

ICAI MANGALORE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

e- Bulletin





Volume 11 | November 2016

- Chairman's Message
- Branch Activities carried out in the month of November 2016
- Branch Activities Gallery
- Professional Updates
- Managing Committee

Thought for the Month:

If it doesn't challenge you, it won't change you.



Mangalore Branch of SIRC of ICAI | ICAI Bhawan | Padil | Mangalore - 575007

Tel: 0824-2439722 Email: mangalore@icai.org

Chairman's Message

CA Keshava Ballakuraya Chairman Mangalore Branch of SIRC of ICAI

Dear Members.



The month of November has brought with it in full swing the most awaited mega event of this year for Mangalore Branch -PARVA, the Dawn of New Taxation Era. We have all joined together to prepare for Parva – National Conference on GST to be held on 2^{nd} and 3^{rd} December.

Unity is strength. When there is teamwork and collaboration, wonderful things can be achieved.

- Mattie J. T. Stepanek

It is indeed a great joy for me to see you all come forward and contribute in various ways to make this event a success. We have formed various committees to handle different aspects of the conference. It is also impressive to see the energy and enthusiasm with which members and students are getting together every evening to practice for the cultural events.

Member activities

We have had a few activities at the institute for members as well as students this month. On 03rd November we had live webcast on opportunities in GST & interactive session on model GST law organised by Indirect Taxes Committee of ICAI. ISA course which had started in the month of October, continued in this month on 05th, 06th, 10th, 11th, 12th and concluded on 13th. We had a National Live webcast on Demonetization of Currency - Overview & Impact on 17th November.

<u>Young Members Empowerment Committee of ICAI</u> conducted a one day workshop on 19th November. Youth play an important role in the growth of the nation. The institute recognizes this fact and has created the Youth Members Empowerment Committee to provide them with many opportunities to grow both professionally and personally.

Mangalore Branch is growing fast and the number of young members is increasing faster. Not only the number of people opting for the CA course has increased but the number of people clearing the CA exams has also increased. It becomes very necessary to channel the energy and talent that these young people posses in the right direction. Just like colorful butterflies emerge from their cocoon, it is great to see these students whom we have groomed over the years to emerge as successful Chartered Accountants. It is also nice to see that many of them have opted to stay in Mangalore and practice as Chartered Accountants.

....Contd

Chairman's Message



Contd.....

All the young members have made their family, friends and mentors very proud. It is said that with great authority comes great responsibility. The young members now have higher responsibilities towards family, society as well as the institute that has given them great repute. I expect the young members to be pro-active, come up with ideas and initiatives. Their active involvement in all aspects related to this branch is required to take it to greater heights.

We are familiar with the significance of drafting as the tax implications will be mostly decided based on the content of the documents. Also the accuracy is required to avoid or resolve any disputes. Hence, the workshop was conducted on the topic 'Drafting of Deeds and Documents' and we had CA Sripriya Kumar Central Council Member, CA Umesh Bolmal, Advocate Krishna Prasad M S and Senior Advocate M V Shankar Bhat as speakers.

Student activities

Students appeared for examinations in the month of November. I wish all the students who appeared for the examination the very best and hope they will bring pride to our branch with great results. The CA student's annual festival Advaya was conducted on 27th November where the students got an opportunity to unleash their unique talents. I congratulate the winners of various competitions of Advaya. I appreciate the efforts of SICASA committee for making the programme a success.

December is going to be one of the most exciting months with a Parva- National conference on GST and Lakshya -sub-regional conference for students coming ahead. Let us all continue to work together for the success and glory of our branch.

Whatever you do sincerely is good for you. Even the least thing well done brings marvelous results; therefore let everyone do what little he can.

-Swami Vivekanada

With warm regards, CA Keshava N Ballakuraya

Branch Activities November 2016



| SI No | Date | Activities at Branch for Members | CPE Hours/ Number of |
|----------|----------------------------|--|---|
| 1 | 03.11.2016 | Live Webcast on "Opportunities in GST and Interactive Session" organised by Indirect Tax Committee, ICAI Panel Members on discussion: CA Ashok Batra CA A Jatin Christopher CA Mandar Telang | Participants Members: 8 CPE Credit: 2 Hrs |
| 2 | 05.11.2016 – 13.11-2016 | ISA Course for Members at Mangalore Branch | Members : 33 |
| 3 | 17.11.2016 | Live Webcast on "Demonetization of Currency- Overview and Impact" organized by CPE Committee of ICAI Speakers: CA Vijay Kumar Gupta, Chairman of CPE Committee; CA Prafulla Premsukh Chhajed, Chairman of PD Committee; CA Piyush Goyal, Hon'ble Minister of State with Independent charge for Power, Coal, New and Renewable Energy, Government of India Taxation Aspects by Dr. Rakesh Gupta Economic Aspects by Mr. Kaushal Sampat, President & MD of Dun & Bradstreet | Members : 6 CPE Credit : 2 Hrs |
| 4 | 19.11.2016 | One Day Seminar on "Drafting of Deeds and Documents" Organised by Young Members Empowerment Committee of ICAI (YMEC) Hosted by Mangalore Branch of SIRC of ICAI Session 1 – Professional Opportunities and Service Lines for CAs- A detailed exposition by CA Sripriya Kumar Session 2- Hints for Drafting a Good Partnership Deed by CA Umesh Bolmal, Belgaum Session 3- Will and Codicil- How to Draft by Advocate Krishna Prasad M S Session 4- Inheritance of Properties- Issues involved by Advocate M V Shankar Bhat | Members: 80 CPE Credit: 6 |



Branch Activities November 2016



| Sl No | Date | Activities at Branch for the Students | Number of Participants |
|----------|------------|--|---------------------------|
| 1 | 01.11.2016 | Commencement of ITT Batch (One Batch) | Students : 30 |
| 2 | 02.11.2016 | Commencement of Orientation Batch | Students : 40 |
| 3 | 10.11.2016 | Career Counseling Program at Navachetana School Neermarga | Students : 61 |
| 4 | 26.11.2016 | Commencement of ITT Batch (Two Batches) | Students : 59 |
| 5 | 27.11.2016 | CA Students' Annual Fest- ADVAYA | Students : 150 |



Branch Activities Gallery November 2016





INAUGURATION OF ONE DAY SEMINAR ORGANIZED BY YMEC



CA SRIPRIYA, SPEAKER FOR A SESSION AT THE YMEC SEMINAR



CA UMESH BOLMAL, SPEAKER FOR A SESSION AT THE YMEC SEMINAR

Branch Activities Gallery November 2016



ADVOCATE SHANKAR BHAT, SPEAKER FOR A SESSION AT THE YMEC SEMINAR





ADVOCATE KRISHNA PRASAD M S, SPEAKER FOR A SESSION AT THE YMEC SEMINAR



INAUGURATION OF STUDENTS' SEMINAR ADVAYA



CHAIRMAN 'S ADDRESS AT ADVAYA STUDENTS' SEMINAR

Professional Updates & News: Direct Taxes



Top priorities of the CBDT Chairman

On taking over the post of Chairman, CBDT, Senior Indian Revenue Service Officer Shri Sushil Chandra has set out the priorities to be pursued to facilitate honest tax payers and to focus upon effective enforcement in a fair, transparent and objective manner. The priorities set were the following:

- 1. Maximizing Revenue collection
- 2. Delivering quality tax payer services
- 3. Promoting digital tax administration and transparency
- 4. Widening of tax base
- 5. Expediting dispute resolution & prevention
- 6. Taking effective enforcement actions
- 7. Providing enablers

Chapter VI A deduction on enhanced profits after disallowance eligible

Circular No. 37/2016- Income Tax dated November 02, 2016

The issue of the claim of higher deduction on the enhanced profits due to disallowances has been a contentious one. The courts have generally held that if the expenditure disallowed is related to the business activity against which Chapter VI A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. The Board has accepted the settled position that the disallowances made under the various provisions of the Income Tax Act related to the business activities against which chapter VI A deduction has been claimed results in enhancement of profits and deduction under Chapter VI A is admissible on the profits so enhanced by the disallowance. Vide the above circular; the Board has directed the Officers of the Department not to file appeals on this ground and to withdraw the appeals already filed in various Courts and Tribunals on the same ground.

Constitution of CASS Committee and the Scope of working of such Committee

The CASS committee for FY 2016-17 has been constituted with a total of 18 members consisting of 1 Chairman, 1 Member Secretary and 16 members.

The terms of reference of this CASS Committee are as follows

- 1. Analysis of suggestions received from field
- 2. Recommendation of modification or removal of existing rules
- 3. Recommendation of introduction of new rules.
- 4. Recommending changes in Income Tax Returns, Income Tax Forms, Third Party information etc. in order to enable effective scrutiny selection.

Professional Updates & News: Direct Taxes



The Staff of the Income Tax Department requested to take Citizens Integrity Pledge

In connection with the observance of the Vigilance Awareness Week, 2016 which was observed from 31st of October to 5th of November, the Central Vigilance Commission had asked all the Departments/ Ministries/ Organizations to provide a hyperlink to the integrity pledges on their respective websites. Accordingly, a hyperlink "Take Integrity Pledge" is provided in the Department's Website "incometaxindia.gov.in" under the heading "Important Links" which would take the subscriber to the website of the CVC for taking the pledge. All the staff members and officers of the Department have been requested to take the pledge and to receive a Certificate from CVC as an acknowledgement for taking the pledge.

<u>Section 115BA- Depreciation restricted to forty percent</u> Notification No. 103/2016 dated 7th November 2016

Vide the above Notification, a domestic company which has exercised the option available under Section 115BA where the tax is calculated at the rate of 25%, the allowance under clause (ii) of sub section (1) of Section 32 in respect of depreciation of any block of assets entitled to more than forty percent of depreciation shall be restricted to forty percent.

Rectification of typographical or bonafide error & Assessment

Instruction No. 12 of 2016

Reply to question No. 1 contained in Circular No. 27 of 2016 dated 14.07.2016 (FAQs on IDS) read that a revised declaration can be filed on or before the closure of the scheme provided the undisclosed income in the revised declaration is not less than the undisclosed income declared in the declaration already filed. In this connection, vide the above Instruction, it is clarified that where jurisdictional Principal Commissioner or Commissioner is satisfied that the mistake in filing the original declaration in Form No. 1 appears to be genuine and bonafide, the concerned Principal Commissioner or Commissioner may address the same while processing the declaration. Further, a facility is provided to the jurisdictional Principal Commissioner or Commissioner to generate rectified Form No. 2 on the IDS system.

Professional Updates & News: Direct Taxes



<u>Issues pending assessment that is covered by declaration made under IDS</u> Instruction No. 12 of 2016

Vide the above Instruction; it has been clarified that where the assessee claims that an issue under an assessment has nexus with declaration filed under the IDS, the Assessing Officer may obtain a written undertaking along with relevant documentary evidence from the assessee about the issue and quantum of amount covered under the declaration having bearing on the pending assessment proceeding. On being satisfied about the nexus, the Assessing Officer shall provide the benefit of such amount in the pending assessment provided the assessee duly pays the tax, surcharge and penalty payable under the scheme.

CBDT notifies reporting of Cash Deposit between 09.11.2016 and 30.12.2016 Notification No. 104/2016- Income Tax dated 15.11.2016

Vide the above Notification, Amendment has been brought in Rule 114E for filing AIR as required under section 285BA of Income Tax Act, 1961. Post the amendment, Cash deposits during the period 09th November, 2016 to 30th December 2016 aggregating to twelve lakh fifty thousand rupees or more, in one or more current account of a person; or two lakh fifty thousand rupees or more, in one or more accounts (Other than current account) of a person are to be reported by a banking company or a cooperative bank to which the Banking Regulation Act, 1949 applies and also by a Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898.

<u>CBDT notifies prescribed authority for Section 143(2) Assessment</u> Notification No. 105/2016- Income Tax dated 16.11.2016

Vide the above Notification, CBDT has prescribed authority under sub section (2) of section 143 to be an income tax authority not below the rank of an Income Tax Officer who has been authorized by the CBDT to act as income tax authority for the purposes of sub section (2) of section 143.

Admissibility of expense by a firm on Keyman Insurance Policy of Partner Circular No. 38/2016

Issue relating to admissibility of expenditure incurred by a firm on Keyman Insurance Policy premium in the case of a partner has been a contentious one. Various courts have upheld the admissibility of this expenditure stating the Keyman policy to be extended to the life of a person who is connected in any manner whatsoever with the business of the subscriber and not to be confined only to the employees. This view has been accepted by the CBDT and similar judgment given by the High court of Punjab and Haryana in the case of M/s. Ramesh Steels has not been further contested. It is therefore a settled position that in case of a firm, premium paid by the firm on the Keyman Insurance Policy of a partner, to safeguard the firm against disruption of the business, is an admissible expenditure under section 37 of the Act. Vide the above circular department is informed not to file an appeal on this issue and to withdraw those that are already filed.



Capital Gains and Capital asset- Transfer of development rights in property

ITO v. Bharat Raojibhai Patel (2016)(Mum Trib)

Assessee entered into a development agreement over a property, i.e., land and offered income arising from sale of development rights to Capital Gains Tax. However, AO on the ground that there was no transfer of rights, title and interest in the plot, treated the same to be income from other sources. Assessee contended the development right to be a capital asset.

Held: Development right in a property is also a property by itself and would be included in the expression "Capital Asset". Permission to load TDR on FSI allowed by the assessee owner was, by itself, a transfer of right in immovable property, i.e., capital asset and income arising from transfer thereof was to be taxed as long term capital gains. AO was not, therefore, justified in treating the same as income from other sources.

<u>Lands were converted from agricultural to non-agricultural before sale- whether lands were agricultural before transfer?</u>

Dy. CIT v. B. Sudhakar Pal (2016)(Bang Trib)

Assessee claimed exemption in respect of gains on sale of agricultural lands. AO denied exemption on the ground that properties were converted to non agricultural lands for non agricultural use prior to the sale thereof and the properties were therefore Capital Asset on the date of sale as per section 2(14). Assessee contended that the lands were used for agricultural purposes till the date of the sale and were in fact agricultural lands as evidenced by revenue records.

Held: Lands were held by the assessee for a very short period of time and sold to the purchaser with the condition for non agricultural use and hence there was no intention of the assessee to use the land for agriculture. Merely showing the lands as agricultural in the land record and remote use for agricultural purpose in the past was not a decisive factor, AO was, therefore, justified in treating the said lands as non agricultural lands and taxing the gains arising on the sale thereof as future use of the lands for non agricultural purpose changed their character at the time of sale.

Accumulated profits for the purpose of Section 2(22)(e)

CIT v. Shree Balaji Glass Manufacturing (P.) Ltd.

Assessee borrowed certain sum from two companies in which he was substantially interested. One of the two companies had paid the entire loan from the share premium account and the other one which was mainly engaged in money lending business had paid loan in ordinary course of its business partly from accumulated profits and partly from securities premium account. AO treated the sums as deemed dividend under section 2(22)(e).

Held: Share premium does not constitute accumulated profits of company and where money was lent out of reserve and surplus representing share premium there would be no deemed dividend in the hands of the receiver.

<u>Charitable Purpose- Utilisation of profit on sale of plots for achieving the objectives of charitable purpose of assessee trust</u>

CIT v. Magunta Raghava Reddy Trust (2016)(Mad HC)

Assessee trust running an educational institution had shown certain amount as profit on sale of land. Assessee for certain genuine reasons decided to sell a land after converting them into smaller plots. AO held that activity of assessee was an organized business activity and brought to tax the profit earned as business income.

Held: Mere sale of an immovable property of the trust alone could not be the sole factor, to arrive at a conclusion that the income from sale of plots should be brought under the head "Business Income". In the case of trust or institution, whose predominant activity is not business, incidental activity of sale carried out in furtherance of and to achieve the main objectives of the trust or institution, should not be construed as business activity, solely with an intention to earn profit, and consequently, to bring the income under the head business income. Therefore, profit on sale of land was not taxable as business income of assessee.

<u>Receipts from educational activities alleged to be too small in comparison to total receipts</u> Society for Participatory Research in Asia v. ITO (2016) (Del Trib)

AO noticed that assessee had shown receipts of Rs. 20.65 lakhs from educational activities out of total receipts of Rs. 21.46 crores and thus opined that the activities of the assessee society were commercial in nature and also not in consonance with the aims and objects contained in memorandum of association and hence assessee society did not fall within the scope of educational purpose as defined in section 2(15) and therefore, benefit of sections 11 and 12 were not allowed to the assessee.

Held: Assessee worked with the community organizers, adult educators, health care workers, social workers etc., in training them to use participatory research methodology in their work. It produces own educational materials for use in educational programs and for wider dissemination. Hence, conclusion of AO was incorrect. Further, it is a well settled matter that merely because profit has resulted from the activities of imparting education, it would not result in change of character of the trust which was solely for educational purpose. Therefore invocation of proviso to section 2(15) was not justified.

Micro finance business- Applicability of proviso to section 2(15)

Asstt. CIT v. Grama Vidiyal Trust (2016)(Chen Trib)

Assessee trust was established with the ideology of poverty elimination through empowerment of women. Micro-credit program had been started with same idea and money was lent to thousands of poor women. AO treated assessee as a business entity and denied exemption under section 11 on the ground that micro-credit activity was not of charitable nature.

Held: Though activities carried on by the assessee took care of poor people, however same could not be classified under any of the specific activities of relief to the poor, education and medical relief and it was actually carrying on "advancement of any other object of general public utility". As assessee carried on micro finance activity in a commercial manner, there was no iota of charity carried on by assessee and proviso to section 2(15) got attracted. Further, micro finance business was not incidental to main object of assessee trust, it was not therefore protected by section 11(4A) either. AO was therefore justified in denying exemption under section 11.



<u>Letting out auditorium on rent for commercial activities by a Charitable trust</u> Suguna Charitable Trust v. ITO (2016)(Chen Tribunal)

Assessee trust formed with the objective of alleviating human suffering, eradication of poverty and imparting of sound education etc constructed an auditorium on the land owned by it and let out the same on rent and claimed exemption u/s. 11 in respect of income there from.

Held: Application of income generated by the business run by the trust is not relevant consideration and what is relevant is whether the activity is so inextricably connected or linked with the objects of the trust so as to be considered incidental to those objects. Merely carrying on business for and on behalf of trust and applying the profits thereof for the object of the trust does not entitle for exemption under section 11. As there was no nexus between letting out of the auditorium and objects of the assessee, AO was justified in treating the income from auditorium as business income and deny exemption.

Non-filing of audited accounts along with application- Effective date for acceptance of application

CIT v. Garment Exporters Association of Rajasthan

Assessee trust submitted application for registration under section 12AA. However, audited accounts were filed later on. Revenue on the ground that application submitted without filing of audited accounts therewith was defective, granted registration from the date of filing the accounts and not the application

Held: Requirement of filing of audited accounts along with application is not mandatory by directory. Registration was therefore to be allowed from the date the application was submitted, and not from the date when alleged defect in said application was cured.

Agricultural Income or Business Income- Gain on sale of pieces of land Dy. CIT v. S. Amar Narayana Reddy

AO noted that assessee had sold three lands, which he claimed as agricultural land and that even though assessee had been holding pieces of land of higher value; he had returned only meager agricultural income. Accordingly, AO added certain amount to the income returned by assessee as profits earned/gained by the assessee on account of sale of three pieces of land.

Held: Assessee had furnished certificate, which indicates that the land under reference was agricultural land and there was no evidence to show that the assessee had changed the land for non agricultural purpose. Therefore, the land held and sold by assessee was certified and proved as agricultural land. Addition made by AO was not justified.



Capital Gains- Transactions not regarded as transfer

Kantilal G. Kotecha v. ITO (2016)(Bom HC)

Assessee, proprietor of a sole proprietorship concern was allotted shares of Rs. 3.35 crores upon its conversion into a private company. There was credit balance of Rs. 1.16 crores in the capital account of assessee- assignor and the excess value given was considered as goodwill. AO, on the ground that such goodwill was not covered under section 47(xiv), brought the same to capital gains tax under section 45.

Held: Assignment deed did not evidence that goodwill is transferred to assignee. Such goodwill was never created in the books of proprietor concern of the assessee. It had got additional consideration without bringing anything to the assignee. As prerequisite laid down in section 47(xiv) was not complied with, AO was, therefore justified in invoking section 45.

Interest on borrowed capital for acquisition of capital asset

Captain B. L. Lingaraju v. Asstt. CIT (2016)(Bang Trib)

Assessee included interest on housing loan to acquire a self occupied property in the cost of acquisition of that property for computation of capital gains arising on sale thereof. AO disallowed the same on the ground that interest had already been allowed as deduction under the head Income from house property to the extent allowable under section 24(b)

Held: Interest paid on borrowing for acquisition of capital asset had already been a subject matter of deduction under another head i.e., under section 24 and hence it could not be considered again for the purpose of addition in the cost of acquisition as same would result into double deduction.

Deduction under Section 48 in relation to travelling expenses

Annu Tribhuvan Khandelwal v. Addl. CIT (2016)(Jp Trib)

Assessee while calculating her capital gains arising from sale of property, claimed an expenditure of certain amount towards travelling in connection with the said transaction under 48.

Held: Since assessee was able to prove the direct nexus between her travel to India from Japan and the corresponding travel expenditure with the transfer of the property the expenses were allowed as deduction under section 48. Further, assessee had also duly offered to tax the capital gains arising from the transaction.

Other Updates



Government notifies withdrawal of bank notes of Rs. 500 and Rs. 1,000

Owing to circulation of fake currencies, storage of unaccounted wealth in the form of currency, use of fake currency for financing subversive activities such as drug trafficking and terrorism, the Central Government declared the Specified Bank Notes to cease from being legal tender with effect from the 9th of November, 2016.

IDS 2016- Banks not to ask the source of cash deposit

Vide a circular dated 11th of November 2016, RBI has requested all the member banks to sensitize their branches to ensure that while identification of customers and walk in customers is necessary as per KYC instructions contained in the Master Direction- KYC Circular dated25th February 2016, banks should not seek sources of funds for cash deposits under IDS-2016

Government puts restriction on withdrawal from Jan-Dhan Yojna

To protect the account holders of PMJDY from activities of money launders and legal consequences of the Benami Property Transaction & Money Laundering laws, certain limits have been placed on the operations in the PMJDY accounts.

Note exchange continues at Reserve Bank counters

Members of public are advised that exchange of bank notes in denominations of Rs. 500 and Rs. 1,000/- whose legal status tenders have been withdrawn will be continue to be available at the counters of Reserve Bank. However, such exchange facility is no longer available at other bank's counters.

Watch for fraudulent acts by Bank Officials: RBI

RBI vide a letter dated 22nd November 2016 has advised all banks to ensure that fraudulent practices are stopped through enhanced vigilance and stern action be taken against officials involved in fraudulent activities.

Further, the letter has directed the banks to ensure strict compliance with the instructions issued with regard to exchange of SBNs and also deposit of such notes into the accounts of their customers.







Managing Committee

CA Keshava N Ballakuraya, Chairman

CA Bhargava Tantri, Vice -Chairman

CA Shivananda Pai B, Secretary

CA Raviraj B, Treasurer

CA Anantha Padmanabha K, SICASA Chairman

CA Aravinda Krishna B, Member

CA K Subramanya Kamath, Member

CA Abdur Rahman Musba, Member

The Managing Committee of Mangalore Branch of SIRC of ICAI invites articles, writeups and other similar materials in the areas of Accounting, taxation or any other subject of professional interest for publishing in its e-bulletin. The articles submitted for consideration of publication should be of 2,000-4,000 words typed double space on A4 size paper with 1 inch margin all around. Soft copy of the article may be sent to icaiebulletin@gmail.com.



Feed back on this e-bulletin can be sent to the editorial team @ <u>icaiebulletin@gmail.com</u>

Editorial Team:

CA Prasanna Shenoy M | CA Gautham Nayak M | CA Madhav Shenoy S | CA Shravan Dota | CA Vignesha M | CA Akshay Shet | Committee Members