed by both the houses of the Parliament in May 2016 and the same has been notified too, and this enactment will give rise to new avenues of professional opportunities, since insolvency professionals will have to carry out a wide range of functions including those in finance and accountancy.

Chartered Accountants are best suited to be insolvency professionals who can carry out insolvency and bankruptcy processes, while being appointed as liquidators, trustees, etc., at various stages of the insolvency proceedings. ICAI has recently developed video lectures on almost each and every topic of GST, which are hosted on ICAI TV (i.e. <http://icaitv.com/?cat=89>). All stakeholders can also access them without any cost at the e-Lectures tab at www.idtc.icaai.org. I request all my professional colleagues to register themselves at the aforementioned website for regular GST update.

Successful Completion of 1st Ever RRC on GST at Jaisalmer-

I am pleased to inform you that the 1st RRC on GST was a great hit and more than 50 members participated for the same, where members from Jaisalmer, Kolkata, and Delhi also joined us. It was a historical event, where eminent faculties from across the country came and delivered their view about GST. It's a stepping stone towards annual ritual where we are going to

organise such kind of RRC every year .The Conference had celebrated new thought on GST etc., to augment growth for meeting the aspirations and expectations of society at large.

Certificate Course on FAFD (Forensic Accounting & Fraud Detection)

As you are aware, continuous professional updation is the hallmark of our profession. The Institute has helped in organising various workshops and certificate courses and FAFD is one of the fascinating topics in the era of Information Technology. Our Branch had organised the same in the month of January 2017.Eminent faculties from Mumbai CA Chetan Dalal, CA. Mahesh Bhatki, Sachin Dedhia, and CA. Shailesh Coushik had taken the lectures and delivers us minute things about FAFD.

68th Republic Day Celebration 2017

Our Branch is dedicated towards arranging not only qualitative seminar, but also committed towards our Constitutional rights and Nationalism and thus we had celebrated 68th Republic Day Celebration by hosting Flag and remembering our great leaders.

Empanelment of Chartered Accountants Firms/LLPs for 2017-18

I wish to inform my professional colleagues that the Office of Comptroller and Auditor General of India has recently invited online applications from Chartered Accountants firms/LLPs that desire to be empanelled with them, i.e. office of the Comptroller and Auditor General of India, for appointment as auditors of Government companies/corporations for the year 2017-18. The online application format will be available at www.saiindia.gov.in from 1st January to 15th February 2017, where the CA firms/LLPs can apply/ update their data showing the status of their firms/ LLPs as on 1st January 2017.

All of us have an inherent ability to transform our words and actions into sheer joy and happiness. Let us recall here the lines of probably **the greatest twentieth century Brazilian poet, Carlos Drummond de Andrade: Our pain doesn't come from the things that we've lived, but from the things that were dreamed up and not acquired...**We suffer not because we age, but because the future is being confiscated from us, thus preventing a thousand adventures to happen to us, all those with whom we dreamed and we never ever try. He later on goes on to say in the same verse, Every day I live, the more I become convinced that the

waste of life are in love that we don't give, the forces that we don't use, in the selfish prudence that nothing ventures, and that, dodging the suffering, we lose also the happiness. How true these lines are even today!

Following on the line, we have been trying to help our society and our country appear better by extending all possible help that we can contribute; we have been endeavouring to help and empower members of our profession who are yet to take off in their career; Fundamentally we have been making honest efforts to create a better professional atmosphere.

Let us begin the New Year with a promise to help others and with a belief that only a happy and satisfied surrounding has the power to make us happy and satisfied.

TOUCH THE SKY WITH GLORY



CA Rajiv Singh
Chairman
Gandhidham Branch of WIRC of ICAI



- 1. Seminar on Cash Deposits Post Demonetisation Notices and Section 115BBC - 7th February***
 - 2. Seminar on Budget Analysis - 11th February***
 - 3. Cricket Match with Income Tax Department – 18th February***
 - 4. Seminar by Capacity Building Committee and Change Over Ceremony – 25th February***
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VAT – AN EXCURSION

- Contributed by CA Jiten Thacker

GVAT Tribunal Judgement – Jyoti CNC Automation Ltd. & its Practical Application

➤ Background:

Section 8(1) of the Central sales Tax Act, 1956 reads as : Every dealer, who in the course of inter-state trade or commerce sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be **2% of his turnover or at the rates applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that state, whichever is lower.**

Section 8(4) : provisions of sub-section (1) shall not apply to any sale in the course of inter-state trade or commerce unless the dealer selling the goods **furnishes to the prescribed authority in the prescribed manner a declaration** duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority.

Section 8A(1) :In determining turnover of a dealer for the purpose of this Act, the following deductions shall be made from the aggregate of the sale price namely : (a) the amount arrived at by applying the following formula-

$$\frac{\text{Rate of Tax} * \text{Aggregate of Sale Prices}}{100 + \text{Rate of Tax}}$$

➤ Analysis of Section 8(1) and 8(4) :

1. Rate of CST which is to be collected on inter-state sales shall be 2%. However if local rate in proper state is lower than 2% then CST would be levied on such lower rate. Eg. Local sale of gold is taxable @ 1% in most of the states (some states have even lower tax rate than 1%) then CST would also be levied @ 1% on inter-state sale.

2. Sub section (4) provides that such reduced rate i.e. 2% shall not be applicable and inter-state sale would be taxed at local rate if a declaration (Form C) is not submitted to prescribed authority.

➤ Gujarat Value Added Tax Tribunal Judgement in case of Jyoti CNC Automation Ltd.

In present case, the appellant initially charged CST @ 2% against Form C in their invoices but could not produce Form C later on. The assessing authority applied 3% straightaway on sale price (5% local rate – 2% already collected in invoice) along with interest. Aggrieved by this, dealer went to first appeal and having lost in first appeal, they reached to tribunal. Tribunal observed that wording of section 8A(1) for adjustment in sale price is so clear that there is hardly need of quoting any judgement by ld. advocate. Tribunal set aside order of first appellant authority and remanded the matter to first appellant authority for calculating reduction in sale price.

➤ How to calculate deduction as per formula prescribed in section 8A(1) :

Though formula as sited above seems simple, its practical implication is not so. Let us understand this by way of an example :

Mr. X - A dealer is having total inter-state turnover of Rs. 1,00,00,000. On this he has collected CST @2% Rs. 2,00,000 against Form C. Later on one purchaser to whom goods worth Rs. 10,00,000 + 2% CST were sold, could not give Form C. Let us find out total tax liability of Mr. X assuming local tax rate is 15% on the goods sold by him.

First of all, since he has collected 2% CST separately in his invoice, he has to pay the collected tax, no deduction of whatsoever can be claimed by him on Rs. 20,000.

Applying section 8A(1), following deduction in sale price would be allowed to him :

$(13 * 10,00,000) / (100+13) = \text{Rs. } 115,044.$

Note : Since he had collected 2% separately on Rs. 10,00,000, we can say that 10,00,000 is inclusive of 13% CST (**and NOT 15%**).


So, after deducting Rs. 1,15,044 from Rs. 10,00,000 we get Rs. 884,956 on which 13% CST is payable which obviously would come Rs. 1,15,044. At the time of assessment, Mr. X would be required to pay Rs. 1,15,044 + interest @ 18% p.a.

Had we not applied section 8A(1), CST payable would have come to 13% on Rs. 10,00,000 i.e. Rs. 1,30,000.

The difference might appear not significant but in case amount of non-receipt of Form C is huge and considering interest @ 18% on this (usually for 3 to 4 years if dealers wait for receipt of Form C till the assessment is not completed), interest payable could be 54% to 72% of demand which is huge.

➤ Conclusion:

With the bells ringing for time barring cases, one should take benefit of section 8A(1) and judgement of Jyoti CNC Automation Ltd. to the maximum. This ratio can be applied in all cases where taxes have not been collected or short collected. We can always contend that the receipts on which tax liability is not discharged on appropriate rates is cum-tax and thereby (on a lighter note) at least help client in recovering our professional fees, if case is lost because of demerits other than this.

Full judgement of Jyoti CNC Automation Ltd. is attached, as comment, for the benefit of readers of this article. 



Legal Updates

- Contributed by CA Meet Palan

INCOME TAX

Where Notice For Assessment Is Not Properly Served Then Assessment Made Thereupon May Be Quashed. [DCIT Vs. M/s. M.K Enterprise (ITAT Kolkata)]

Section 282 of the Income Tax Act, 1961(hereinafter referred to as 'the Act') deals with the service of notice generally, section 282A of the Act deals with the authentication of notices and other documents, section 283 of the Act deals with the service of notice when family is disrupted or firm, etc., is dissolved while section 284 of the Act deals with the service of notice in the case of discontinued business. Service of the notice properly is necessary before making an assessment.

In D.C.I.T, Cir-53, Kolkata vs. M.K Enterprise [ITA No. 181/Kol/2013 A.Y 2008-09,(vice-versa)], notice as prescribed under section 143(2) of the Act was not properly served on the assessee, the ITAT Kolkata, held, on the facts & circumstances of the case, that assessment made under section 144 of the Act was not valid & it was quashed.

Loan / advances received by HUF could be treated as deemed dividend [Gopal and Sons (HUF) Vs CIT (Supreme Court of India)]

As per the provisions of Section 2(22)(e) of the Act, once the payment is received by the HUF and shareholder is a member of the said HUF and he has substantial interest in the HUF, the payment made to the HUF shall constitute deemed dividend within the meaning of clause (e) of Section 2(22) of the Act. This is the effect of Explanation 3 to the said Section. Therefore, it

is no gain saying that since HUF itself is not the registered shareholder, the provisions of deemed dividend are not attracted.

Penalty only on Disproved claim of expenditure & not unproved [Arun Duggal Vs. DCIT (ITAT Delhi)]

At the most, the assessee's claim of deduction can be considered as unproved claim and not a disproved claim of expenditure. The Hon'ble Gujarat High Court in National Textiles vs. CIT (2001) 249 ITR 125 (Guj.), has held that in order to justify levy of penalty for addition of cash credits, the explanation tendered by the assessee must be disproved. Deleting the penalty so imposed, the Hon'ble High court held that it was not a case of imposition of penalty. The Hon'ble Calcutta High Court in Durga Kamal Rice Mills vs. CIT (2004) 265 ITR 25 (Cal), relying on National Textiles 249 ITR 125 (Guj), has held that there is a difference in 'Facts not proved' and 'Facts disproved'. It further held that penalty can be levied only for the latter. Similar view has been taken in CIT vs. Vidyagauri Natvarlal & Ors (1999) 153 CTR (Guj) 546. 6. In the light of the foregoing precedents, we are satisfied that it is not a case warranting any imposition of penalty u/s 271(1)(c). We, therefore, set aside the impugned order and order for the deletion of penalty.

Gujarat VAT

Notification no. 192/167 and 193/168 dated 20.12.2016 Extension of Last date for VAT Audit and Annual Return for FY 2015-16

Due-date for obtaining and submission of VAT Audit Report u/s. 63 of Gujarat VAT Act, 2003 r.w. Rule 44(2) of Gujarat VAT Rules, 2006 and Annual Return for the those Assesseees for FY 2015-16 has been extended from 31.12.2016 to 28.02.2017.

Service Tax

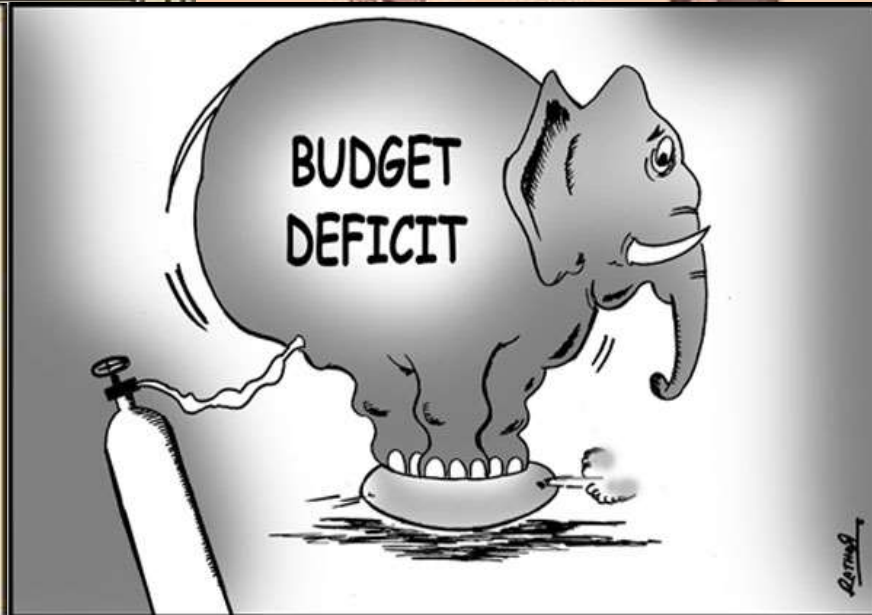
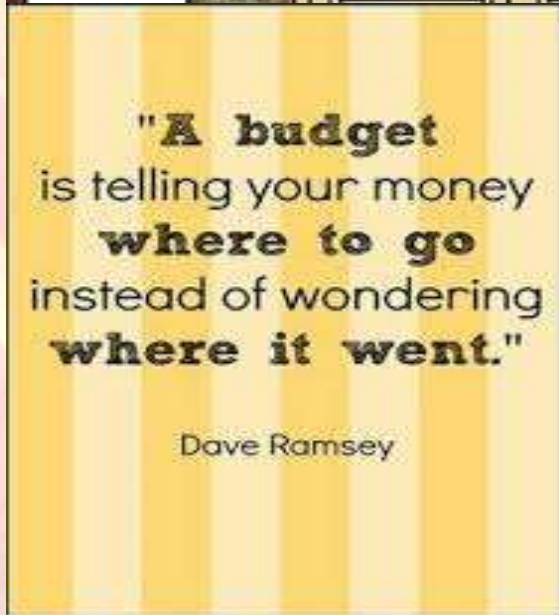
Notification No. 4/2017 - Service Tax (12th January, 2017)

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.26/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 468 (E), dated the 20th June, 2012, namely:-

1. In the said notification, in the first paragraph, in the TABLE, for Sl. No. 11 and the entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)	(4)
"11	Services by a tour operator	60	(i) CENVAT credit on inputs and capital goods used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour."

JUST IN GIST- CARTOON CORNER





1st RRC on Goods & Service Tax (Day 1)



1st RRC on Goods & Service Tax (Day 2)



Certificate Course on Forensic Accounting & Fraud Detection



68th Republic Day Celebration



GANDHIDHAM BRANCH OF WIRC OF ICAI

(IT Training Centre Cum Sales Counter)

Office No. 205-206, Sai Krupa Complex, 2nd Floor,

Plot No. 575, Ward - 12/C, Above Guru Nanak Super Market,

Gandhidham – Kachchh, Gujarat - 370201, Ph. No.: 02836 – 230305

E-Mail - gandhidhambranch.wirc@gmail.com

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Vande Mataram !! Jay Hind!!