



ICAI MANGALORE

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

e- Bulletin



The Bulletin Board

Volume 12 | December 2015

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Thought for the Month:

PROGRESS is impossible without change. Those who cannot change their minds cannot change anything. - George Bernard Shaw



Quotes 4 Smiles.com



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Chairman's Message



CA Shivakumar Koikuli
Chairman
Mangalore Branch of SIRC of ICAI

Dear Esteemed Members,

Warm greetings. As the pleasant cool weather of December embraces us, I am reminded that the year coming to an end has also been quite warm, cheerful and pleasant. As we end the present year on a cheerful note, we are all in anticipation for the year ahead wishing for a fresh and bright future.

And as an eventful year comes to an end, I am glad that it has been an eventful year yet again for ICAI, Mangalore. December month started with Career guidance programmes for popularization of CA Course conducted at Govinda Dasa College, Surathkal, Government PU College, Mulki and Vijaya College, Mulki by CA.Shivanand Pai, CA Kiran Vasant and Ms.DeepikaVasani. The polling in Mangalore to elect to Central Council and Regional Council was held on 5th December at St. Aloysius College Mangalore. Most of our members participated in the election and used the opportunity to exercise their franchise for electing the right candidates.

For the first time in the history of Mangalore branch we organized a National Conclave for CA students. The Conclave rightly named 'Jnana Sathra' with a theme 'Igniting Intellectual Intent' was held on 15th and 16th of December at TMA Pai Convention Centre, Mangalore. The Conclave was inaugurated by CA.K.Raghu, immediate Past President of ICAI. The conclave witnessed record number of participants of around 1500 students.

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Chairman's Message



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I congratulate the SICASA Chairman CA.Shivanand Pai and his team of SICASA Office bearers for their wonderful team work. I also wish to place on record excellent support and co-operation from the Past Chairmen, members, volunteers, coordinators and my committee members without which it would not be possible to organize a programme of this magnitude. We are thankful to Board of Studies of ICAI for giving this opportunity and making the event a memorable one. I am personally pleased with this Mega Event as a large number of students responded with enthusiasm to showcase their multi-faceted talents.

On 31/12/2015, in a CPE study circle meeting, Dr.P.Ananthakrishna Bhat, renowned speaker, addressed the members on 'We the people and our Constitution' at ICAI Bhavan, Mahendra Arcade. His in-depth knowledge and interesting lecture has really evoked patriotism and pride about our constitution among the participants. We are thankful to him for sharing his knowledge which has created an urge to know more about our Constitution.

I would like to wind up by saying that although no one can go back and make a brand new start, anyone can start from now and make a brand new ending. As we are coming to the end of the year let us forget about the past failure and negative thoughts but rather take on the positive things and give a warm welcome to 2016.

Let us Live our Life and Love our Life.

With warm regards,

Yours in Professional Service,

CA Shivakumar Koikuli

Branch Activities December 2015



SI No	Date	Activity at Branch	CPE Hours/ Number of Participants
01	04.12.2015	Career Guidance Program Govinda Dasa College, Surathkal Speaker: CA. Shivanand Pai B,	Students: 50
02	04.12.2015	Career Guidance Program Government P.U. College, Mulki Speaker: CA. Kiran Vasant	Students: 40
03	04.12.2015	Career Guidance Program Vijaya College, Mulki Speaker: Ms. Deepika Vasani	Students: 120
04	04.12.2015 to 08.12.2015	48th Batch of Orientation Programme for IPCC Students	Students: 42
05	06.12.2015	CA Students volunteered RX Life Cycle Rally	Students: 12
06	08.12.2015 to 22.12.2015	23rd Batch of GMCS -1	Students: 48
07	15.12.2015 to 16.12.2015	National Conclave - JNANA SATHRA- Igniting Intellectual Intent , Organised by Board of Studies Hosted by Mangalore Branch of SIRC of ICAI Inaugurated by CA. K. Raghu, Past President, ICAI Guest of Honor: Mr. Ambareesh Baliga	Students : 1427
08	17.12.2015	ITT BATCH - STARTED	Students : 24
09	31.12.2015	Topic: Constitutional and legal provisions behind levy of Service Tax Speaker: Dr. P. Ananthakrishna Bhat, MA, LLB. Ph.D	Members: 19 CPE Credit: 2 Hours





Left: Speaker Dr P Ananthakrishna Bhat during the CPE Seminar held on 31st Dec 2015 at ICAI Bhawan, Mangalore
Right: CA Shivkumar Koikuli welcoming the gathering during the CPE Seminar held on 31st Dec 2015



Glimpse of Students National Conclave held on 15th & 16th of Dec 2015 at T M A Pai Convention Centre, Mangalore



Professional Updates: Direct Taxes

Receipt shown in profit and loss account liable to MAT even if it is shown as capital receipt in notes to accounts

B & B Infotech Ltd. v. ITO [2015] (Bangalore – Trib.)

The issue that was disputed in the instant case was as under:

“Whether remission of bank loan shown in P&L A/c shall be included for computing book profits under section 115JB even if same was shown as capital receipt in notes to accounts?”

The Tribunal held as under:

Once profit and loss account is admittedly prepared as per schedule VI of the Companies Act, then neither the AO has any power to tinker with it nor the assessee is permitted to claim exclusion or inclusion of any item of income or expenditure as the case may be for the purpose of computing book profits under section 115JB except the permissible adjustment provided under the explanation to section 115JB of the Act.

Remission of bank loan does not fall in the ambit of any of the clauses of the Explanation to section 115JB. Therefore, once the remitted amount has been disclosed in the profit and loss account prepared strictly as per provisions of schedule VI of the Companies Act, the same cannot be excluded for the purpose of computing book profits under section 115JB even if it was shown as capital receipt in notes to accounts.

Buy-Back consideration paid above face value, as per CLB’s direction, held as revenue expenditure

CIT v. Brahma Bazar Hotels Ltd. [2015] (Bombay)

There was a dispute between two groups of shareholders in the assessee-company. In terms of direction issued by CLB, the assessee-company paid certain extra amount over and above the face value of the shares to the departing group of shareholders which was debited as revenue expenditure.

Assessing Officer (AO) allowed assessee's claim for deduction. However, Commissioner of Income-tax (CIT) revised AO's order by taking a view that amount in question was in nature of capital expenditure.

The Tribunal, however, restored the order passed by the Assessing Officer.

On revenues's appeal, the Bombay High Court held as under:

Since, the amount paid by assessee to buy back shares of one group of shareholders was only for the purpose of ensuring that it could run its business smoothly and more profitably. Therefore, tribunal was justified in allowing said amount as revenue expenditure.



Professional Update: Direct taxes

Foreign tax credit should be given on tax liability computed under MAT provisions

Dy. CIT v. Subex Technology Ltd. [2015] (Bangalore – Trib.)

The issue that was disputed in the instant case was as under:-

“Whether relief under section 90 of Income –tax Act (‘the Act’) in respect of tax paid in a foreign country would be available while computing tax liability as per provisions of MAT?”

The Tribunal held in favour of assessee as under:

The Mumbai Tribunal in case of Asstt. CIT v. L&T Ltd. [ITA No. 4499/Mum/2008/dated 22-04-2009] had held that once taxable income was determined either under the normal provisions of the Act or as per section 115JB, subsequent portion relating to rebate and set-off would be governed by the normal provision of the Act.

There is no provision in the Act, debarring granting of credit for tax paid abroad in case income is computed under section 115JB. Thus, assessee could not be denied set-off of tax relief under section 90 against the tax liability determined under section 115JB.

Apex Court discuss scope of ‘commercial expediency’ to allow deduction of interest to Hero Cycles

Hero Cycles (P.) Ltd. v. CIT [2015] (SC)

Assessee-company had taken a loan at interest rate of 18% p.a. Out of such borrowed funds it had transferred certain sum to its subsidiary-company without any interest. It had claimed deduction of interest under section 36(1)(iii). Assessing Officer (AO) disallowed interest on borrowed sum on the ground that such funds were not used for business purposes.

It was held by the Supreme Court that once it is established that there is nexus between the expenditure and the purpose of business (which need not necessarily be the business of the assessee itself), the revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and how much is reasonable expenditure having regard to the circumstances of the case.

In the instant case, it was manifest that the advance to subsidiary-company became imperative as business expediency in view of the undertaking given to the financial institutions by the assessee to the effect that it would provide additional margin to subsidiary-company to meet the working capital for meeting the cash losses. Thus, assessee was allowed to deduct interest on loan.

Professional Updates: Direct Taxes



Split sales couldn't be treated as slump sale just because unit was transferred on going-concern

Dy. CIT v. Tongani Tea Co. Ltd. [2015] (Kolkata – Trib)

The issue of dispute in the instant case was as under:

“Whether split sale could be treated as slump sale under section 50B just because unit was transferred as going concern?”

The Kolkata Tribunal held as under:

As per section 2(43C) slump sale means transfer of undertaking for lump sum consideration without assigning value to individual assets or liabilities. However in present case of assessee has assigned specific value to each movable asset. Moreover the sale agreement does not include liabilities, investments and deposits.

Further, even though the expression “going concern” is a functional qualification as far as the estate is concerned, the said functional qualification was not sufficient enough to decide the exact legal character of the transaction, for the purpose of income –tax assessment. Therefore, the instant case was one of split sale and not a case of slump sale.

Sum received for restrictive covenant in relation to profession is tax-free

Satya Sheel Kholsa v. ITO [2015] (Delhi – Trib)

The appellant was a managing director of the M/s Suzuki Motorcycle India Pvt. Ltd. The appellant stepped down as managing director of Suzuki India. The appellant and Suzuki India entered into an Agreement where under Suzuki India agreed to pay a sum of Rs. 1.32 crores to the appellant, in consideration of the appellant not providing “the benefit of his knowledge of regulatory matters, negotiating skills and strategic planning expertise to any other person in the two wheeler segment for a period of two years, Thus, the disputed issue was:

Whether the said sum received by appellant would be taxable under section 28 (va)?

The Tribunal held as under:

The sum of Rs.1.32 crores paid by Suzuki India to the appellant could not be regarded as non – competition fee because it had not been paid for not competing with the payer, but for not providing the benefit of his knowledge, expertise, skills, etc., to any other person in the two wheeler segment.

Clause (va) of section 28 “taxes a sum received for a restrictive covenant in relation to a business, but not a profession”;and, therefore, sum received by appellant does not fall within the ambit of section 28(va). Hence, as the sum received by the appellant did not fall within the ambit of section 28(va), it was not chargeable to tax as it constituted a capital receipt.

Professional Updates:



Director's act of nominating own person on board without giving notice to Co. was *mala fide*: HC

Mekuba Petroleum India (P.) Ltd. V. Wynn's Mekuba India (P.) Ltd. [2015] (Madras)

Where second respondent had right to appoint nominee on board of company but there were strained relationship between parties i.e., appellant and second respondent, action of second respondent in nominating its own persons on board without any notice was mala fide and vindictive.

Now NRs or NRIs may acquire units of 'Real Estate Investment Trusts'

NOTIFICATION [NO.FEMA .355/2015-RB]/GSR 858(E), DATED 16-11-2015

RBI has amended Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 whereby it has permitted Non-resident Indians ("NRIs") and Registered Foreign Portfolio Investors ("RFPIs") to invest in units of Investment Vehicles under automatic route.

Further amendment includes:

- (i) inclusion of a new definition of 'investment Vehicle', which shall mean an entity registered and regulated by SEBI or any other authority designated for the purpose and shall include Real Estate Investment Trusts (REITs), Infrastructure Investment Trusts (InvIts) & Alternative Investment Funds (AIFs).
- (ii) Definition of 'Unit', which shall mean beneficial interest of an investor in Investment Vehicle and shall include shares/partnership interests.
- (iii) Amendment to regulation 9 which permits transfer of Investment vehicle's units, in addition to shares or convertible debentures or warrants of an Indian Company by person resident outside India.
- (iv) Allowing pledging of units for securing credit facilities being extended to NRIs.
- (v) Introduction of Schedule titled as 'Investment by a person resident outside India in an Investment Vehicle'.

Professional Updates



Direct Taxes: Govt. notifies old tolerance limit of 1% and 3% under new TP Rule

NOTIFICATION NO.86/2015 [F.NO.500/1/2014-APA-II], DATED 29-10-2015

Government has notified old tolerance limit of 1% and 3% under new Transfer Pricing Rule 10CA. Thereby, if the variation between the arm's length price determined under section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed, 1% in respect of wholesale trading and 3% in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2015-16.

Direct Taxes: Land acquired under an agreement not to be held as compulsory acquisition under section 194LA

Karnataka Industrial Area Development Board v. ITO [2015] (Bangalore-trib)

Question of applicability of section 194LA arise only when there is a compulsory acquisition under the law. Under compulsory acquisition, the seller has no option but to sell the land. He cannot even negotiate the price as same is fixed by statute itself.

However, in the instant case, the land owners and State Government Undertaking (i.e., assessee) entered into an agreement whereby they mutually agreed for the amount of compensation which was fixed in accordance with section 29(2) of the Karnataka Industrial Areas Development Act, 1966. Therefore, it could not be said to be a case of compulsory acquisition. Thus, once the acquisition is not considered as compulsory acquisition, section 194LA will not be applicable.

Direct Taxes: Gain arising to ESOP- trust on transfer of shares to employees of settler- company isn't business receipt

Mahindra & Mahindra Employees' Stock Option Trust v. Addl. CIT [2015] (Mumbai-Trib.)

The issue in the instant case is as under:

“Whether income arising to assessee, being an ‘ESOP Trust (created by settler-company for implementing its ESOP scheme) on transfer of shares to employees of settler-company could be taxed as business income ?”

Tribunal held in favour of assessee as under:

- (1) As per the trust deed assessee was not authorized to trade in shares held by it, so it could not take advantage of stock market fluctuations. The shares held by the assessee were in fiduciary capacity and assessee did not have absolute rights over those, so these shares could not be categorized as business assets.
- (2) On other side all the control on operation and implementation of ESOP scheme was held by the settler-company. Transfer of shares by assessee to employees of settler-company was similar to issuance of new shares by settler-company to its employees. If settler-company had issued shares directly to its employees at a value higher than their face value, difference would have been regarded as share premium and not as business income.
- (3) Therefore, assessee was merely acting as ‘Special Purpose Vehicle’ and could be said to be an ‘extended –arm’ of the settler- company. Hence, gains arising on transfer of shares would be same as it would have been in the hands of settler-company. Accordingly, the gain arising on transfer of shares should be treated as capital gain and not as business income.

Professional Updates



Direct taxes: No search proceedings against client due to seizure of CA's hard disk containing ITR data of client

CIT v. RRJ Securities Ltd. [2015] (Delhi)

The issue that was disputed in the instant case is as under:

'Whether Hard Disk seized from Chartered Accountant which pertain details of ITR filing of Assessee (i.e. client) could be said to be "belong to" the client for invoking section 153C?'

The Delhi High Court followed its judgement in case of Pepsico India Holding pvt. Ltd.v. ACIT [2014] 50 taxmann.com 299 to interpret the expression 'belongs to'.

A registered sale deed, for example, 'belongs to' the purchaser of the property, although it obviously 'relates to' or 'refers to' the vendor. Hence, if the purchaser's premises are searched and the registered sale deed is seized, it cannot be said that it 'belongs to' the vendor just because his name is mentioned in the document.

In the instant case, the hard disk was recovered from the computer belonging to Chartered Accountant (CA) of assessee which contained soft copies of working papers and balance sheet pertaining to assessee's income tax return. The data pertaining to the assessee was held by CA in his professional capacity. Therefore, merely because such data pertained to the assessee, the hard disk could not be said to be belonged to assessee for invoking section 153C.

Direct Taxes: Trust imparting spiritual education is religious trust; its anonymous donations aren't taxable

CIT(E) v. Bhagwan Shree Laxmi Naraindham Trust [2015] (Delhi)

Assessee –trust was involved in imparting of spiritual education through lectures/samagam. It also distributes medicines and clothes to needy and destitute people. It had claimed exemption under section 115BBC in respect of anonymous donation received by it.

The Assessing Officer held that the assessee-trust was not a religious trust as it was engaged in spreading spirituality. Thus, anonymous donations received by it were not exempt from tax.

The Delhi High Court held that religious activity in context of hindu religion is not only confined to activities incidental to place of worship like a temple. Therefore, assessee's activities could also be included in broad conspectus of Hindu religious activity.

Hence, anonymous donations received by assessee would qualify for deduction under section 115BBC.

Direct Taxes: Value of vacant land to be taken over by Govt. can't exceed compensation amount

S.N. Wadiyar v. CWT [2015] (SC)

The Supreme Court held that value of a vacant land which was going to be taken over by the government could not exceed the maximum compensation payable to the assessee under the Urban Land Ceiling Act, 1962 for the purpose of Wealth-tax Act.

Professional Updates



Service Tax: Free Warranty services provided by vehicle dealers out of their margin are not liable to service – tax

Chowgule Industries (P.) Ltd. v. CCE [2015] (Mumbai – CESTAT)

Assessee, a dealer and also an authorised service station of Maruti Udyog Ltd. was providing free services during warranty period to buyers of Maruti Vehicles. Department argued that a part of dealer's margin/handling charges was consideration for providing free warranty services on behalf of Maruti Udyog Ltd. and demanded service tax thereon.

It was held that amounts received by assessee were not liable to service-tax as these were recorded as dealer's margin/handling charges and VAT was paid thereon. Providing free services by assessee-dealer out of its margin was a part its duty. Hence, assessee had not provided any authorised service station services to Maruti Udyog Ltd.

Service Tax: Refund of wrongly paid ST under reverse charge not hit by principle of unjust enrichment

CC & CE v. Krupadeep Traders [2015] (Mumbai - CESTAT)

Service tax wrongly paid by a sole – proprietorship concern under reverse charge on Goods Transport Agency's Services is refundable along with interest and bar of unjust enrichment would not apply thereto.

Service Tax: Commission earned by agents on sale of SIM cards/vouchers is not liable to Service –tax

CCE v. BharatCell [2015] (Mad.)

Assessee was authorised by BSNL to trade in pre-paid SIM cards and was entitled to bonus /commission. Department sought to levy service tax on said bonus/commission. It was held that commission earned by authorised agents on sale of SIM cards/vouchers of BSNL was not chargeable to service tax as tax on full value of cards/coupons was already paid by BSNL.

Service Tax: Maintenance charges collected by builders from prospective buyers aren't liable to service – tax

Goel Nitron Constructions v. CCE [2015] (Mumbai – CESTAT)

'One-time maintenance charges' collected by builders from prospective buyers of flats for interim period till housing society is formed are not liable to service tax under Management, Maintenance or Repair Services.

Service Tax: Merely supervising movement of Coal from collieries to factory can't be held as C&F services

CST v. Shah Coal (P.) Ltd. [2015] (Bom.)

Merely supervising loading/handling of coal and its movement from collieries to client's factories, cannot be regarded as clearing and forwarding services if assessee has no role in clearance of coal from collieries.

Excise: Concrete sleepers used for laying railway tracks aiding transportation of goods are eligible inputs

Jindal Steel & Power Ltd. v. CCE [2015] (New Delhi – CESTAT)

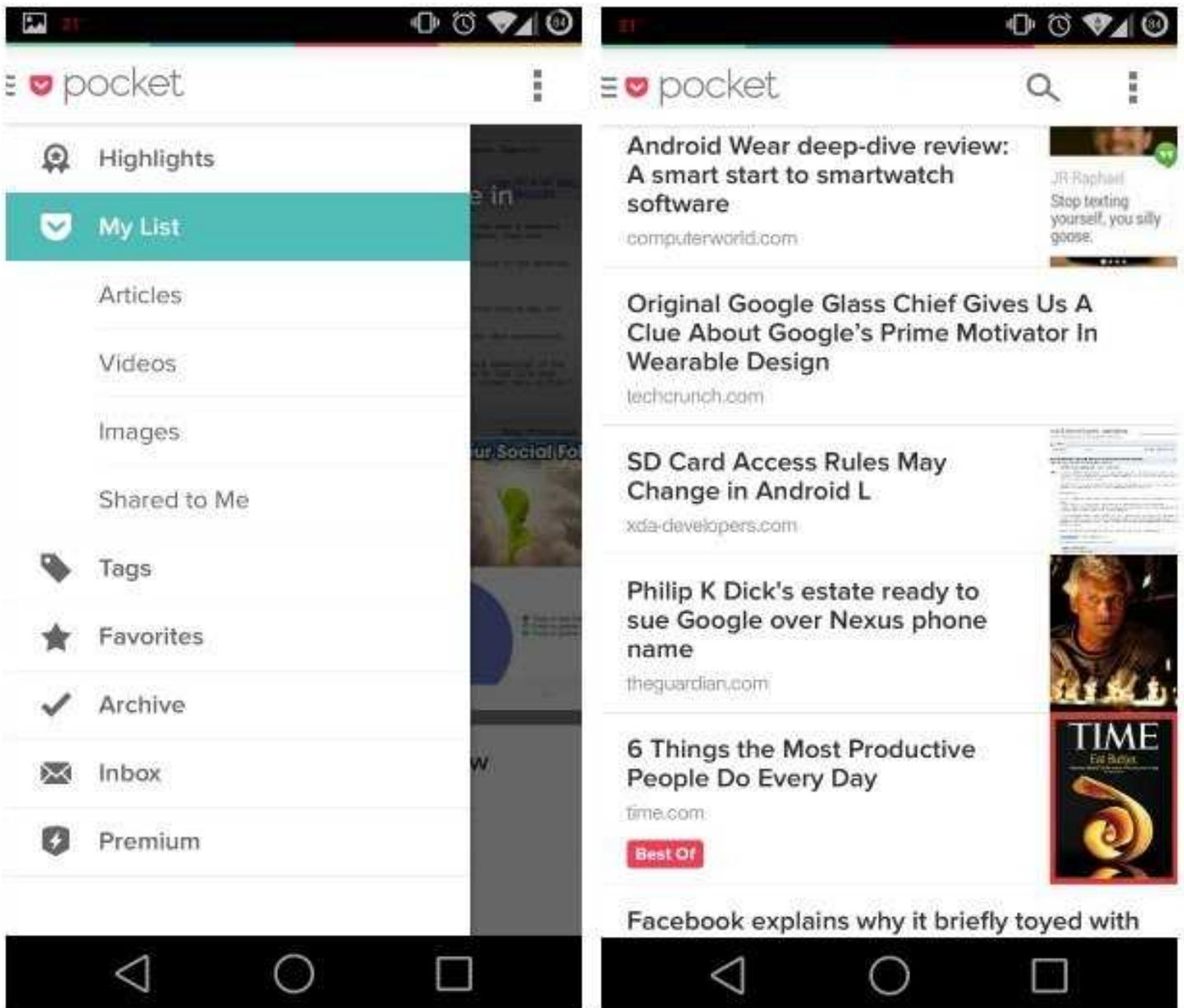
Concrete sleepers used for laying railway tracks for movement of goods to plant facilities installed within factory premises are eligible for Cenvat credit as 'inputs'.

Tips on Android Applications



App Name: Pocket

When you don't have a Wi-Fi or data connection it's too late to download one. We've got the best of the best of offline apps for Android for your offline enjoyment. One of the very best offline Android apps of all is Pocket, and offline reader app that saves text and images for reading later on. No more bookmarking, link sharing or copy pasting when you've Pocket in your pocket.



Pocket lets you save web articles for offline reading. No Wi-Fi required.

Courtesy: www.androidpit.com

ICAI Election Results 2015



SIRC Election Results:

Following members have been elected to the Twenty Second Southern India Regional Council of the Institute as given below:

Sl.No.	Names	Membership No.	Place
1.	CA. Abhishek M., ACA	226622	Chennai
2.	CA. Adusumilli Venkateswara Rao, FCA	200732	Hyderabad
3.	CA. Babu K. Thevar, FCA	212793	Bengaluru
4.	CA. China Masthan Thalakyala, FCA	218549	Hyderabad
5.	CA. Cotha S. Srinivas, FCA	205804	Bengaluru
6.	CA. Dungar Chand U., FCA	215625	Madurai
7.	CA. Gopal Krishna Raju, FCA	205929	Chennai
8.	CA. Hemavathi R. (Ms.) FCA,	210180	Chennai
9.	CA. Jalapathi K., FCA	214823	Coimbatore
10.	CA. Jomon K. George, FCA	202144	Kochi
11.	CA. Panna Raj S., FCA	026366	Ballari
12.	CA. Phalguna Kumar E., FCA	020278	Tirupati
13.	CA. Ritesh Mittal, FCA	214155	Hyderabad

Central Council Election Results -Southern India Regional Constituency

Following Members have been elected to the Twenty Third Council of the Institute from the constituencies as given below:-

Southern India Regional Constituency comprising the States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and Telangana and the Union Territories of Lakshadweep and Pondicherry.

Sl.No.	Names	Membership No.	Place
1.	CA. Babu Abraham Kallivayalil, FCA	026973	Kochi
2.	CA. Devaraja Reddy M., FCA	026202	Hyderabad
3.	CA. Madhukar Narayan Hiregange, FCA	027409	Bengaluru
4.	CA. Sekar G., FCA	025533	Chennai
5.	CA. Sripriya K. (Ms.), FCA	205829	Chennai
6.	CA. Vijay Kumar M. P., FCA	201797	Chennai

2015
ELECTION



Managing Committee 2015-16



Managing Committee

CA Shivakumar K, Chairman
CA Keshava N Ballakuraya, Vice -Chairman
CA Bhargava Tantri P, Secretary
CA Chitra Chandramohan, Treasurer
CA Shivananda Pai, SICASA Chairman
CA Raviraj B, Member

Invitation for the Articles

The Managing Committee of Mangalore Branch of SIRC of ICAI invites articles, write-ups 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.

Son: I am not able to go to school today.

Father: what happened?

Son: I am not feeling well

Father: Where you are not feeling well?

Son: In school!



Feed back on this e-bulletin can be sent to the editorial team @

icaiebulletin@gmail.com

Editorial Team:

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CA Shravan Dota | CA Vignasha M | CA Akshay Shet | Committee Members

